

1 **Final agency action regarding decision below:**

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3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 FERNE SKIDMORE,

8 Petitioner,

9  
10 VS

11 VELDA ROSE ESTATES HOMEOWNERS  
12 ASSOCIATION,

13 Respondent.

**No. 15F-H1515006-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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15 **HEARING:** August 27, 2015, at 8:00 a.m.

16 **APPEARANCES:** Ferne Skidmore (hereinafter "Petitioner" or "Ms. Skidmore")  
17 was represented by her attorney, Jonathan A. Dessauls, Esq. Velda Rose Estates  
18 Homeowners Association (hereinafter "Velda Rose" or "Respondent") was represented  
19 by its attorney, Clint G. Goodman, Esq.

20 **ADMINISTRATIVE LAW JUDGE:** M. Douglas

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22 Evidence and testimony were presented and the following Findings of Fact,  
23 Conclusions of Law and Recommended Order are made:

24 **FINDINGS OF FACT**

- 25 1. The Department of Fire, Building and Life Safety (the "Department") is authorized by  
26 statute to receive Petitions for Hearings from members of homeowners' associations  
27 and from homeowners' associations in Arizona.  
28 2. Velda Rose is a homeowners' association located in Mesa, Arizona.  
29 3. Petitioner owns a residence located in and is a member of Velda Rose.  
30 4. Petitioner filed a petition with the Department alleging that Velda Rose had violated  
certain provisions of its Bylaws and applicable Arizona statutes. Petitioner alleged that

1 Velda Rose had violated the provisions of Article VII, paragraph 2 of the Covenants,  
2 Conditions and Restrictions (hereinafter "CC&Rs") of Velda Rose. Petitioner  
3 specifically alleged as follows:

4 Discrimination Violation resulting in loss of member rights by  
5 Velda Rose Estates HOA (VRE) 2-8-15. The VRE BOD ruled "to  
6 follow our CCR's and Bylaws to restrict use of the clubhouse due  
7 to religious affiliation." This violates VRE's bylaws and CCR's  
8 nondiscrimination clauses. The only rule regarding member use  
9 of the clubhouse requires scheduling a reservation. The new rule  
10 was physically enforced to ban our members' weekly scheduled  
11 Stocking Project (a charitable, non-secular group of old ladies  
12 making and filling Christmas stockings for needy children).<sup>1</sup>

13 5. Velda Rose's Answer to the Petition provided, in relevant part, as follows:<sup>2</sup>

14 All of the complaint items in the Petition are denied.

### 15 **Hearing Evidence**

16 6. Ms. Skidmore testified that the Stocking Project is a charitable project to provide  
17 stockings filled with gift items to homeless children. Ms. Skidmore said that the gifts  
18 included toothbrushes, toothpaste, and small toys. Ms. Skidmore said that all of the  
19 items in the stockings were donated items.

20 7. Ms. Skidmore testified that the Stocking Project started approximately six years ago  
21 using the club house at Velda Rose. Ms. Skidmore said that the Stocking Project  
22 utilized the club house as a pick-up and drop-off location where participants could pick  
23 up raw materials to create gift stockings and then drop off completed gift stockings.

24 8. Ms. Skidmore denied that the Stocking Project had any religious affiliation. Ms.  
25 Skidmore asserted that the Stocking Project was charitable organization that functioned  
26 solely to benefit children in need. Ms. Skidmore said that the Stocking Project had  
27 been continuously operating on the Velda Rose calendar for the last six years.

28 9. Ms. Skidmore testified that most donations to the Stocking Project consisted of raw  
29 materials to create the stockings or small items that could be placed in the stockings.  
30 Ms. Skidmore acknowledged that she had received around \$250 in monetary donations  
for the Stocking Project from 2012 through 2014. Ms. Skidmore said that all money

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<sup>1</sup> See Petition in Electronic File.

<sup>2</sup> See Answer in Electronic File.

1 received was utilized for the Stocking Project. Ms. Skidmore denied receiving any  
2 money in 2015.

3 10. Ms. Skidmore testified that the Stocking Project does not have a religious  
4 affiliation and that religion is never mentioned. Ms. Skidmore said that the sole  
5 purpose of the Stocking Project is "to give children who have nothing at least one thing  
6 for Christmas."

7 11. Ms. Skidmore's testimony is found to be credible.

8 12. Brodie Poole (hereinafter "Ms. Poole") testified that she has been a member of  
9 the Board of Directors (hereinafter "Board") since January 2015. Ms. Poole said that  
10 she has participated in the Stocking Project. Ms. Poole said that the Stocking Project  
11 had no religious affiliation.

12 13. Ms. Poole's testimony is found to be credible.

13 14. Gwendolyn Krogstad (hereinafter "Ms. Krogstad") testified that she has lived in  
14 Velda Rose since 1992. Ms. Krogstad said that she has been a member of the Board  
15 since January 2015. Ms. Krogstad said that the Stocking Project had always been  
16 known as the Christmas Stocking Project. Ms. Krogstad said that she had been  
17 involved in the Christmas Stocking Project for a number of years.

18 15. Ms. Krogstad said that Christmas Stocking Project is now occurring in a hall  
19 owned by a local church. Ms. Krogstad said that she did not want the Christmas  
20 Stocking Project to return to the clubhouse at Velda Rose. Ms. Krogstad said that she  
21 and the Petitioner had once been friends. Ms. Krogstad said that she did not agree  
22 with the filing of the petition at issue.

23 16. Ms. Krogstad testified that the Christmas Stocking Project was funded through  
24 donations of material, not money. Ms. Krogstad said that to her knowledge no money  
25 had been given to the Christmas Stocking Project. Ms. Krogstad said that the  
26 Christmas Stocking Project does not take money, only donated goods.

27 17. Ms. Krogstad testified that the clubhouse had always been open to activities,  
28 including card games and shuffle board, and that non-members were allowed to  
29 participate without restriction.

30 18. Ms. Krogstad testified that the Board always begins its sessions with a prayer

1 and that the clubhouse is always decorated with a Christmas tree and lights during the  
2 Christmas season. Ms. Krogstad said that the intent of the Christmas Stocking Project  
3 was to help homeless children, not celebrate Christ.

4 19. Ms. Krogstad's testimony is found to be credible.

5 20. Darrell Walklin (hereinafter "Mr. D. Walklin") testified that he had previously  
6 been president of the Board. Mr. D. Walklin said that he had lived in Velda Rose for  
7 nine or ten years. Mr. D. Walklin said that the Board had prohibited the Christmas  
8 Stocking Project from utilizing the clubhouse in 2010, due to the Christmas Stocking  
9 Project's "religious affiliation." Mr. D. Walklin said that religious activities were  
10 prohibited in the clubhouse. Mr. D. Walklin acknowledged that Velda Rose decorated  
11 the clubhouse for Christmas and that a Christmas tree had always been erected in the  
12 past.

13 21. Mr. D. Walklin testified that the Christmas Stocking Project also collected  
14 money which should go through Velda Rose. Mr. D. Walklin said that Ms. Krogstad  
15 had told him that she had given five hundred dollars to the Christmas Stocking Project.  
16 Mr. D. Walklin said that all money must go through Velda Rose in order to protect  
17 Velda Rose's non-profit status with the IRS.

18 22. Gloria Denesen (hereinafter "Ms. Denesen") testified that she had been the  
19 treasurer for the Board for the last six or seven years. Ms. Denesen said that she was  
20 familiar with the Christmas Stocking Project and that Velda Rose had never received  
21 any money from it. Ms. Denesen said that the Petitioner disclosed to her that she had  
22 received money for the Christmas Stocking Project at the Petitioner's residence. Ms.  
23 Denesen said that she informed the Petitioner that all money received by the Christmas  
24 Stocking Project had to go through Velda Rose.

25 23. Roger A. Walklin (hereinafter "Mr. Walklin") testified that he was appointed to  
26 the Board in April or May 2013, and elected as president of the Board shortly  
27 thereafter. Mr. Walklin said that the Christmas Stocking Project had been operating  
28 without the approval of Velda Rose since 2010. Mr. Walklin said that the previous  
29 president of the Board, Mr. R. Walklin, had informed the Christmas Stocking Project  
30 that it could no longer use the club house at Velda Rose in 2010. Mr. Walklin

1 acknowledged the 2010 minutes for Velda Rose do not show any action regarding the  
2 Christmas Stocking Project.

3 24. Mr. Walklin testified that the Board had taken action to prevent the Christmas  
4 Stocking Project from using Velda Rose's club house because of the Christmas  
5 Stocking Project's religious affiliation, the fact that money from the Christmas Stocking  
6 Project was not going through the treasurer's office for Velda Rose, and most of the  
7 members of the Christmas Stocking Project were non-members of Velda Rose.

8 25. Mr. Walklin acknowledged that the Board's decision to exclude the Christmas  
9 Stocking Project from the use of the club house at Velda Rose was based on the  
10 Board's desire to avoid potential liability for a group that is affiliated or somehow related  
11 to a religious organization.

12 **VELDA ROSE BYLAWS REFERENCED AT THE HEARING**

13 1. Article IV, Section 3 provides, in relevant part, as follows:<sup>3</sup>

14 Section 3:

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16 By a majority vote of the Board, the Association may, from time to  
17 time, and subject to the provisions of this Declaration, adopt,  
18 amend, and repeal Rules and Regulations. The Rules and  
19 Regulations may restrict and govern the use of the Common Area  
20 and any other area within the Properties. By way of illustration,  
21 and not limitation, the Board may adopt Rules and Regulations  
22 deemed necessary for the safety, care and cleanliness of the  
23 Properties, to secure the comfort and convenience of all residents,  
24 and to implement the provisions of the this Declaration and any  
25 amendments thereto. The Rules and Regulations may not  
26 discriminate among Owners and shall not be inconsistent with this  
27 Declaration, the Articles, or Bylaws....

28 2. Article VIII, Section 1 provides, in relevant part, as follows:<sup>4</sup>

29 The Association, or any Owner, shall have the right to enforce, by  
30 any proceeding at law or in equity, all restrictions, conditions,  
covenants, reservations, liens and charges now or hereafter  
imposed by the provisions of this Declaration or any provision of  
the Community Documents....

<sup>3</sup> See Exhibit 1 (CC&RS of Velda Rose).

<sup>4</sup> See Exhibit 1 (CC&RS of Velda Rose).

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**APPLICABLE CASE LAW**

Religious Activity is defined as any activity that primarily promotes or manifests a particular belief in or about a deity or an ultimate reality. *See Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 825 (U.S. 1995).

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**CONCLUSIONS OF LAW**

1. A.R.S. § 41-2198.01 permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents or violations of statutes that regulate planned communities. That statute provides that such petitions will be heard before the Office of Administrative Hearings.

2. The burden of proof at an administrative hearing falls to the party asserting a claim, right, or entitlement and the standard of proof on all issue in this matter is by a preponderance of the evidence. *See A.A.C. R2-19-119.*

3. Proof by “preponderance of the evidence” means that it is sufficient to persuade the finder of fact that the proposition is “more likely true than not.” *In re Arnold and Baker Farms*, 177 B.R. 648, 654 (9<sup>th</sup> Cir. BAP (Ariz.) 1994).

4. The preponderance of the evidence established that the Stocking Project, also known as the Christmas Stocking Project, is a non-profit charitable organization that exists to help homeless children, not to promote or to manifest a particular belief in or about a deity or an ultimate reality.

5. Mr. D. Walklin testified that the Board had prohibited the Christmas Stocking Project from utilizing the clubhouse because of the Christmas Stocking Project’s “religious affiliation.” Mr. D. Walklin said that religious activities were prohibited in the clubhouse. Mr. D. Walklin acknowledged that Velda Rose decorated the clubhouse for Christmas and that a Christmas tree had always been erected in the past.

6. Mr. Walklin testified that the Board had taken action to prevent the Christmas Stocking Project from using Velda Rose’s club house because of the Christmas Stocking Project’s religious affiliation, the fact that money from the Christmas Stocking Project was not going through the treasurer’s office for Velda Rose, and because most

1 of the members of the Christmas Stocking Project were non-members of Velda Rose.  
2 Ms. Krogstad credibly testified that the Board always begins its sessions with a prayer  
3 and that the clubhouse is always decorated with a Christmas tree and lights during the  
4 Christmas season. Credible testimony established that the clubhouse for Velda Rose  
5 had previously always been open to many activities, including card games in which  
6 money prizes were awarded and shuffle board, where non-members were allowed to  
7 participate without restriction.

8 7. The preponderance of the evidence established that the Board's actions in  
9 excluding the Petitioner and the Stocking Project, also known as the Christmas  
10 Stocking Project, was discriminatory in violation of Article IV, Section 3 of the CC&Rs of  
11 Velda Rose. This Tribunal concludes that Petitioner satisfied her burden of proof for  
12 this petition.

13 **RECOMMENDED ORDER**

14 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing  
15 party in this matter.

16 It is further ORDERED that Velda Rose fully comply with the applicable  
17 provisions of its CC&Rs in the future.

18 It is further ORDERED that Velda Rose pay Petitioner her filing fee of \$550.00, to  
19 be paid to the Petitioner within thirty (30) days of this Order.

20 No civil penalty is found to be appropriate in this matter.

21 *In the event of certification of the Administrative Law Judge Decision by the*  
22 *Director of the Office of Administrative Hearings, the effective date of this Order will be*  
23 *five (5) days from the date of that certification.*

24 Done this day, September 14, 2015.

25 /s/ M. Douglas  
26 Administrative Law Judge

27 Transmitted electronically to:

28 Debra Blake, Interim Director  
29 Department of Fire Building and Life Safety  
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