

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

2
3 **ALJCERT ALJ decision certified as final**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 CAROL M. ROOT,
8 Petitioner,

No. 15F-H1515014-BFS

9 vs

**ADMINISTRATIVE LAW
JUDGE DECISION**

10 CANDLEWOOD ESTATES AT TROON
11 NORTH HOMEOWNERS ASSOCIATION,
12 Respondent.

13
14 Pending before the Office of Administrative Hearings is a Motion to Dismiss and
15 Vacate Hearing (Motion) filed by Respondent Candlewood Estates at Troon North
16 Homeowners Association. Respondent's Motion was premised on a mandatory Dispute
17 Resolution process that preempts the right of any owner to pursue remedies through
18 any other forum including, but not limited to, a hearing before the Office of
19 Administrative Hearings. The Dispute Resolution process referenced is set forth in
20 Respondent's governing documents.

21 **Background**

22 Petitioner and Respondent are governed by the following declarations of
23 covenants, conditions, and restrictions: 1) the Second Restated Declaration of
24 Covenants, Conditions and Restrictions for Troon North, recorded as Document No.
25 2007-0228652, Official Records of Maricopa County, Arizona (Master Declaration); and,
26 2) the Amended and Restated Declaration of Covenants, Conditions and Restrictions
27 for Candlewood Estates at Troon North, recorded as Document No. 2004-0344647,
28 Official Records of Maricopa County, Arizona (Candlewood Declaration).

29 "A deed containing a restrictive covenant that runs with the land is a contract."
30 *Powell v. Washburn*, 125 P.3d 373,375, 211 Ariz. 553, 555 (2006). One who buys a
property subject to such covenants are then bound by the terms of that contract. "The
interpretation of a contract is generally a matter of law." *Id.*

1 Arizona statute provides, in pertinent part, as follows:

2 A written agreement to submit any existing controversy to
3 arbitration or a provision in a written contract to submit to arbitration any
4 controversy thereafter arising between the parties is valid, enforceable
5 and irrevocable, save upon such grounds as exist at law or in equity for
6 the revocation of any contract.

7 A.R.S. § 12-1501.

8 Article 16 of the Mater Declaration and Article 11 of the Candlewood Declaration
9 include almost identical provisions with regard to the mandatory use of the Dispute
10 Resolution process set forth therein. Section 11.02 of the Candlewood Declaration
11 states, as follows:

12 . . . all Claims arising out of or relating to: (i) the interpretation, application
13 or enforcement of the Governing Documents; or, (ii) the failure of the
14 Declarant, the Association or the Board to properly conduct elections, give
15 adequate notice of meetings, properly conduct meetings, allow inspection
16 of books and records, or establish adequate reserve funds; or (iii) the
17 authority of the Association or the Board to take or not take any action
18 under the Governing Documents; or (iv) the performance or non-
19 performance by any Bound Parties of any of the respective obligations or
20 responsibilities under the Governing Documents to or on behalf of any
21 other Bound Parties; or (v) the rights, obligations and duties of any Bound
22 Party under the Governing Documents or relating to the design or
23 construction of improvements on the Property shall be subject to the
24 provisions of Section 11.03.

25 Section 11.03 of the Candlewood Declaration states, as follows:

26 **11.03 Mandatory Procedures.**

27 (a) Notice/Commencement of Mediation. Any Bound Party having a Claim
28 ("Claimant") against any other Bound Party ("Respondent") (collectively,
29 the "Parties") shall notify each Respondent in writing and provide a copy to
30 the Mediator/Arbitrator (as defined below), and to the Board (the "Notice"),
stating plainly and concisely:

- (1) the nature of the Claim, including the date, time, location,
persons involved and Respondent's role in the Claim;
- (2) the legal basis of the Claim (i.e., the specific authority out of
which the Claim arises); and,
- (3) Claimant's proposed remedy.

(b) In no event shall any Claim be asserted after the date when institution
of legal or equitable proceedings based upon such Claim would be barred
by the applicable statute of limitation.

(c) Mediation/Arbitration.

1 (1) The Mediator shall be the Arbitration & Mediation Center of
2 Arizona ("AMCA"), 8701 E. Vista Bonita Drive, Suite 210, Scottsdale,
3 Arizona 85255 (Facsimile No. 480-585-8585). A list of AMCA
4 mediators and arbitrators, along with instructions as to how to select a
mediator/arbitrator, will be sent to each of the parties within three (3)
business days from AMCA's receipt of the demand for arbitration.

5 (2) Within five (5) business days after the receipt of the Notice, or
6 eight (8) days from the date the Notice was sent, the Respondent(s)
7 shall respond to the demand in writing, by filing a written answer with
AMCA, with copies to the Board, the Claimant and other Respondents,
if any.

8 (3) AMCA shall initially attempt to facilitate a resolution of the
9 matter through mediation. The mediation shall be conducted at
10 AMCA's offices, or at such other place as the Bound Parties and
11 AMCA may agree. If, at any time during the course of the mediation,
12 either AMCA or any of the Bound Parties believe that a stalemate has
13 been reached, AMCA shall schedule an arbitration hearing, without
any party being entitled to pre-hearing discovery (other than a demand
for, and exchange of, all relevant documents, photographs, reports and
correspondence).

14 (4) The arbitration hearing shall be held at AMCA's offices on three
15 (3) days' notice to the parties. If AMCA declines, for any reason, to
16 mediate or arbitrate the matter, then the matter will be arbitrated by a
mutually agreeable party to be identified within five (5) business days
17 following AMCA's decline notice. If the parties are unable to agree to
18 an arbitrator, then the matter shall be submitted to American Arbitration
Association, 3200 North Central Avenue, Phoenix, Arizona 85012.

19 (5) The mediation costs and expenses (excluding attorneys' fees
20 incurred by any party) shall be shared equally by the parties. The
21 arbitration fees, costs and expenses (including, but not limited to,
reasonable attorney's fees) of each party shall be borne by the non-
prevailing party.

22 (6) Unless the Bound Parties and the Arbitrator agree otherwise,
23 the Commercial Arbitration Rules (Fast Track, if applicable) of the
24 American Arbitration Association then in effect, where not in conflict
25 with this Section, shall be utilized in the arbitration hearing and the law
of evidence of the State of Arizona shall govern the presentation of
evidence at such hearing.

26 (7) An award rendered by the arbitrator appointed under and
27 pursuant to this Agreement shall be final and binding on all parties to
the proceedings, and judgment may be entered upon it in accordance
28 with applicable law in any court having jurisdiction.

29 (8) Should a dispute arise as to whether or not any dispute arising
30 under the terms of this Declaration is subject to this
mediation/arbitration provision, the matter shall be decided by

1 arbitration in the same manner and with the same effect as all disputes
2 arising out of this Agreement.

3 (9) All mediation discussions are privileged and confidential.
4 Persons who are not Parties are not allowed to attend the mediation
5 conference without the consent of the Parties. Any mediation
6 resolution may be enforced in a court of law. Each of the Parties to a
7 Claim will bear its own costs incurred prior to and during the
8 negotiation and mediation proceeding described herein, including the
9 fees of its attorney or other representative. Each Party to a Claim will
10 share equally all costs of the mediator and, if and to the extent
11 required, will pay its respective share of the costs in advance of the
12 mediation as a condition to its continuation of the prosecution or
13 defense of the Claim.

14 (10) If the Parties agree to a resolution of any Claim through
15 mediation in accordance with this Section 11.03 and any Party
16 thereafter fails to abide by the terms of such agreement, then any other
17 Party may file a demand for arbitration with AMCA (or with another
18 mutually agreed upon arbitrator, or the American Arbitration
19 Association, if AMCA is unwilling or unable to arbitrate the matter) –
20 without the need to again comply with the mediation procedures set
21 forth above. In such event, the Party taking action to enforce the
22 agreement or award shall be entitled to recover from the non-
23 complying Party (or if more than one non-complying Party, from all
24 such Parties pro rata) all costs incurred in enforcing such agreement or
25 Award, including, without limitation, reasonable attorneys' fees, costs
26 and expenses.

27
28 Petitioner argued that the 2004 amendments to the Candlewood Declaration
29 adding the Dispute Resolution process outlined above was adopted in violation of the
30 CC&R's. Petitioner then stated that, because the amendment was not properly passed,
the Dispute Resolution process required by that amendment should not be enforced
against her. Petitioner did not present any evidence that the amendment in question
had been challenged and/or been determined invalid. Petitioner also argued that
because Section 11.01 of the Candlewood Declaration is entitled "**Agreement to Avoid
Litigation**", the Dispute Resolution process outlined in Section 11.03 applies only to the
avoidance of a party filing a lawsuit in a court of law and does not apply to an
administrative proceeding such as this matter.

Discussion

1 The Master Declaration and the Candlewood Declaration provide that the sole
2 method to address any issues relating to the interpretation and enforcement of both
3 declarations is through the Dispute Resolution process outlined. Petitioner did not
4 allege that the declarations did not require a Dispute Resolution process, but only that
5 those provisions should not apply to her in this situation. While Section 11.01 of the
6 Candlewood Declaration is entitled "**Agreement to Avoid Litigation**", Section 11.02 of
7 the Candlewood Declaration provides that "all Claims" relating to the interpretation,
8 application, or enforcement of the governing documents must be handled through the
9 Dispute Resolution process outlined in Section 11.03. The plain language of the
10 covenants prevents this dispute, as it relates to the interpretation, application, or
11 enforcement of the governing documents, to be brought in the Office of Administrative
12 Hearings and mandates that the dispute must be handled through the Dispute
13 Resolution process set forth in the covenants.

14 **Conclusion**

15 In view of the foregoing, it is recommended that the Complaint in this matter be
16 dismissed as the applicable governing documents require that the claim must be
17 handled through the Dispute Resolution process.

18 *In the event of certification of this Administrative Law Judge Decision by the*
19 *Director of the Office of Administrative Hearings, the effective date of these Orders will*
20 *be 40 days from the date of the certification.*

21 Done this day, February 17, 2016.

22
23 /s/ Tammy L. Eigenheer
24 Administrative Law Judge

25
26 Transmitted electronically to:
27 Debra Blake, Interim Director
28 Department of Fire Building and Life Safety
29
30