

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 ARNOLD C. WILLIAMS,

8 Petitioner,

9
10 vs

11 SONOITA RANCH HOMEOWNER'S
12 ASSOCIATION INC.,

13 Respondent.

No. 15F-H1516007-BFS

**ADMINISTRATIVE LAW JUDGE
DECISION**

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17 **HEARING:** February 22, 2016, at 8:00 a.m.

18 **APPEARANCES:** Arnold C. Williams (hereinafter "Mr. Williams" or "Petitioner")
19 appeared on his own behalf. Sonoita Ranch Homeowner's Association Inc., hereinafter
20 "Sonoita" or "Respondent") was represented by its attorney, Douglas W. Glasson, Esq.

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

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

25 **FINDINGS OF FACT**

26 **Background**

- 27 1. The Department of Fire, Building and Life Safety (the "Department") is authorized by
28 statute to receive Petitions for Hearings from members of homeowners' associations
29 and from homeowners' associations in Arizona.
30 2. Sonoita is a homeowners' association located in Vail, Arizona.
3. Mr. Williams owns a residence in and is a member of Sonoita.

1 4. Mr. Williams filed a petition with the Department alleging that Sonoita had violated
2 provisions of Sonoita's CC&Rs and Arizona statutes. Mr. Williams specifically alleged,
3 in relative part, as follows:

- 4 a. Board continued refusal to enforce CC&R. See attached item 1
5 for brief description.

6 Attached item 1 provides, in relevant part, as follows:

- 7 1. From November 14, 2014 to the present time, the petitioner
8 made frequent request to the Sonoita Ranch Homeowner's
9 Association (SNHOA) Board to enforce the governing
10 documents, in particular CC&R 7.4 and CC&R 7.7, since
11 the Board's lack of enforcement has lead to a severe
12 decline in neighborhood appearance as noted by realtors
13 and prospective buyers....
14 2. On May 21, 2009 and October 30, 2012, the SRHOA board
15 illegally, a later determined by their own attorney, passed
16 resolutions that contradict CC&R 7.4 and 7.7, at sparsely
17 attended board meetings violating CC&R 2.6 and CC&R
18 10.14....

15 5. Sonoita's Answer to the Petition provided, in relevant part, as follows:

16 1. Respondent ASSOCIATION denies it has refused to
17 enforce the governing documents, including specifically
18 (CC&Rs) 7.4 and 7.7 of the Declaration of Protective
19 Covenants, Conditions and restriction (hereinafter
20 "CC&Rs"....) Respondent affirmatively alleges that it has
21 worked diligently and in good faith to interpret and enforce
22 the imperfect CC&Rs to the best of its ability, including
23 passing the two resolutions detailed and addressed below,
24 which Petitioner complains of.

25

26 3. Respondent admits it passed the "Trash/Recycle
27 Container Resolution" on May 21, 2009 (Hereinafter "the
28 (CC&R) 7.4 Resolution") in an effort to clarify what
29 designated areas are appropriate for storage of trash/recycle
30 containers as permitted in (CC&R) 7.4 of the CC&Rs.

....

12. Respondent admits it has consulted with counsel
regarding the validity of the two resolutions passed to
remedy perceived problems with (CC&Rs) 7.4 and 7.7 of the
CC&Rs,...Counsel has confirmed the two resolutions conflict
with the language of (CC&Rs) 7.4 and 7.7 of the CC&Rs,

1 and that (CC&R) 7.4 Resolution and the (CC&R) 7.7
2 Resolution are invalid and unenforceable. Therefore, based
3 on the above analysis, Respondent admits the two
4 resolutions are invalid, and affirmatively alleges that they
5 have been withdrawn.

6 13. Respondent affirmatively alleges that it has decided to
7 seek homeowner approval to amend (CC&Rs) 7.4 and 7.7
8 of the CC&Rs, and that a committee has been formed to
9 review and recommend changes to the CC&Rs.

10 6. On January 26, 2016, the Department issued a Notice of Hearing to the parties
11 notifying them that a hearing on the Petition would be conducted by the Office of
12 Administrative Hearings.

13 7. On February 22, 2016, a hearing was held on the Petition and the parties presented
14 evidence and argument regarding the violations alleged in the Petition.

15 Testimony

16 8. Mr. Williams testified that he believes that he has been unable to sell his residence
17 because the Respondent has not been enforcing CC&Rs 7.4 and 7.7. Mr. Williams
18 stated that the Respondent altered CC&Rs 7.4 and 7.7 without a required vote of the
19 homeowners. Mr. Williams said that Sonoita has not been enforcing CC&Rs 7.4 and
20 7.7. Mr. Williams said that as a result of the Respondent's failure to enforce CC&Rs 7.4
21 and 7.7 the appearance of the neighborhood has deteriorated sharply. Mr. Williams
22 said that he had read the CC&Rs before he purchased his residence and that he
23 expected Sonoita to enforce its CC&Rs.

24 9. Kenneth Elflein (hereinafter "Mr. Elflein") testified that he lives in Sonoita. Mr. Elflein
25 stated that he moved into Sonoita in 2007 and that it has deteriorated since 2007
26 because Sonoita does not enforce its CC&Rs. Mr. Elflein said that there is an
27 "onslaught" of RVs in the neighborhood, and that cars and trucks are parked on the
28 road and driveways. Mr. Elflein said that there are wondering dogs and uncontrolled
29 weeds in the neighborhood. Mr. Elflein said that the Board for Sonoita was
30 unresponsive to his complaints.

10. Nathan Tennyson, Esq., Brown Olcott PLLC (hereinafter "Mr. Tennyson") testified
that his firm is general counsel for Sonoita. Mr. Tennyson opined that CC&Rs 7.4 and

1 7.7 are vague and subject to interpretation. Mr. Tennyson said that he was working on
2 amendments to CC&Rs 7.4 and 7.7. Mr. Tennyson said that an amendment to CC&Rs
3 7.4 and 7.7 would require a vote to amend by 75% of the homeowners in Sonoita.

4 11. Scott DeRosa (hereinafter "Mr. DeRosa") testified that he is a member of the Board
5 of Directors (hereinafter "Board") for Sonoita. Mr. DeRosa stated that the Board for
6 Sonoita has tried to be fair to all homeowners in Sonoita. Mr. DeRosa said that
7 enforcement of CC&R 7.4 has been a problem. Mr. DeRosa said that the previous
8 management company for Sonoita informed the Board that the CC&Rs could be
9 amended without a vote of the homeowners. Mr. DeRosa said that the previous
10 management company informed the Board that the Board could amend CC&Rs by a
11 Board resolution. Mr. DeRosa said that the resolutions amending CC&Rs 7.4 and 7.7
12 were prepared by the previous management company for Sonoita.¹ Mr. DeRosa said
13 there are no carports in Sonoita.

14 12. Eloy Blanco (hereinafter "Mr. Blanco") testified that he is a member of the Board for
15 Sonoita. Mr. Blanco stated that usually the only people present at a HOA meeting for
16 Sonoita were members of the Board. Mr. Blanco said that the previous management
17 company had assured the Board that the CC&Rs could be amended by a resolution of
18 the Board. Mr. Blanco said that he assumed that the resolutions amending the CC&Rs
19 were correct because they had been prepared by the previous management company.

20 13. Sarah Curley (hereinafter "Ms. Curley") testified that she is the president of the
21 Board for Sonoita. Ms. Curley stated that amending the CC&Rs for Sonoita has been a
22 slow and frustrating process. Ms. Curly said that the resolutions amending CC&Rs 7.4
23 and 7.7 were prepared by the previous management company for Sonoita.

24 14. Paul Gready, CAAM (hereinafter "Mr. Gready") testified that he was an expert in
25 HOA management. Mr. Gready stated that he is employed by Express Property
26 Management. Mr. Gready said that Express Property Management started managing
27 Sonoita on November 1, 2015. Mr. Gready said that management companies work at
28 the direction of the Board of Directors including the enforcement of CC&Rs.

29 _____
30 ¹ See Exhibit Nos. H, I, and J (CC&R 7.7 Resolution, Amendments to Bylaws, and CC&R 7.4
Resolution).

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

4 4. Sonoita admitted that two resolutions passed by the Board to remedy perceived
5 problems with CC&Rs 7.4 and 7.7 of the CC&Rs were invalid and unenforceable.
6 Sonoita’s attorney, Mr. Tennyson testified that an amendment to CC&Rs 7.4 and 7.7
7 would require a vote to amend by 75% of the homeowners in Sonoita. Mr. Williams
8 credibly testified that Sonoita has not been enforcing CC&Rs 7.4 and 7.7.

9 5. Therefore, Mr. Williams established by a preponderance of the evidence that
10 Sonoita violated its CC&Rs as described above. The Administrative Law Judge
11 concludes that Petitioner’s Petition should be granted.

12 **RECOMMENDED ORDER**

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

15 It is further ORDERED that Respondent comply with the applicable provisions of
16 CC&R 7.4 and CC&R 7.7 in the future and that any amendment to Sonoita’s CC&Rs
17 must be voted on and passed by the homeowner members of Sonoita as set forth in
18 Respondent’s CC&RS.

19 It is further ORDERED that Respondent pay Mr. Williams his filing fee of
20 \$2,000.00, to be paid directly to Mr. Williams within thirty (30) days of this Order.

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

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

25 Done this day, March 9, 2016.

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27 /s/ M. Douglas
28 Administrative Law Judge

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30 Transmitted electronically to:

1 Debra Blake, Interim Director
2 Department of Fire Building and Life Safety

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