

1 **BEFORE THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY**
2 **OFFICE OF ADMINISTRATION**
3 **IN AND FOR THE STATE OF ARIZONA**

4 **GAINEY RANCH COMMUNITY ASSOCIATION,**)
5 **AND PAVILIONS COUNCIL OF CO-OWNERS,**)

6 **Petitioners,**)

7 **vs.**)

8 **MS PAVILLIONS 35 LLC,**)

9 **Respondent.**)

CASE NO. HO 15-16/009

DOCKET NO. 15F-H1516009-BFS

FINAL ORDER
ACCEPTED, IN PART;
MODIFIED, IN PART.

11
12 Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.08, the attached
13 Administrative Law Judge ("ALJ") Decision is adopted by the Interim Director of the
14 Department of Fire, Building and Life Safety ("Director") and is accepted, in part, and
15 modified, in part, as follows:

16 **ORDER**

17 The Interim Director accepts the ALJ Recommendation with modification. The
18 Interim Director modifies the ALJ Recommendation to include that the Respondent shall
19 reimburse to the Petitioner the Petitioner's filing fee in the amount of seven hundred fifty
20 ("\$750.00") dollars within thirty (30) calendar days

21 Pursuant to A.R.S. § 41-1092.09, a party may file a motion for rehearing or
22 review within thirty (30) days after the service of this final Order. A written request for
23 rehearing should be addressed to Joni Cage, 1110 West Washington, Suite 100, Phoenix,
24 Arizona, 85007.

25 **////**

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1 This Order is a final administrative action and is effective immediately from the
2 date service is complete. A party may appeal this final administrative decision by filing a
3 complaint for judicial review pursuant to title 12, chapter 7, article 6. The Order will not be
4 stayed unless a stay is obtained from the court in conjunction with the judicial review action.

5 DATED this 24th day of March, 2016.

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9 **Debra Blake, Interim Director**
10 **DEPARTMENT OF FIRE, BUILDING**
11 **AND LIFE SAFETY**

12 **The foregoing mailed this 24th day of March, 2016,**
13 **via certified mail receipt no. 7015 0640 0004 7381 8380 to:**

14 **Gainey Ranch Community Association**
15 **c/o Mulcahy Law Firm, P.C.**
16 **3001 E. Camelback Rd., Suite 130**
17 **Phoenix, AZ 85016**

18 **Copy sent via certified mail receipt no. 7015 0640 0004 7381 8397 to:**

19 **MH Pavillions 35, LLC**
20 **c/o Danielle K. Graham**
21 **15831 S. 33rd Place**
22 **Phoenix, AZ 85048**

23 **Copy electronically transmitted to:**

24 **Office of Administrative Hearings**
25 **1400 West Washington, Suite 101**
26 **Phoenix, AZ 85007**

27 **By:** 
Joni Cage
Complaint Program Manager

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

GAINEY RANCH COMMUNITY
ASSOCIATION, and PAVILIONS COUNCIL
OF CO-OWNERS

Petitioner,

vs

MS PAVILLIONS 35 LLC,

Respondent.

No. 15F-H1516009-BFS

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: February 26, 2016, at 1:00 p.m.

APPEARANCES: Gainey Ranch Community Association and Pavilions Council of Co-Owners were presented by Beth Mulcahy, Esq. MS-Pavillions 35 LLC was represented by its attorney, Danielle K. Graham, Esq.

ADMINISTRATIVE LAW JUDGE: M. Douglas

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

FINDINGS OF FACT

Background

1. The Department of Fire, Building and Life Safety (the "Department") is authorized by statute to receive Petitions for Hearings from members of homeowners' associations and from homeowners' associations in Arizona.
2. Gainey Ranch Community Association is formed as a Master Planned Community in Scottsdale, Arizona. The Pavilions Council of Co-Owners is a Satellite Association located within the Gainey Ranch Community Association.

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 3. MS-Pavillions 35 LLC (hereinafter "Respondent") is a domestic LLC in the State of
2 Arizona. Respondent owns a residence in and is a member of Gainey Ranch
3 Community Association and the Pavilions Council of Co-Owners.

4 4. Gainey Ranch Community Association and Pavilions Council of Co-Owners
5 (hereinafter "Petitioner") filed a petition with the Department alleging that Respondent
6 had violated provisions of Article VIII, Section 5(a) of the Satellite CC&Rs. Petitioner
7 specifically alleged, in relative part, as follows:

8 Respondent failed to obtain approval from Architectural
9 Committee prior to removing deck railing.

10 5. Respondent's November 11, 2015, amended response provides, in relevant part,
11 as follows:

12 With respect to the Petition, Gainey Ranch alleges that
13 "Respondent failed to obtain approval from the Architectural
14 Committee prior to removing deck railing." This is simply not
15 true. On or about January 15, 2015, Mr. Shotey received
16 approval from the Gainey Ranch Architectural Committee to
17 install new metal fascia (flashings) on his deck. Such
18 approval was recorded in the Minutes of the Master
19 Architectural Committee Meeting of January 15, 2015, which
20 are attached hereto for your reference. Upon consideration
21 of the fascia installation, the Architectural Committee knew
22 or should have known that it would be impossible to install
23 the fascia without removing the deck railing. Accordingly,
24 approval to remove the deck railing was a necessary
25 element of the Architectural Committee's approval to install
26 the fascia.

23 6. On December 3, 2015, the Department issued a Notice of Hearing to the parties
24 notifying them that a hearing on the Petition would be conducted by the Office of
25 Administrative Hearings.

26 7. On February 26, 2016, a hearing was held on the Petition and the parties
27 presented evidence and argument regarding the violation alleged in the Petition.

28 **Hearing Evidence**

29 8. The Minutes of the Master Architectural Committee Meeting of January 15, 2015
30

1 provide, in relevant part, as follows:¹

2 4. Pavilions #35-Shotey New metal flashing at patio
3 Pavilions approved. Discussion: NONE

4 9. Dee Bloom (hereinafter "Ms. Bloom") testified that Respondent failed to obtain
5 required approval before removing the deck railing in front of Respondent's residence.
6 Ms. Bloom said that Respondent asked for permission to remove the metal flashing for
7 the deck not the deck railing. Ms. Bloom said that Respondent removed the deck
8 railing after January 15, 2015. Ms. Bloom said that she did know the exact date
9 because Respondent failed to ask and obtain approval to remove the deck railing. Ms.
10 Bloom said that Respondent failed to obtain required approval from the Architectural
11 Committee prior to removing deck railing.

12 10. James A. Funk (hereinafter "Mr. Funk") testified that he is the executive director of
13 the Gainey Ranch Community Association and a member of the Master Architectural
14 Committee (hereinafter "MAC") for the Gainey Ranch Community Association. Mr.
15 Funk stated that he has been a member of MAC for over seven years. Mr. Funk said
16 that members of the community must obtain approval from MAC before making
17 exterior changes to their residence. Mr. Funk said that removal of deck railing would
18 have to be approved by MAC. Mr. Funk acknowledged that MAC did give the
19 Respondent approval to replace the wood flashing on Respondent's deck and replace
20 the wood flashing with metal flashing. Mr. Funk said there was no discussion at the
21 time regarding the removal of Respondent's deck railing. Mr. Funk said that
22 Respondent removed the deck railing without approval of MAC. Mr. Funk said that
23 Respondent is in violation of the Gainey Ranch Community Association's CC&Rs. Mr.
24 Funk said that the MAC's approval would include whatever process was required to
25 complete the approval. Mr. Funk said that the approval to remove the wood flashing
26 and replace it with metal flashing could include the temporary removal of the railing.

27 11. Michael Shotay (hereinafter "Mr. Shotay") testified that in order to remove the wood
28 flashing the railing had to be removed because the railing was attached to the wood
29 flashing. Mr. Shotay said that when he remodeled his deck he moved the railing to the

30 ¹ See Exhibit No. A (MAC minutes of January 15, 2015).

1 wood flashing on the deck. Mr. Shotay said that railing had to be removed to replace
2 the wood flashing. Mr. Shotay said that he obtained approval from Pavilions to remove
3 the wood flashing. Mr. Shotay said that he was out of the country while the work was
4 performed. Mr. Shotay said that he believed that his representatives went through all
5 of the proper procedures to obtain approval to remove and replace the wood flashing.

6 12. Mr. Shotay testified that his contractor informed him that the railing could not be
7 replaced because the railing was rusted out and rotting. Mr. Shotay said that Tom
8 Tedford was the name of his contractor.² Mr. Shotay said that the existing deck railing
9 could not be reinstalled. Mr. Shotay said that he assumed that he had approval to do
10 whatever was necessary to install the new metal flashing.

11 13. Mr. Shotay acknowledged that pursuant to the CC&Rs the Association is
12 responsible for the maintenance of the deck railing. Mr. Shotay said that he would
13 have repaired the railing if it had been repairable.

14 14. Michael Shotay is the managing member for Respondent.

15 **APPLICABLE CC&Rs REFERENCED AT HEARING**

16
17 1. Article VIII, Section 5(a) of the Pavilions Council of Co-Owners CC&Rs provides
18 as follows:³

19 (a) No exterior changes whatsoever shall be commenced,
20 erected, maintained, made or done without the prior written
21 approval of the Master Architectural Committee and the prior
22 written approval of the Board or any committee established by
23 the Board for that purpose. By way of illustration but not of
24 limitation the following are considered exterior changes:
25 painting, landscaping, except within the enclosed patio,
26 repairs, excavation, patio covers, screens, doors, evaporative
27 coolers, fireplaces, skylights, storage buildings, solar
28 collectors, shade screens, awnings, window coating or tinting,
29 decorative alterations or other work which in any way alters the
30 exterior appearance of any property. The Board, or committee
established by the Board for that purpose, may designate
design, style, model and manufacturer of any exterior
improvement or alteration which is acceptable to the Board.

² Tom Tedford, Flo-Tech Inc. ROC License No. 153023.

³ See Exhibit No. 2 (Declaration of Covenants, Conditions and Restrictions, for the Pavilions (Satellite Association)).

1 Architectural Committee prior to removing deck railing and that Petitioners' Petition
2 should be granted.

3 **RECOMMENDED ORDER**

4 In view of the foregoing, it is ORDERED that Petitioners be deemed the
5 prevailing party in this matter.

6 It is further ORDERED that Respondent fully comply with the applicable
7 provisions of Article VIII, Section 5(a) of the Pavilions Council of Co-Owners
8 CC&Rs.

9 It is further ORDERED that Respondent pay Petitioners' filing fee of \$550.00, to
10 be paid directly to Petitioners within thirty (30) days of this Order.

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

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

15 Done this day, March 11, 2016.

16 /s/ M. Douglas
17 Administrative Law Judge

18 Transmitted electronically to:

19 Debra Blake, Interim Director
20 Department of Fire Building and Life Safety
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