

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Barbara Printy,
Petitioner

No. 16F-H1616010-BFS

v.

ADMINISTRATIVE LAW JUDGE

Olive Grove Village Association Inc.
Respondent

DECISION

HEARING: October 12, 2016

APPEARANCES: Petitioner Barbara Printy appeared and was represented by Phil Whitaker. Olive Grove Village Association Inc. was represented by Jonathan Ebertshauser.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

RULING

This hearing involved an allegation made by Petitioner Barbara Printy that Olive Grove Village Association Inc. (Respondent or Association) violated A.R.S. § 33-1243(J) by failing to obtain an audit of the 2014 financials. The Administrative Law Judge concludes that Petitioner established a violation by Respondent.

FINDINGS OF FACT

1. Respondent is an association of condominium owners located in Phoenix, Arizona.

2. Respondent's 2014 fiscal year ended on December 31, 2014.

3. A.R.S. § 33-1243(J) provides as follows:

Unless any provision in the condominium documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available on request to the unit owners within thirty days after its compilation.

4. Respondent's Covenants, Conditions, and Restrictions (CC&Rs) provide as follows:

1 The books and records of the Condominium Association shall be audited by
2 an independent auditor at the close of each fiscal year and the results of
3 such audit submitted to each Owner and First Mortgagee within ninety (90)
4 days after the end of such fiscal year.

5 5. Respondent's By-Laws outline the duties of Respondent's Treasurer to
6 include the following:

7 Cause an Audit of the Association's books to be made by a Certified Public
8 Accountant as required by the Association. A complete August is to be
9 made each even numbered year; a review may be made each odd
10 numbered year.

11 6. On or about April 15, 2015, Petitioner requested a copy of the audit report
12 during an Association meeting. Petitioner was told that the information was with the CPA
13 and the audit would be available for inspection by June.

14 7. On or about October 15, 2015, Petitioner submitted a written request for the
15 audit.

16 8. At the Association's October 21, 2015 meeting, Petitioner again requested
17 the audit. Petitioner was told to make the request to the management company.

18 9. At the Association's March 17, 2016 meeting, Petitioner again requested
19 the audit. Petitioner was told homeowners wanting an audit would be charged \$35.00
20 each.

21 10. On or about March 23, 2016, Petitioner filed a Petition with the Department
22 of Fire, Building and Life Safety¹ alleging Respondent violated the CC&Rs, by-laws, and
23 A.R.S. § 33-1243(J) by failing to complete an audit of the 2014 financials within 90 days
24 of the end of the fiscal year. Petitioner paid a \$750.00 filing fee.

25 11. In August 2016, Respondent engaged a CPA to perform the audit of the
26 Association's 2014 financials.

27 12. On or about October 11, 2016, Respondent received a copy of the audit.

28 13. At hearing, Petitioner recounted the times she had requested the audit and
29 was denied. Petitioner also testified that the audit received on the eve of the hearing
30 showed discrepancies in the financial records from the compilations previously received.
Petitioner requested that a civil penalty of \$5,000.00 be imposed against Respondent

¹ As of July 1, 2016, this matter now falls under the purview of the Department of Real Estate.

1 based on its ongoing and flagrant refusal to comply with the Association's governing
2 documents.

3 14. Respondent argued that the CC&Rs and by-laws were inconsistent, so
4 there was confusion as to what level of review was necessary. Respondent
5 acknowledged that an audit of the 2014 financials was required under both the CC&Rs
6 and the by-laws. Respondent argued against a civil penalty in this matter as the penalty
7 would just be passed on to the homeowners through assessments.

8 **CONCLUSIONS OF LAW**

9 1. The Department has jurisdiction to hear disputes between a property owner
10 and a condominium owners association. A.R.S. § 32-2199 *et seq.*

11 2. In this proceeding, Petitioner bear the burden of proving by a
12 preponderance of the evidence that Respondent violated A.R.S. § 33-1243(J). A.A.C.
13 R2-19-119.

14 3. A preponderance of the evidence is "[e]vidence which is of greater weight or
15 more convincing than the evidence which is offered in opposition to it; that is, evidence which
16 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S
17 LAW DICTIONARY 1182 (6th ed. 1990).

18 4. Arizona statute provides as follows:

19 A. The administrative law judge may order any party to abide by the statute,
20 condominium documents, community documents or contract provision at
21 issue and may levy a civil penalty on the basis of each violation. All monies
22 collected pursuant to this article shall be deposited in the condominium and
23 planned community hearing office fund established by section 32-2199.05
24 to be used to offset the cost of administering the administrative law judge
function. If the petitioner prevails, the administrative law judge shall order
the respondent to pay to the petitioner the filing fee required by section 32-
2199.01.

25 A.R.S. § 33-2199.02.

26 5. Petitioner established by a preponderance of the evidence that Respondent
27 was required to complete an audit by March 31, 2015, as required by the governing
28 documents and A.R.S. § 33-1243(J).

29 6. The Administrative Law Judge concludes that Petitioner's Petition should
30 be granted.

RECOMMENDED ORDER

Respondent is ordered to pay Petitioner her filing fee of \$750.00 within 30 days of the effective date of the Order entered in this matter.

Within 60 days of the effective date of the Order entered in this matter, Respondent shall pay to the Department of Real Estate a civil penalty in the amount of \$5,000.00, and such payment shall be made by cashier's check or money order made payable to the Department.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be five days from the date of that certification.

Done this day, November 14, 2016.

/s/ Tammy L. Eigenheer
Administrative Law Judge

Transmitted electronically to:

Judy Lowe, Commissioner
Arizona Department of Real Estate