

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 Michael J Stoltenberg,  
4 Petitioner,  
5 vs  
6 Rancho Del Oro Homeowners Association,  
7 Respondent

No. 20F-H2019005-REL-RHG

**ADMINISTRATIVE LAW JUDGE  
DECISION**

---

8 **HEARING:** May 5, 2020

9 **APPEARANCES:** Petitioner Michael J. Stoltenberg appeared on his own behalf.  
10 Respondent Rancho Del Oro Homeowners Association was represented by Nicole Payne.

11 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

---

12 Petitioner filed the instant petition asserting that Respondent had failed to comply  
13 with the decision in a prior proceeding before the Office of Administrative Hearings in  
14 which the Administrative Law Judge concluded that Respondent was required to provide  
15 landscaping maintenance.

16 Petitioner acknowledged that in 2013, he notified Respondent that it was not  
17 allowed to enter his property. Following the prior ruling, Petitioner provided Respondent  
18 notice in April 2019 that he expected it to start maintaining his property in January 2020.

19 At the time of the initial hearing, Petitioner acknowledged that Respondent did  
20 not have his permission to enter his property and would not be allowed to start providing  
21 maintenance until January 2020.

22 Given Petitioner's admission that Respondent was not allowed to enter his  
23 property at the time he filed the instant petition, Petitioner's allegation that Respondent  
24 was in violation of the governing documents was not ripe for determination by this tribunal.  
25 Accordingly, the Administrative Law Judge dismissed Petitioner's petition.

26 Petitioner subsequently submitted a request for rehearing claiming newly  
27 discovered material evidence; error in the admission or rejection evidence or other errors  
28 of law; that the findings of fact or decision was arbitrary, capricious, or an abuse of  
29 discretion; and that the findings of fact or decision was not supported by the evidence or  
30 was contrary to law. In the request, Petitioner asserted that he was "being proactive in

1 getting resolution to the dispute before the first of the year” and that “[b]y the time that the  
2 rehearing is schedule[d] or allowed the HOA *will be* in violation.” Emphasis added. The  
3 Commissioner of the Department of Real Estate issued an Order Granting Rehearing “for  
4 the reasons outlined in the Rehearing Petition” without further explanation.

5 The rehearing was held on May 5, 2020. At that time, Petitioner again  
6 acknowledged that in 2013, he notified Respondent that it was not allowed to enter his  
7 property and that Petitioner provided Respondent notice in April 2019 that he expected it  
8 to start maintaining his property in January 2020. Again, Petitioner acknowledged that  
9 Respondent did not have his permission to enter his property and would not be allowed to  
10 start providing maintenance until January 2020.

11 During the discussion, Petitioner attempted to reframe his issue presented to  
12 include Respondent’s alleged failure to maintain his neighbors’ properties. Whether  
13 Petitioner had standing to bring such a complaint was irrelevant given Petitioner did not  
14 allege this purported failure in his original petition and raised it only during the rehearing.  
15 Petitioner also argued that Respondent’s ongoing failure, since January 2020, to maintain  
16 his landscaping created a present controversy.

17 Given Petitioner’s admission that Respondent was not allowed to enter his  
18 property at the time he filed the instant petition, Petitioner’s allegation that Respondent  
19 was in violation of the governing documents was not ripe for determination by this tribunal.  
20 Accordingly,

21 **IT IS ORDERED** dismissing Petitioner’s petition.

22  
23 **NOTICE**

24 This administrative law judge order, having been issued as a result of a  
25 rehearing, is binding on the parties. A.R.S. § 32-2199.02(B). A party  
26 wishing to appeal this order must seek judicial review as prescribed by  
27 A.R.S. § 41-1092.08(H) and title 12, chapter 7, article 6. Any such appeal  
28 must be filed with the superior court within thirty-five days from the date  
29 when a copy of this order was served upon the parties. A.R.S. § 12-904(A).

30 Done this day, May 5, 2020.

/s/ Tammy L. Eigenheer  
Administrative Law Judge

1  
2  
3 Copy mailed/e-mailed/faxed May 5, 2020 to:

4 Judy Lowe, Commissioner  
5 Arizona Department of Real Estate  
6 100 N. 15th Avenue, Suite 201  
7 Phoenix, Arizona 85007

8 Attn:

9 jlowe@azre.gov

10 LDettorre@azre.gov

11 AHansen@azre.gov

12 djones@azre.gov

13 DGardner@azre.gov

14 ncano@azre.gov

15 Lydia A. Peirce Linsmeier

16 CARPENTER, HAZLEWOOD, DELGADO & BOLEN LLP

17 1400 E. Southern Ave., Suite 400

18 Tempe, Arizona 85282

19 minuteentries@carpenterhazlewood.com

20 Lydia.Linsmeier@carpenterhazlewood.com

21 Michael J. Stoltenberg

22 11777 E Calle Gaud

23 Yuma, AZ 85367

24 mstolt1349@yahoo.com  
25  
26  
27  
28  
29  
30