

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 R.L. Whitmer

Petitioner,

No. 24F-H034-REL

4
5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Hilton Casas Council of Homeowners, an
7 Arizona nonprofit corporation,
8 Respondent.

9 This matter was brought before this Tribunal upon Petitioner R.L. Whitmer's
10 (Petitioner) Motion for Summary Judgment. In Respondent Hilton Casas Council of
11 Homeowners' (Respondent) Response to Petitioner's Motion for Summary Judgment,
12 Respondent raised a defense of Statute of Limitations. In Respondent's oral argument,
13 Respondent made a motion to dismiss on the basis of Statute of Limitations.

14 In his Petition, Petitioner alleges that Respondent breached Section 23.9 of the
15 CC&Rs on August 19, 2016, when the Board voted to adopt the Rules and Regulations.
16 The Respondent's governing documents, which include the CC&Rs, Bylaws and Rules
17 and Regulations, constitute contracts under Arizona law.¹ The statute of limitations for a
18 breach of contract matter is six years.²

19 Under Arizona law, Petitioner was required to assert his breach of contract claim
20 against Respondent on or before August 19, 2022. Petitioner failed to assert such a claim
21 within the requisite six-year period. As a result, Petitioner is now barred by the statute of
22 limitations from asserting this claim against Respondent.

23 Accordingly, it is **ORDERED AND ADJUDGED DENYING** Petitioner's Motion for
24 Summary Judgment.

25 **IT IS FURTHER ORDERED AND ADJUDGED GRANTING** Respondent's Motion
26 to Dismiss. Petitioner's Complaint is hereby dismissed.

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29 ¹ See *Powell v. Washburn*, 211 Ariz. 553, 555, 125 P.3d 373, 375 (2006) ("A deed containing a restrictive
covenant that runs with the land is a contract").

30 ² See A.R.S. § 12-548(A).

NOTICE

Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter must be filed with the Commissioner of the Department of Real Estate within 30 days of the service of this Order upon the parties.

Done this day, May 30, 2024.

/s/ Amy M. Haley
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile May 30, 2024 to:

Susan Nicolson
Commissioner
Arizona Department of Real Estate
100 N. 15th Avenue, Suite 201
Phoenix, Arizona 85007
Attn:
SNicolson@azre.gov
vnunez@azre.gov
djones@azre.gov
labril@azre.gov
mneat@azre.gov
lrecchia@azre.gov
gosborn@azre.gov

Emily H. Mann
Phillips, Maceyko & Battock, PLLC
5010 E Shea Blvd, Ste 155
Scottsdale, AZ 85254
emily@pmbllaw.org

R.L. Whitmer
6333 N. Scottsdale Road
Casita 21
Scottsdale, AZ 85250
rlw@fulcrumgroup.biz

By: OAH Staff

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