

1 second time after my bank (not the Pettys) researched the issue, which is
2 a violation of 6.9.1. . .”

3 4. Respondent’s CC&Rs Article 6.9.1 sets forth the following:

4 **6.9.1** Any Assessment or any installment of an Assessment not paid within
5 fifteen (15) days after the Assessment or the installment of the
6 Assessment first became due (or such longer period of time as required
7 by applicable law) shall be deemed delinquent and will, unless expressly
8 waived by the Association, bear interest from the date on which such
9 Assessment or installment of the Assessment became due at the rate of
10 twelve percent (12%) per annum. In addition, the Board may establish a
11 late fee, not to exceed the greater of fifteen dollars (\$15.00) or ten percent
12 (10%) of the amount of the unpaid Assessment or installment thereof (but
13 in no event an amount greater than permitted under applicable law), to be
14 charged to any Owner who has not paid any Assessment, or any
15 installment of an Assessment, within fifteen (15) days after such
16 payment was due, provided that such late fee may be imposed only after
17 the Association has provided notice to the Owner that the Assessment or
18 installment of an Assessment is overdue or will be considered overdue if
19 not paid in full within fifteen (15) days after such payment was originally
20 due. Notwithstanding the foregoing, to the extent applicable law from time
21 to time provides for any shorter period of time after which Assessments or
22 any other amounts payable hereunder may or shall become delinquent,
23 such shorter period of time may be established by the Board to apply in
24 lieu of the time period set forth in this Section, and to the extent applicable
25 law from time to time provides for any greater amount of late fee or other
26 amount to be charged to any Owner deemed delinquent in the payment of
27 any Assessment, or any installment of an Assessment, such greater
28 amount may be established by the Board to apply in lieu of the late fee set
29 forth in this Section.
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22 5. Homeowners are assessed quarterly by Respondent. The first
23 quarter assessment for 2025 was due January 1, 2025. The billing was issued in
24 December 2024, by Platinum Management, Inc., Respondent’s community
25 management company at that time. The billing issued to the homeowners contained
26 the address for payments to be sent which was the address for Platinum Management,
27 Inc.
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1 **CONCLUSIONS OF LAW**

2 1. The Department has jurisdiction to hear disputes between a property
3 owner and a planned community association.¹

4 2. In this proceeding, Petitioner bears the burden of proving by a
5 preponderance of the evidence that Respondent violated its CC&Rs Article 6.9.1.²

6 3. A preponderance of the evidence is “[e]vidence which is of greater weight
7 or more convincing than the evidence which is offered in opposition to it; that is,
8 evidence which as a whole shows that the fact sought to be proved is more probable
9 than not.”³

10 4. The Administrative Law Judge concludes, based upon the probative and
11 credible evidence presented at hearing, that Petitioner timely and properly paid the
12 January 2025 assessment to the correct address, and that it was due to the abrupt
13 change in management companies that Respondent did not receive the payment. It
14 was incumbent upon Respondent to ensure that there were no interruptions to the
15 community business. It was Respondent that issued the first quarter assessment for
16 2025, in December 2024, with the mailing address for Platinum Management, Inc.
17 Petitioner timely paid the assessment and sent it to the address provided by
18 Respondent. The fact that Respondent did not receive the payment was not due to any
19 error or omission on Petitioner’s part. Respondent did not even notify the community
20 members of the change until January 2025.

21 5. Accordingly, Petitioner established by a preponderance of the evidence
22 that Respondent committed the alleged violation.

23 6. Based on the facts presented, the Administrative Law Judge finds no civil
24 penalty is appropriate in this matter.

25 **ORDER**

26 **IT IS ORDERED** that Petitioner’s petition is affirmed.

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¹ A.R.S. § 32-2199 *et seq.*

29 ² A.A.C. R2-19-119.

30 ³ BLACK’S LAW DICTIONARY 1182 (6th ed. 1990).

1 Bella Tierra Community Association
2 info@agavemgmt.com

3 Sara Malovich
4 CFO Agave Management
5 s.malovich@agavemgmt.com

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9 By: OAH Staff

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