

1 4. The parties agreed that, if the second question were answered in favor of
2 Respondent, the first question was moot. Accordingly, the questions were bifurcated and
3 the parties submitted briefs on the second question.

4 5. Article III, Section 4 of Respondent's Bylaws provides as follows:

5 Disqualification and Resignation of Directors. Any director may resign at
6 any time by sending written notice of resignation to the Secretary of the
7 Association. Unless otherwise specified therein, any resignation shall take
8 effect upon receipt by the Secretary. Except in the case of injury, illness or
9 similar circumstances, more than three (3) consecutive absences from
10 regular meetings of the Board by any director may be cause for immediate
11 removal, effective as of the conclusion of the last missed meeting. In the
12 event that a director ceases to be an Owner of a Lot or have an interest
13 therein, the directorship shall immediately and automatically terminate. NO
14 director shall continue to serve on the Board if such director is more than
15 thirty (30) days delinquent in the payment of an Assessment or in violation of
16 Declaration or Architectural Guidelines and said delinquency or violation
17 shall automatically constitute a resignation *effective when the Board of*
18 *Directors accepts such resignation.*

19 Emphasis added.

20 6. Article III, Section 9 of Respondent's Bylaws provides as follows:

21 Quorum. At all meetings of the Board, a majority of the directors shall
22 constitute a quorum for the transaction of business. Every act or decision
23 done or made by a majority of the directors present at a duly held meeting at
24 which a quorum is present shall be regarded as the act of the Board. If there
25 is less than a quorum present at any meeting of the Board, the majority of
26 those present may adjourn the meeting from time to time. At any adjourned
27 meeting, any business that might have been transacted at the original
28 meeting may be transacted without further notice.

29 7. On or about March 13, 2019, the Board posted a "Wall Charge" to Ms. Igo's
30 account in the amount of \$3,925.00. The charge was listed under the Code type "Self-
Help" and not "Assessment". On April 22, 2019; April 30, 2019; May 30, 2019; June 28,
2019; July 30, 2019; August 30, 2019; and September 30, 2019, Ms. Igo made \$100.00
payments, which paid her monthly assessment of \$48.50 and reduced the balance of the
"Wall Charge". On October 21, 2019, Ms. Igo paid \$3600.00, which paid her balance in
full with a \$52.00 credit remaining.

1 8. Petitioner indicated that he, as a member of the Board, accepted Ms. Igo's
2 resignation from the Board in his email to the Board members on October 18, 2019.
3 Petitioner asserted that no other Board members responded to the email to vote for, vote
4 against, or abstain from accepting Ms. Igo's resignation. Petitioner argued that, pursuant
5 to Robert's Rules of Order, his vote accepting Ms. Igo's resignation constituted a majority
6 vote in that the vote total was one in favor and zero against.

7 9. Petitioner also stated that he attempted to bring up the topic during the
8 October 30, 2019 Executive Session, but the President of the Board "shut down" the
9 Executive Session at that point.

10 **CONCLUSIONS OF LAW**

11 1. Arizona statute permits an owner or a planned community organization to
12 file a petition with the Department for a hearing concerning violations of planned
13 community documents or violations of statutes that regulate planned communities.
14 A.R.S. § 32-2199. That statute provides that such petitions will be heard before the Office
15 of Administrative Hearings.

16 2. Petitioner bears the burden of proof to establish that Respondent committed
17 the alleged violations by a preponderance of the evidence.¹ Respondent bears the burden
18 to establish affirmative defenses by the same evidentiary standard.²

19 3. "A preponderance of the evidence is such proof as convinces the trier of fact
20 that the contention is more probably true than not."³ A preponderance of the evidence is
21 "[t]he greater weight of the evidence, not necessarily established by the greater number of
22 witnesses testifying to a fact but by evidence that has the most convincing force; superior
23 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
24 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
25 the other."⁴

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27

¹ See ARIZ. REV. STAT. section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*,
74 Ariz. 369, 372, 249 P.2d 837 (1952).

28 ² See A.A.C. R2-19-119(B)(2).

29 ³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ⁴ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 4. Regardless of whether the outstanding charge was an assessment, the
2 plain language of Article III, Section 4 of the Bylaws requires that the automatic
3 resignation resulting from a delinquent assessment is effective only when the Board of
4 Directors accepts the resignation.

5 5. Petitioner's attempt to accept Ms. Igo's automatic resignation by email was
6 not an act of the Board. An email correspondence does not constitute a duly held meeting
7 of the Board. Furthermore, an email communication cannot constitute a quorum of the
8 Board, so Petitioner's purported "vote" could not be considered a majority of the Board
9 voting on the matter.

10 6. Petitioner pointed to no instance in which a quorum of the Board took a vote
11 at a duly held meeting on Ms. Igo's automatic resignation and the majority of those votes
12 were cast in favor of accepting Ms. Igo's resignation.

13 7. Accordingly, Petitioner failed to establish by a preponderance of the
14 evidence that the Board accepted Ms. Igo's resignation.

15 **ORDER**

16 **IT IS ORDERED** that Petitioner's petition is dismissed.

17 **NOTICE**

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

23 Done this day, May 5, 2020.

24 /s/ Tammy L. Eigenheer
25 Administrative Law Judge
26

27 Transmitted by either mail, e-mail, or facsimile March 6, 2020 to:

28 Judy Lowe, Commissioner
29 Arizona Department of Real Estate
30

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