

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 Carla J. Snyder,

No. 21F-H2121032-REL

4 Petitioner,  
5 v.

**ADMINISTRATIVE LAW JUDGE  
DECISION**

6 Las Hadas Villas Association,

7 Respondent.  
8

9 **HEARING:** April 1, 2021

10 **APPEARANCES:** Petitioner Carla J. Snyder appeared on her own behalf. David Potts,  
11 Esq. represented Respondent Las Hadas Villas Association. Ray Odom and Dr. John  
12 Gilderbloom appeared as witnesses for Petitioner Carla J. Snyder. Tonia Reynolds  
13 appeared as a witness for Respondent Las Hadas Villas Association.

14 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella

15 **FINDINGS OF FACT**

16 1. On or about February 22, 2021, Petitioner Carla J. Snyder filed a  
17 Homeowners Association (HOA) Dispute Process Petition ("Petition") with the Arizona  
18 Department of Real Estate ("Department") alleging a violation of community documents  
19 by Respondent Las Hadas Villas Association. Petitioner indicated a single issue would be  
20 presented, paid the appropriate \$500.00 filing fee, and asserted a violation of Section 14.2  
21 of the CC&Rs.

22 2. On or about February 22, 2021, the Department issued a Notice of Hearing  
23 in which it set forth the issue for hearing as follows:

24 The dispute between Petitioner and Respondent arises from Community  
25 Documents Covenants, Conditions and Restrictions (CCRs) 14.2. The Petitioner  
26 states, "There is a serious flaw in the construction of my roof (which was not built  
27 with flashing) and in the CC&Rs 14.2 it clearly states that it is the responsibility of  
28 the HOA to make the necessary repairs as well as being responsible for specific  
29 damage resulting from the roof construction, the impact of having an ill constructed  
30 roof has resulted in \$11,476.00 in damages for which I had to incur the cost."

1           3.     At hearing, Petitioner presented the testimony of Ray Odom, a general  
2 contractor, and professor, Dr. John Gilderbloom, who is also Petitioner's fiancé.  
3 Respondent presented the testimony of Property Manager Tonia Reynolds.

4           4.     The relevant portions of the CC&Rs provide as follows:

5           14.   Maintenance, Repairs and Replacements.

6  
7           14.1. Owner's Responsibility. Each Owner shall furnish and be  
8 responsible for, at his own expense, all of the maintenance, repairs and  
9 replacements within his own Unit, including all windows, doors and locks,  
10 interior partitioning, kitchen, bathroom and lighting fixtures, and all utility  
11 lines and air conditioning and heating units serving only such Owner's Unit,  
12 and for the garage appurtenant to such Owner's Unit, including the door  
13 thereof. ***Each Owner shall also be responsible for, at his own expense,***  
14 ***the maintenance and repair of any exclusive use area which, as***  
15 ***provided in Paragraph 10, is subject to the exclusive control,***  
16 ***possession or use of the Owner, including, for example, balconies,***  
17 ***patios, or fenced yard areas adjoining or appurtenant to the Unit. In***  
18 ***the event of any dispute as to whether an Owner is responsible for the***  
19 ***maintenance, repair or replacement of a particular area or item as***  
20 ***provided in the Paragraph 14.1, the decision of the Board shall be***  
21 ***conclusive.***

22           14.2 Association's Responsibility. Except as otherwise provided herein to  
23 the contrary, maintenance, repairs and replacements of the Common  
24 Elements (including the painting and repair of the exteriors of all Units such  
25 as Building walls, trim, drain pipes, roofs and similar exterior surfaces, but  
26 excluding doors and windows) shall be furnished by the Association as part  
27 of the Common Expenses, subject to the Bylaws and rules and regulations  
28 of the Association. If, due to the intentional act or negligence of an Owner or  
29 his invitee, guest or other authorized visitor, or an Occupant, damage is  
30 caused to the Common Elements or to a Unit or Units owned by others, or  
maintenance, repairs or replacements are required which would otherwise  
be at the common expense, then such Owner, to the extent permitted under  
Arizona law, shall pay for such damage and for such maintenance, repairs  
and replacements as may be determined by the Board, to the extent not  
covered by the Association's insurance. An authorized representative of the  
Board, or of the manager or managing agent of the Property, and all  
contractors and repairmen employed or engaged by the Board or such  
manager or managing agent, shall be entitled to reasonable access to each  
of the Units as may be required in connection with maintenance, repairs or

1 replacements of or to the Common Elements or any equipment, facilities or  
2 fixtures affecting or serving other Units and the Common Elements.

3 See Respondent's Exhibit 3. Emphasis added.

4 5. Petitioner presented the testimony of Ray Odom, a general contractor who  
5 performed the mold remediation and drywall repairs at Petitioner's home. Mr. Odom  
6 testified that there was water damage in the garage that permeated through the garage  
7 and onto the patio due to improper drainage, and because there was no flashing installed  
8 in the roof line and no plastic sheathing installed prior to applying the stucco.  
9 Consequently, the wood was not waterproofed. Mr. Odom explained that the purpose of  
10 the flashing is to divert water, and the lack of installation of flashing is a design flaw with  
11 the roof. Mr. Odom testified that water damage and mold will occur every time it rains if  
12 flashing is not installed. Mr. Odom testified regarding the photographs submitted by  
13 Petitioner depicting the water damage and wood rot. See Petitioner's Exhibit 1. Mr.  
14 Odom opined, based upon his years of experience as a contractor, that "property  
15 management companies generally cut corners."

16 6. Dr. John Gilderbloom, a professor at the University of Louisville, testified  
17 regarding his extensive background and experience with housing. Dr. Gilderbloom  
18 testified that the lack of flashing in a roof is "a problem." Dr. Gilderbloom testified that he  
19 contacted over one hundred roofing contractors and all of them informed him that the  
20 installation of flashing is standard practice. Dr. Gilderbloom opined, based upon his  
21 experience, that "in developments, they cut corners." Dr. Gilderbloom asserted that  
22 Respondent is responsible for "the outside" and that the "roof is the responsibility of the  
23 HOA."

24 7. Petitioner testified that "if the former owner [of the Unit] and Amcor [the  
25 property management company] could have split costs" this hearing would not be  
26 necessary. Petitioner asserted that the issue was with the roof, exterior wall, and patio  
27 wall due to an ill constructed roof and pergola. Petitioner testified that she was seeking a  
28 "finding of negligence in the primary construction of the roof" in order to "move forward  
29 with a civil lawsuit."  
30

1 8. Respondent argued that a finding of negligence is outside the purview of  
2 this administrative hearing as the statutory framework for this proceeding limits  
3 Petitioner's remedies to an Order to comply with the community documents or a civil  
4 penalty if a violation is found. Further, there is no ongoing or current issue, but rather a  
5 past issue, and therefore, an Order to comply would be inappropriate.

6 9. Tonia Reynolds, Respondent's property manager, testified that  
7 approximately three months after moving into the Unit, Petitioner had informed her of the  
8 water leaks and mold in the hallway closet and of the renovations Petitioner had  
9 performed. Ms. Reynolds testified that in response to the information obtained from  
10 Petitioner, Respondent had a roofing contractor, Payne Roofing, conduct a roof  
11 inspection of Petitioner's Unit. See Respondent's Exhibit 1. The roofing inspection report  
12 is dated October 18, 2019, and indicates that: i) Underlayment looks to be in good  
13 condition; ii) The leak appears to be an old issue; and iii) No work needed at this time. *Id.*

14 10. Ms. Reynolds also testified regarding Respondent's "Roof Log" that  
15 demonstrates that on October 9, 2015, Westside Roofing performed the following work to  
16 the roof of Petitioner's Unit: "Tile Section remove existing concrete roof tiles remove  
17 existing wood nailer strips and haul away install tile underlayment and new 1x2 wood  
18 nailer strips provide and install new valley metal and metal flashings as needed Fix trim  
19 provide new concrete tile trim and field tiles to replace any broken or missing tiles." See  
20 Respondent's Exhibit 2. Ms. Reynolds explained that the Roof Log entries are generated  
21 from the invoices received for any work performed to the roof.

22 11. Ms. Reynolds further testified that the next time Petitioner brought an issue  
23 to her attention was approximately three months later when Petitioner had work  
24 performed on her balcony. Petitioner complained of water damage and rot. Ms.  
25 Reynolds testified that she informed Petitioner that the previous owner of the Unit  
26 experienced similar issues due to the pergola. Ms. Reynolds explained that the pergola  
27 was replaced by the previous owner, however, that owner did not want to replace the  
28 damaged and rotted wood causing the pergola to detach, and instead, only had stucco  
29 installed over the wood rot. The previous homeowner contracted directly with a  
30

1 contractor, 99 Home Improvements, to perform work set forth in the Affidavit of Tom  
2 Reynolds, Lead for 99 Homes Improvements, as follows:

3 3. . . . [W]e were called out to inspect possible water damage after we  
4 were told the stucco was pulling away from the pergola. This was in or  
5 around April 2019; a copy of the invoice is attached as Exhibit 1 to this  
6 Declaration.

7 4. We ultimately repaired the stucco at the direction of the owner; Las  
8 Hadas Villas was not responsible for our bills, as our understanding is  
9 that area is supposed to be maintained by the owner and not Las  
10 Hadas. The prior owner specifically told us that he did not want to  
11 replace the underlying material, but just the pergola and a patch of  
12 stucco.

13 See Respondent's Exhibit 4.

14 12. The invoice for the work performed by 99 Home Improvements was  
15 addressed to the previous owner of the Unit and is dated April 4, 2019. *Id.*

16 13. Ms. Reynolds further testified regarding CC&Rs sections 14.1 and 14.2,  
17 specifically that the roof is Respondent's responsibility, however, the patio is the  
18 homeowners' responsibility, as it is an area of exclusive control. See Respondent's  
19 Exhibit 3. Ms. Reynolds further testified that in early 2020, Petitioner presented her case  
20 to the Board, and pursuant to Section 14.1, the Board determined that the pergola and  
21 balcony area are Petitioner's responsibility and did not vote to reimburse Petitioner for the  
22 damages and repair. Petitioner appealed the Board's decision and was once again  
23 denied reimbursement. The Board suggested that Petitioner file a lawsuit against the  
24 previous owner of the Unit for failing to disclose the issue. Respondent submitted into  
25 evidence the Residential Seller Disclosure Advisory which states that "Arizona law  
26 requires the seller to disclose material (important) facts about the property, even if you are  
27 not asked by the buyer or a real estate agent. . . ." See Respondent's Exhibit 5. The  
28 Residential Seller Disclosure Advisory fails to disclose the condition. *Id.*

29 14. Respondent argued that the roof was repaired in 2015, to include  
30 underlayment and flashing, a roofing contractor inspected the roof and found it to be in  
proper condition, the previous owner had work performed to the pergola and covered the

1 underlying wood rot, the patio is the homeowner's responsibility, and pursuant to CC&R  
2 Section 14.1, the decision of the Board to not reimburse Petitioner, is final.

### 3 CONCLUSIONS OF LAW

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

9 2. Petitioner bears the burden of proof to establish that Respondent committed  
10 the alleged violations by a preponderance of the evidence. See ARIZ. REV. STAT. section  
11 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74  
12 Ariz. 369, 372, 249 P.2d 837 (1952). Respondent bears the burden to establish affirmative  
13 defenses by the same evidentiary standard. See A.A.C. R2-19-119(B)(2).

14 3. "A preponderance of the evidence is such proof as convinces the trier of fact  
15 that the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF  
16 EVIDENCE § 5 (1960). A preponderance of the evidence is "[t]he greater weight of the  
17 evidence, not necessarily established by the greater number of witnesses testifying to a fact  
18 but by evidence that has the most convincing force; superior evidentiary weight that, though  
19 not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a  
20 fair and impartial mind to one side of the issue rather than the other." BLACK'S LAW  
21 DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

22 4. The plain reading of the CC&Rs provides that each owner shall be  
23 responsible for the maintenance and repair of any exclusive use area. Petitioner's patio  
24 and pergola are subject to her exclusive control, possession, and use. Therefore,  
25 Respondent is not responsible for the repair or maintenance of such. The evidence of  
26 record established that the previous owner of the Unit had repairs to the pergola  
27 performed at his own expense, however, he failed to remedy the wood rot beneath and  
28 covered resulting damage with stucco. While Respondent is responsible for the roof, the  
29 evidence of record established that the roof was repaired in 2015, to include flashing, and  
30 that a roofing contractor inspected the roof and found it in proper condition.

