

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Emery Herbert,
4 Petitioner,
5 v.
6 Lakebrook Villas II Homeowners
7 Association INC.,
8 Respondent.

No. 22F-H2222047-REL
No. 22F-H2222052-REL

ADMINISTRATIVE LAW JUDGE
DECISION

9 **HEARING:** July 11, 2022

10 **APPEARANCES:** Petitioner Emery Herbert represented herself. Attorneys
11 Maria G. McKee and Josh Bolen represented Respondent Lakebrook Villas II
12 Homeowners Association Inc.

13 **ADMINISTRATIVE LAW JUDGE:** Kay A. Abramsohn

14 **FINDINGS OF FACT**

15 1. The Lakebrook Villas II Homeowners Association (“Association”) is a nonprofit
16 corporation whose members are the owners of real property within the condominium
17 community located in Tucson, Arizona, now known as The Lakebrook Villas II.¹

18 Docket No. 22F-2222047-REL

19 2. On April 20, 2022, Petitioner filed a single-issue petition (“Petition1”) with the
20 Arizona Department of Real Estate. Petition1 alleged that the Association violated
21 Arizona Revised Statutes (“A.R.S.”) § 33-1247, regarding a failure “to provide a prompt
22 repair for the roof leaks that are considered common elements and are maintained by the
23 HOA.” In Petition1, Petitioner noted that she had notified the Association of the leak on
24 March 29, 2022 with follow-up from her on March 31, 2022, April 4, 2022, and April 11,
25 2022.² Petition1 indicated that the property management company informed Petitioner that
26 her roof is not scheduled for repair for a minimum of three months, which action was to be a
27 replacement of her roof and multiple other roofs within the community. Petitioner’s position
28 is that the Association is refusing to perform necessary maintenance, *i.e.*, a “repair” as to her
29 roof leak, and, instead, is planning on a “capital improvement” and raising the owners’
30 monthly dues for the funding.

¹ See HOA Exhibits 2 and 3.

² See Petitioner Exhibit 47-D.

1 3. A.R.S. § 33-1247, Upkeep of the condominium provides:

2 A. Except to the extent provided by the declaration, subsection C of this
3 section or section 33-1253, subsection B, the association is responsible
4 for maintenance, repair and replacement of the common elements and
5 each unit owner is responsible for maintenance, repair and replacement
6 of the unit. On reasonable notice, each unit owner shall afford to the
7 association and the other unit owners, and to their agents or employees,
8 access through the unit reasonably necessary for those purposes. If
9 damage is inflicted on the common elements or any unit through which
10 access is taken, the unit owner responsible for the damage, or the
11 association if it is responsible, is liable for the prompt repair of the
12 damage.

13 4. Section 1, Definitions, subsection (e), of the applicable Declaration, in pertinent
14 parts, contains the following references as to the meaning of “common areas and
15 facilities:”³

16 (4) All of the properties owned by the Lake Biltmore Village Owners
17 Association, a non-profit corporation organized under and by virtue of the
18 laws of the State of Arizona governing non-profit corporations and its
19 successors and assigns. Said common area shall mean all such property
20 held by said association for the common use and enjoyment of members of
21 the association, including but not limited to such things as a lake, driveways,
22 parking areas, bike paths, water courses, fountains, walk areas, lighting
23 fixtures, concessions, rights-of-way, easements, recreational areas and
24 facilities, pumps, trees, landscaping, streets, pipes, wire, conduits and other
25 utility lines;

26 (5) All foundations, columns, girders, beams, supports, exterior walls,
27 bearing walls, *roof*, exterior walkways, undesignated and/or guest covered
28 and uncovered parking spaces, service streets, stalls, recreational areas
29 and facilities, yards, gardens, fences, storage spaces, stairwells and
30 landings, all installations of power, light, water and other apparatus,
“installations and other parts of the property necessary or convenient to the
existence, maintenance and safety of the Common Area, or normally in
common use;”⁴

³ See HOA Exhibit 1. Prior to this Declaration [May 22, 2979], the properties within the Lakebrook Villas II Property were subject a previous Declaration and its Amendments for Property known as “Lake Biltmore Village.” *Id.* at 1; see also Petitioner Exhibit 52-M (a 1975 Amendment dealing with the need for a two-thirds vote of each class of members specifically related to special assessments for construction or renovation, etc. of “additional recreational and other facilities situated upon the common area ...”).

⁴ Emphasis added.

1 5. Section 1, Definitions, subsection (g), of the applicable Declaration contains the
2 following definition of "unit:"

3 Each *unit* is composed of and shall include the space enclosed and
4 bounded by the boundaries shown for each unit on the Plat, which
5 *boundaries are the interior surface of the finished perimeter walls and the*
6 *interior surfaces of finished floor and the finished ceiling*, the elevations of
7 each apartment being as shown on the Plat;⁵

8 6. On May 10, 2022, Association filed with the Department its blanket response
9 denying the allegations.

10 7. On or about May 26, 2022, the Department issued its Notice of Hearing to
11 the parties notifying them that an administrative hearing regarding the Petition would be
12 conducted by the Office of Administrative Hearings ("Tribunal").

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14 8. By letter dated April 20, 2022, the Association notified Unit owners that there
15 would be an increase in the monthly HOA fees to an amount of \$885.00 a month
16 beginning on June 1, 2002 and running until the end of 2002.⁶ The Association indicated
17 that the total roof project costs were \$362,586.00 which, when calculated proportionally
18 per community unit was \$4,074.00 per unit, which when divided for the remainder of the
19 year [7 months], equaled \$582.00 per month per unit for the remainder of the year. The
20 Association further stated, in pertinent part:

21 The roofs are a common expense and required maintenance. This is NOT a
22 special assessment; it is an increase to your regular monthly HOA fees.⁷

23
24
25
26 _____
27 ⁵ Emphasis added.

28 ⁶ See HOA Exhibit 5 [contains the attached new 2022 budget]. The Association further indicated that the
29 faster the funds came in, the faster the progress would be as to repairs to help eliminate continued leaks into
30 homes during the monsoon season.

⁷ An increase of \$582.00 to a total HOA fee of \$885.00 indicates that, prior to the increase, the HOA monthly
fee was \$303.00.

1 9. A previous Association budget line increase affecting the HOA fees
2 regarding roofing expenses, in “November,” was “used up” by the Association with regard
3 to new landscaping costs.⁸

4 10. On May 6, 2022, Petitioner filed a single-issue petition (“Petition2”) with the
5 Arizona Department of Real Estate. Petition2 alleged that the Association had violated
6 the Declaration, Section 9, in failing to obtain a 75% vote of the community to impose a
7 special assessment for the “capital improvement” of ripping off and replacing all of the
8 condominium roofs. Petitioner’s position is that the roofing replacement project is a “capital
9 improvement” which, under Section 9, calls for a special assessment and, further, the
10 Association cannot simply raise the monthly Association dues to cover the costs of the
11 roofing replacements.⁹

12 11. Section 1, Definitions, subsection (i), of the applicable Declaration contains
13 the following definition of “common expenses:”

14 [A]ll items things and sums described in the Act which are lawfully assessed
15 against the Unit Owners in accordance with the provisions of the Act, this
16 Declaration, the By-Laws, such rules and regulations pertaining to the
17 Condominium project as the Management Committee¹⁰ may from time to
18 time adopt, and such other determinations and agreements lawfully made
19 and/or entered into by the Management Committee, however, care for
20 stairwells and landings shall be deemed a “common expense”;

21 12. Section 9, Assessments, of the applicable Declaration provides as
22 follows:¹¹

23 Assessments. Each Unit Owner, by acceptance of a deed therefor, whether
24 or not it shall be so expressed in such deed, is deemed to covenant and
25 agree to pay to the Management Committee: (1) *Common expenses for the
26 operation, maintenance of Common Areas and Facilities; and (2) special
27 assessments for capital improvements*, such assessments to be
28 established and collected as the Management Committee determines in

29 ⁸ See HOA Exhibit 12 [March 2022 HOA meeting] and Exhibit 13 at 2 [June 2022 HOA meeting]; that
30 increased HOA fee cost was noted to have been \$47.50.

⁹ Petitioner noted that the total cost for the roof replacements in the community was \$362,586.00 which
equated to \$582.00 per homeowner unit, calculated to be completed (*i.e.*, paid off) in the remaining months
of 2022.

¹⁰ Based on the hearing record, and relying on HOA Exhibits 2 and 3, the “Management Committee” was
replaced by the Association’s Board of Directors.

¹¹ See HOA Exhibit 1.

1 accordance with the Act, the Declaration or the By-Laws. The common
2 expenses and special assessments, together with late payment penalties, if
3 any, together with such interest thereon and costs of collection thereof, as
4 hereinafter provided, including reasonable attorney's fees and costs, shall
5 be a charge on the land and shall be a continuing lien upon the property
6 against which each such assessment is made. Each such assessment,
7 together with such interest, costs and reasonable attorney's fees shall also
8 be the personal obligation of the person who was the Unit Owner of such
9 property at the time when the assessment fell due, but' such personal
10 obligation and liability of the Unit Owner shall not be deemed to limit or
11 discharge the charge on the land and continuing lien upon the property
12 against which such assessment is made.¹²

13 In assessing Unit Owners or requiring them to pay for the building
14 improvements following the execution of the Declaration, it is agreed that no
15 assessment for a single improvement in the nature of capital expenditure
16 exceeding the sum of \$2,500.00 in cost shall be made without the same
17 having been first approved by a vote of owners of 75 percent, or more, of the
18 undivided interests in the Common Areas and Facilities. The foregoing
19 provision shall not apply in connection with the replacement or
20 reconstruction occasioned by fire or other casualty.

21 13. Section 13, Payment of Expenses, in the applicable Declaration provides as
22 follows, in pertinent part:

23 Each Unit Owner shall pay the Management Committee his allocated
24 portion of the *cash requirement deemed necessary by the Management
25 Committee to manage and operate the Condominium Project, ...* upon the
26 terms, at the time, and in the manner therein provided without any deduction
27 on account of any set off or claim which the owner may have against the
28 Management Committee, and if the owner shall fail to pay any installment
29 within one month of the time when the same becomes due, the owner shall
30 pay interest thereon at the rate of 10 percent per annum from the date when
such installment shall become due to the date of the payment thereof.

The *cash requirements* above referred to for each year, or portions of the
year, are hereby defined and *shall be deemed to be such aggregate sum as
the Management Committee from time to time shall determine, in its
judgement, is to be paid by all the owners of the Condominium project in
order to enable the Management Committee to pay all estimated expenses
and outlays of the Management Committee to the close of such year,
growing out of or in connection with the maintenance and operation of such
land, buildings and improvements, recreational area and facilities, which*

¹² Emphasis added.

1 *sum may include, among other things, the cost of management, special*
2 *assessment, fire, casualty and public liability insurance premiums, common*
3 *lighting, landscaping and the care of grounds, repairs and renovations to*
4 *Common Areas and Facilities, recreational facilities, wages, water and*
5 *charges, legal and accounting fees, management fees, expenses and*
6 *liabilities incurred by the Management Committee under or by reason of this*
7 *Declaration, the payment of any deficit remaining from a previous period,*
8 *the creation of a reasonable contingency or other reserve or surplus fund,*
9 *as well as all other costs and expenses relating to the Condominium Project.*
10 *The Management Committee may from time to time, up to the close of the*
11 *year for which such cash requirements have been so filed or determined,*
12 *increase or diminish the amount previously fixed or determined for such*
13 *year.*¹³

14 ...
15 The portion payable by the owner in and for each year or for a portion of a
16 year shall be a sum within the limits and on the conditions hereinabove
17 provided bearing to the aggregate amount of such cash requirements for
18 such year, or portion of year, determined as aforesaid, in the same ratio as
19 the owner owns an undivided interest in the Common Areas and Facilities,
20 and such assessments, together with any additional sums accruing under
21 this Declaration shall be payable monthly in advance, or in such payments
22 and installments as shall be required by the Management Committee.

23 The Management Committee shall have discretionary powers to prescribe
24 the manner of maintaining and operating the Condominium Project and to
25 determine the cash requirements of the Management Committee to be paid
26 as aforesaid by the owners under this Declaration. Every such reasonable
27 determination by the Management Committee within the bounds of the Act
28 and this Declaration shall, as against the owner, be deemed necessary and
29 properly made for such purpose.

30 ...
Each monthly assessment and each special assessment shall be separate,
distinct, and personal debts and obligations the owner against whom the
same are assessed at the time the assessment is made and shall be
collectible as such. Suit to recover a money judgment for unpaid common
expenses shall be maintainable without foreclosing or waiving the lien
securing the same. *The amount of any assessment, whether regular or*
special, assessed to the owner of any condominium plus interest at ten
percent per annum and costs, including reasonable attorney's fees, shall
become a lien for non-payment of common expenses and have priority over
*all other liens and encumbrances, recorded or unrecorded, except only ...*¹⁴

¹³ Emphasis added.

¹⁴ Emphasis added; the exceptions are not applicable to the issues in these matters.

1 14. On June 1, 2022, Association filed with the Department its blanket response
2 denying the allegations.

3 15. On or about June 14, 2022, the Department issued its Notice of Hearing to
4 the parties notifying them that an administrative hearing regarding the Petition would be
5 conducted by the Office of Administrative Hearings (“Tribunal”).

6 16. On request of the Association, the two Petitions were determined to be
7 heard at a consolidated hearing.

8 17. The Tribunal’s authority is limited to rule on the two Petitions and the
9 alleged violations. The issues for consideration are (1) whether the Association violated
10 A.R.S. § 33-1247(A) and (2) whether the Association violated Section 9 of the Association’s
11 Declaration.

12 BACKGROUND

13 18. In 2019, Association obtained a Roof Inspection Report assessing the
14 general quality and condition of the roofing materials on each of the buildings within the
15 community.¹⁵ The report noted the variances in materials on various buildings and
16 assessed the condition of the materials as to each; the report listed the conditions as to
17 the buildings from worst to best.¹⁶

18 19. Association was receiving reports from homeowners regarding roofing
19 issues and leaks.

20 20. On December 17, 2021, Association obtained a bid and proposal from
21 Roofing Consultants of Arizona regarding complete roof tear-offs, determined repairs,
22 and new foam and coating for the existing foam roofs in the community.¹⁷ The proposal
23 for new installation was of minimum 1” of 2.8 Density LaPolla Foam and elastomeric
24 LaPolla TF-750 coating, base and topcoat, and included a 10-year labor and material
25 warranty.

26
27 ¹⁵ See HOA Exhibit 14. The community includes 14 buildings. *Id.*

28 ¹⁶ At that time, at Building M, listed as being in the best condition, the urethane foam was 1.375” thickness
29 with an applied elastomeric coating at 20 mils and no blistering. At that time, the top four worst-condition
30 buildings were: “I”, “K”, “C”, and “A.”

¹⁷ See HOA Exhibit 16.

1 21. At a February 16, 2022 Board meeting, the Board noted that the roof of
2 Building “C” had been replaced.¹⁸

3 22. At that February 2022 meeting, the Board discussed the possibility of
4 obtaining a loan in the amount of \$350,000.00 and needing a written vote approval of
5 sixty-seven percent of the membership to proceed with obtaining a loan; the
6 need/reasons for the possible loan were not expressed in the minutes. In the minutes, the
7 Board indicated that in order to make a “special assessment” to the members to repay
8 such a loan, the Board would need to have a written vote approval of sixty-seven percent
9 of the membership.¹⁹ Alternatively, the Board noted that it could elect to increase the
10 monthly assessment (*i.e.*, the HOA dues/fees) “by the maximum amount allowable under
11 the CC&Rs” of ten (10) percent, which the minutes noted would be an increase of thirty-
12 five (35) dollars each month, in order to be able to repay the loan in five years.²⁰

13 23. In March of 2022, Association was also in contact with a second roofing
14 company regarding the condition of the roofing, and reported leaking, on multiple
15 buildings.

16 24. At a March 23, 2022 meeting, the Board discussed verifying with lawyers
17 whether a \$2,500.00 “special assessment” could go out to each owner without the need
18 for a community vote on the roofs project.²¹

19 25. On March 30, 2022, Association contracted with Desert Canyon Roofing to
20 perform, as to buildings with foam roofing, complete roofing tear-offs, underlying
21 determined repairs, and installation of 1.5” to 2” of 2.8 Density LaPolla Foam and 2 layers
22
23
24

25 ¹⁸ See HOA Exhibit 11.

26 ¹⁹ Based on the hearing record, as to the 67% number, it appears that the Board may have been relying on
27 what appeared to the percentages, generally, in place, as percentages that were reflected in a 1975
28 amendments to an earlier declaration, regarding “special assessments.” See Petitioner’s Exhibit 52-M.
29 However, those amendments specify the subject of the assessment was as to “construction of additional
30 recreational and other facilities” on, or to be placed on, the common area.

²⁰ Further calculations in the meeting minutes indicate that a monthly increase of \$175.00 a month would
pay back such a loan in 12 months. However, it is noted that the 1979 Declaration does not appear to
contain a 10% maximum as to a monthly dues assessment.

²¹ See HOA Exhibit 12.

1 of elastomeric LaPolla TF-750 base coating, and included a 10-year labor and material
2 warranty.²²

3 26. Petitioner became a homeowner on February 28, 2022. Petitioner owns
4 Unit #212 in Building M.

5 27. On March 29, 2022, Petitioner advised Association (through the
6 management company, "Peterson") that there was a leak in her roof and that her internal
7 ceiling was bubbling and dripping.²³ Thereafter, a series of emails between March 29th
8 and April 11th ensued with Petitioner imploring and then demanding that a repair be
9 completed at her roof and in her unit given that she had suffered damage to her
10 belongings and feared mold would begin, and continue, to grow as a result of a water leak
11 and damage.²⁴

12 28. On April 22, 2022, Peterson sent out the notification letter to homeowners
13 and began to compile specific information about active leaks in the event that the hired
14 contractor might be able to place tarps or covers, or band-aid, their roof until the roof
15 replacement began.²⁵

16 29. Petitioner responded the same day to Peterson inquiry regarding the leaks
17 in her unit.²⁶

18 30. On May 4, 2022, Peterson again reached out to homeowners with regard
19 to the roof project and active leaks, again indicating that the hired contractor might be able
20 to band-aid their roof.²⁷ The letter indicated that the projected start date was between
21 June 15th and June 30th.

22 ²² See HOA Exhibit 4; see also Petitioner Exhibit 47-N, which appears to be the entire contract paperwork.
23 In addition to the foam roofing work, the Desert Valley contract included work to be performed on
24 building/portions of buildings with tile roofing materials.

25 ²³ See Petitioner Exhibit 47-D.

26 ²⁴ It was subsequently confirmed that there was mold under the roofing materials and in Petitioner's home.
27 See Petitioner Exhibit 47-O; see also Petitioner Exhibits S through X, photographs depicting holes cut in the
28 popcorn ceiling to check for mold and the bowing of the popcorn ceiling surface.

29 ²⁵ See HOA Exhibit 6.

30 ²⁶ *Id.*

²⁷ See HOA Exhibit 8.

1 31. At a Board meeting on June 15, 2022, the Board noted that roofing work
2 would begin at the end of June or early July on Building “I” and that Buildings “M,” “I,” and
3 “G” were on the active leak list.

4 32. On June 20, 2022, Petitioner’s unit was tested for mold.²⁸

5 33. On June 24, 2022, Peterson notified Petitioner that repairs for Building “I”
6 would start on July 5th, would take about 2 weeks, and then Building “M” would be
7 started.²⁹ Peterson informed Petitioner that the Association was only responsible to repair
8 the exterior roof and that any mold damage on the interior or her home needed to be
9 submitted to her homeowner’s insurance.

10 34. On June 24, 2022, Petitioner responded to Peterson noting, with
11 specificity, that the mold damage was not on the interior of her home but was in the roof
12 and insulation, behind her interior drywall.³⁰ Petitioner further noted that the roofing
13 companies and other had indicated that the leaks were actually caused by roofing drains
14 that needed to be repaired by a plumber along with the roof replacement.

15 35. After a conversation with Petitioner on June 24, 2022, Peterson informed
16 Petitioner that it was going to consult with the Board of Directors about changing the order
17 of roof project to next work on Building “M” instead of Building “I.”³¹ Peterson further noted
18 that, as to plumber-repair of the drain pipe leaks, other repairs needed, and mold, that
19 these would be addressed at the time the roof was removed for replacement.

20 36. On July 1, 2022, Paul Davis inspected water damage in Unit 212 and Unit
21 213.³² In Unit 212, Mr. Davis found ceiling bubbling and staining, microbial growth/mold in
22 the ceiling cavity.³³ Mr. Davis recommended removal of the entire popcorn ceiling,
23 removal of some of the interior drywall away from the exterior wall, sanitization, and then
24 replacement of the demolished areas.³⁴

25
26 ²⁸ See HOA Exhibit 9, email chain; see also Petitioner Exhibit 47-O.

27 ²⁹ *Id.*

28 ³⁰ *Id.*; see also HOA Exhibit 1, Declaration, Section 1(g).

29 ³¹ *Id.*

30 ³² See HOA Exhibit 17.

³³ See also Petitioner Exhibit 47-O.

³⁴ Mr. Davis further noted the need for asbestos testing due to the age of the units.

1 37. At hearing, as to Petition1, Petitioner argued that, despite being notified on
2 March 29, 2022 of the leaking and despite her continued requests, the Association has
3 failed to act “promptly” and make the necessary repairs to her roof and the drains, which
4 was a violation of A.R.S. § 33-1247(A), and she argued that through the Association’s
5 “negligent” roof maintenance and refusals to make repair, the Association has caused
6 continued damage to her home.

7 38. At hearing, as to Petition2, Petitioner argued that the full roof rip and
8 replacement project is a “capital improvement” which required a 75% vote of the
9 community to approve any “special assessment” over \$2,500.00 to the owners. Petitioner
10 argued that the increase in the monthly assessment in the absence of a 75% approval
11 vote of the homeowners was a violation of Section 9 of the Declaration.

12 39. Petitioner requested that there be an Order for Association to cease the
13 increase in the monthly fees.

14 40. At hearing, Association acknowledged that it is responsible for
15 “maintenance, repair and replacement” as to the common areas, including the roof, and
16 argued that, even prior to hearing from Petitioner regarding her leak, the Association had
17 begun to address the issue of roof maintenance and repair in the entire community
18 because it had heard from other homeowners regarding leaks.

19 41. Regarding the “prompt” terminology in A.R.S. § 33-1247 to which Petitioner
20 relies, Association argues that Petitioner incorrectly applies this, essentially, to her
21 specific leak situation when, in fact, the “prompt” term applies to a circumstance when,
22 after a homeowner allows the Association into and through the homeowner’s unit to make
23 common elements’ maintenance or repairs and, during that action, the Association
24 causes damage to the unit or to the common elements, the Association is liable for
25 “prompt” repair of the damage it has so caused.

26 42. Overall, Association also acknowledged that Petitioner is unhappy with the
27 time line and time frame as to roof repair but noted that Association had, earlier, taken
28 steps to have inspections and evaluations performed; in December 2021, Association had
29 obtained a bid for foam roof replacements in the community and, in February 2022,
30 Building “C” was completed.

1 the monthly Association dues rather than imposing a requisite “special assessment” to cover
2 the costs of capital improvements to the roofs in the absence of obtaining a 75% vote of the
3 community.

4 4. A preponderance of the evidence is “[e]vidence which is of greater weight or
5 more convincing than the evidence which is offered in opposition to it; that is, evidence which
6 as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW
7 DICTIONARY 1182 (6th ed. 1990).

8 5. The Administrative Law Judge concludes that Petitioner has not met her
9 burden with regard to an alleged Association violation of Section 9 of the Declaration. The
10 hearing record demonstrates that Association exercised its authority under Section 13 of
11 the Declaration regarding an assessment for necessary expenses to manage and operate
12 the community in determining the particular costs to be allocated to the homeowners for
13 repairs and renovations including those on the common areas. Further, the
14 Administrative Law Judge concludes that Petitioner erroneously relied on A.R.S. § 33-
15 1247(A) with regard to an alleged violation by Respondent to not act on her specific leaks
16 and repairs “promptly.” The hearing record demonstrates that Association acted with
17 reasonable deliberation as to the overall issue of 40-year old roofs and the need to replace
18 all the roofs in the community; the Association was taking action as early as December of
19 2021 with regard to the community common areas, *i.e.*, the community roofs. The timing of
20 repairs and/or replacement is within the authority of the Association to determine.

21 6. The hearing record demonstrated that, by the time of the hearing, the timeline
22 for roof replacements, that would include determining damage and requisite repairs that
23 would need to be done on each roof, was set and was being implemented. However, as
24 opposed to the urging of the Association,³⁵ Petitioner need not have pulled her Petition1
25 based on Association statements that the work would be done at some near point; having
26 filed Petition1, Petitioner was entitled to administrative hearing.

27 7. Therefore, based on the hearing record, the Administrative Law Judge
28 concludes that Petitioner has not established, as alleged, any violation by Association. As

29 ³⁵ See HOA Exhibit 10.

1 a result, the Administrative Law Judge concludes that Petitioner's Petition1 and Petition2
2 shall both be dismissed.

3 **ORDER**

4 IT IS ORDERED that Petitioner's Petition1 is dismissed and Petitioner bears that
5 \$500.00 filing fee.

6 IT IS FURTHER ORDERED that Petitioner's Petition2 is dismissed and Petitioner
7 bears that \$500.00 filing fee.

8 **NOTICE**

9 Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties
10 unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.

11 Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter must
12 be filed with the Commissioner of the Department of Real Estate within 30 days of
13 the service of this Order upon the parties.

14 ORDERED this day, August 18, 2022.

15 /s/ Kay Abramsohn
16 Administrative Law Judge

17 Transmitted by e-mail August 18, 2022 to:

18 Louis Dettorre, Commissioner
19 Arizona Department of Real Estate
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Petitioner

By: c. serrano

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