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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

Pius J Lacher  
Petitioner,  
vs.  
Trilogy at Power Ranch Community  
Association,  
Respondent.

No. 19F-H1919055-REL  
**ORDER GRANTING MOTION TO  
DISMISS**

Pending before the Office of Administrative Hearings is Respondent Trilogy at Power Ranch Community Association’s Motion to Dismiss (Motion). Petitioner Pius J. Lacher filed a response to the Motion (Response). Respondent filed a Reply in Support of the Motion (Reply). Petitioner filed a response to the Reply (Second Response).

At issue in the filings is whether the Petition alleged a dispute between a homeowners association and its member that falls within the jurisdiction of the Arizona Department of Real Estate, and thereby, the Office of Administrative Hearings.

Arizona statute establishes the jurisdiction of the Office of Administrative Hearings to hear disputes between owners and planned community associations as follows:

For a dispute between an owner and a . . . planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of . . . planned community documents or violations of the statutes that regulate . . . planned communities. The petitioner shall file a petition with the department and pay a filing fee in an amount to be established by the commissioner. The filing fee shall be deposited in the condominium and planned community hearing office fund established by section 32-2199.05. On dismissal of a petition at the request of the petitioner before a hearing is scheduled or by stipulation of the parties before a hearing is scheduled, the filing fee shall be refunded to the petitioner. . . .

A.R.S. § 32-2199.01(A) (emphasis added).

The relevant entities at issue in this matter are Respondent Trilogy at Power Ranch Community Association (Respondent or Association) and the Trilogy Golf Club at Power Ranch (Golf Course).

1 In his Petition, Petitioner alleged a violation of "CC&R 6.3.2", which is part of the  
2 Amended and Restated Declaration of Covenants, Conditions, Restrictions and  
3 Easements for Golf Course Use for Trilogy Golf Club (Golf Course Declaration),  
4 recorded at Maricopa County Instrument No. 2006-0834770. Petitioner alleged that  
5 Respondent failed to fulfill its obligations under the Golf Course Declaration. Petitioner  
6 did not allege that Respondent failed to comply with any provision of Respondent's  
7 Declaration of Covenants, Conditions and Restrictions for Meadowbrook Village at  
8 Power Ranch Community Association (Association Declaration), which is recorded at  
9 Maricopa County Instrument No. 1999-0581325.

10 Petitioner attempted to explain the interconnected history of the Golf Course and  
11 Respondent to establish that, somehow, the Golf Course Declaration should be  
12 considered as the planned community document that would give the Office of  
13 Administrative Hearings jurisdiction to hear this matter. In fact, the documents make  
14 clear that the Golf Course and the Association are two separate entities. While the  
15 Association may have certain obligations under the Golf Course Declaration, that does  
16 not bring the failure to meet that obligation into the jurisdiction of the Office of  
17 Administrative Hearings.

18 Because Petitioner has not provided any provisions of the Association  
19 Declaration or applicable statutes that would allow him to pursue an enforcement action  
20 in this venue, this matter must be dismissed. This is not to say that Petitioner may not  
21 have the right to seek resolution of this matter in another venue, but only that the Office  
22 of Administrative Hearings does not have the statutory authority to hear this dispute.  
23 Accordingly,

24 **IT IS ORDERED** dismissing the Petition.

25 Done this day, September 20, 2019.

26  
27 /s/ Tammy L. Eigenheer  
28 Administrative Law Judge  
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**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.**

Transmitted by either mail, e-mail, or facsimile September 20, 2019 to:

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By c. serrano