

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Pius J Lacher
4 Petitioner,
5 vs.
6 Trilogy at Power Ranch Community
7 Association,
8 Respondent.

No. 19F-H1919055-REL

**ORDER GRANTING MOTION TO
DISMISS**

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

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

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

19 For a dispute between an owner and a . . . planned community
20 association that is regulated pursuant to title 33, chapter 9 or 16, the
21 owner or association may petition the department for a hearing
22 *concerning violations of . . . planned community documents or violations*
23 *of the statutes that regulate . . . planned communities.* The petitioner shall
24 file a petition with the department and pay a filing fee in an amount to be
25 established by the commissioner. The filing fee shall be deposited in the
26 condominium and planned community hearing office fund established by
27 section 32-2199.05. On dismissal of a petition at the request of the
28 petitioner before a hearing is scheduled or by stipulation of the parties
29 before a hearing is scheduled, the filing fee shall be refunded to the
30 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