

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Dennis Tingey

No. 21F-H2121041-REL

4 Petitioner,

**ORDER GRANTING MOTION
TO DISMISS**

5 v.

6 Verde Santa Fe (VSF) Master Assn.,

7 Respondent

8
9 Pending before the Office of Administrative Hearings is Verde Santa Fe (VSF)
10 Master Association's ("Respondent") June 14, 2021 Motion for Judgment on the
11 Pleadings ("Motion"). On June 30, 2021, Dennis Tingey ("Petitioner") filed a Response
12 to the Motion ("Response"). On July 12, 2021 Respondent filed a Reply in Support of the
13 Motion.

14 The issue in the filed Petition in this matter concerns Petitioner's allegation that
15 Respondent has violated Article 12, Section 12.4 of the CC&Rs due to:

16 "lack of reasonable, prudent *management* as to golf course operations has
17 caused much potential health problems, nuisances, and angst..."
18 (Emphasis added). Paragraphs (a) through (e) of the Petition go on to
19 allege specific management issues related to the golf course including
20 weeds, brush, seeds, dust, and tumbleweeds (paragraph a); excessive
21 skunk population (paragraph b); lack of policy regarding golf course
22 trespasser's (paragraph c); raw sewage smells coming from the golf
course's irrigation system (paragraph d); and wind carried irrigation
overspray from tee boxes (paragraph e).

23 See Motion (quoting Petitioner's original petition).

24 The golf course to which Petitioner refers is Agave Highland Golf Course which is
25 not owned or operated by Respondent.

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

28 For a dispute between an owner and a . . . planned community association
29 that is regulated pursuant to title 33, chapter 9 or 16, the owner or
30 association may petition the department for a hearing concerning

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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)

A.R.S. § 32-2199.02(A) sets forth the following regarding orders, penalties and dispositions in hearings regarding disputes between owners and planned community associations as follows:

The administrative law judge may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation. . . . If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by section 32-2199.01.

The cited provision of the CC&Rs that Petitioner alleges Respondent has violated states the following:

12.4 Jurisdiction and Cooperation. It is Declarant’s intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. *The Association shall have no power to promulgate rules and regulations affecting activities or use of the Golf Course except as specifically provided in the Golf Course Declaration.*

Emphasis added.

In his Petition, Petitioner alleged a violation of “Article 12, section 12.4 Golf Course Management”, which is part of the Declaration of Covenants, Conditions, Restrictions and Easements for Verde Santa Fe. Petitioner alleged that Respondent failed to fulfill its obligations under this section of the CC&Rs. In his Response to the Motion, Petitioner asserted that “Petitioner’s case is simply one where it is asking this Court to find breach because the Association refuses to even *try* to persuade the Golf Course to manage its property better.” Petitioner further argued,

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The Association might not be able to pass new rules against the Golf Course but there is nothing in the CC&Rs that prevents the Association from, among other things: a) enforcing *existing* CC&Rs against the Golf Course; b) establishing committees of owners to voice complaints; c) withholding support/services from the Golf Course if it refuses to be a good neighbor; d) devising policies or procedures for facilitating communication with the Golf Course; or e) even actually helping the Golf Course to abate a nuisance if it is in the Association’s power to do so. Arguably, the Association must exhaust all options in order to satisfy its obligation to cooperate “to the maximum extent possible.”

Emphasis in original.

CC&R Section 12.4 is comprised of two sentences. The first sentence is: “It is Declarant’s intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course.” This sentence expresses the Declarant’s intent that Respondent and the golf course cooperate regarding operation of their respective properties. This sentence does not grant Respondent any authority over the golf course. It simply states that Respondent and the golf course “shall cooperate to the maximum extent possible.”

The second sentence is: “The Association shall have no power to promulgate rules and regulations affecting activities or use of the Golf Course except as specifically provided in the Golf Course Declaration.” The plain language of this sentence indicates that Respondent has no power over the golf course “except as specifically set forth in the Golf Course Declaration.” Petitioner has not demonstrated or even alluded to any such power existing within the Gold Course Declaration. Consequently, Respondent has no authority to regulate or control the issues about which Petitioner complains, specifically, weeds, brush, seeds, dust, and tumbleweeds on the golf course, excessive skunk population, policy regarding golf course trespassers, raw sewage smells coming from the golf course’s irrigation system, or wind carried irrigation overspray from tee boxes.

This Tribunal does not have the authority to order Respondent to perform any of the above quoted suggestions to remedy Petitioner’s complaints. Petitioner’s complaints and any requested remedies rest against the golf course directly as the Office of Administrative Hearings does not have jurisdiction over the golf course.

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Jonathan Ebertshauser, Esq.
Timothy Butterfield, Esq.
Carpenter, Hazlewood, Delgado & Bolen, LLP
1400 East Southern Avenue, Suite 400
Tempe, Arizona 85282-5691
minuteentries@carpenterhazlewood.com
jonathane@carpenterhazlewood.com
tim.butterfield@carpenterhazlewood.com

By c. serrano