

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2019-000075-001 DT

05/01/2019

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT
C. Avena
Deputy

HAYDEN SQUARE CONDOMINIUM
HOMEOWNERS ASSOCIATION

ASHLEY N MOSCARELLO

v.

CHRIS I WEISS (001)
ARIZONA DEPARTMENT OF REAL ESTATE
(001)

CHRIS I WEISS
154 W 5TH ST UNIT 252
TEMPE AZ 85281
LYNETTE EVANS

JUDGE STARR
OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

MINUTE ENTRY

The Court has considered the Motion for Stay filed by Appellant Hayden Square Condominium Homeowners' Association, the Response filed by Appellee Chris Weiss, and the Reply. Appellant seeks a stay of the final administrative decision entered by the Arizona Department of Real Estate pending the resolution of this appeal.

This Court may not grant a stay of an agency's decision absent good cause. A.R.S. § 12-911; Rule 3(b), Rules of Procedure, Judicial Review of Administrative Decisions ("JRAD"). The party filing the motion must provide "proper notice to the agency affected and all other parties to the proceeding before the agency." JRAD Rule 3(a).

Appellant has now served counsel for the Arizona Department of Real Estate with the request for a stay; the Department takes no position. Appellee objects to the issuance of a stay.

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To obtain a stay, a party must establish: (1) a strong likelihood of success on the merits; (2) irreparable harm absent a stay; (3) that the harm to the requesting party outweighs the harm to the opposing party; and (4) that public policy favors the granting of the stay. *Smith v. Arizona Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410, ¶ 10 (2006). To establish its entitlement to a stay under the *Smith* test, Appellant must establish either “probable success on the merits and the possibility of irreparable injury” or that there are serious questions and the balance of hardships tips sharply in its favor. *Id.* When the harm is greater and less reparable, “the less the showing of a strong likelihood of success on the merits need be. Conversely, if the likelihood of success on the merits is weak, the showing of irreparable harm must be stronger.” *Id.*

After considering the circumstances of the case, the argument of the parties, and the applicable law, the Court finds the standard has been met here.

Thus,

IT IS ORDERED granting the Motion for Stay Pending Appeal.

IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court.

/s/ Patricia A. Starr

THE HON. PATRICIA A. STARR
JUDGE OF THE SUPERIOR COURT

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