

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2019-000075-001 DT

05/22/2019

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

Appellant Hayden Square Condominium Homeowners Association (“the Association”) seeks a trial de novo pursuant to Rule 11, Rules for Judicial Review of Administrative Decisions (“JRAD Rules”). The Court has considered the Motion, the Response and the Reply. For reasons set forth below, the Court finds this matter involves a legal issue only, and a trial de novo is not necessary or required.

The Association seeks a trial de novo because there was no hearing on the merits held before the Arizona Department of Real Estate. Appellee Chris I. Weiss opposes the request.

In an administrative appeal, a court “shall hold an evidentiary hearing . . . to the extent necessary” to determine whether the agency action was “not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.” A.R.S. § 12-910 (A), (E). “By its plain meaning, the statute requires an evidentiary hearing only upon a showing that a hearing is necessary to resolve those questions.” *Curtis v. Richardson*, 212 Ariz. 308, 311, ¶ 11, (App. 2006). The statute does not authorize a trial de novo.

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The Court finds that a hearing is not required. At issue is whether the Association was entitled to a hearing before the Department. That is a purely legal issue. If the Court determines that the Association was entitled to hearing, this Court has the authority to enter that order by vacating the entry of the default decision and ordering the Department to hold a hearing. See A.R.S. 12-911(A)(5).

The Association argues that it is entitled to a hearing because the Department did not provide one. But the statute at issue, A.R.S. § 12-910, permits a hearing only as necessary to resolve the issues on appeal. It is not an invitation for a hearing before the Superior Court that should have been held in the first instance before the agency.

The Association cites *Koller v. Arizona Dept. of Transp., Motor Vehicle Div.*, 195 Ariz. 343, 346, ¶ 14 (App. 1999), for the proposition that it is entitled to a trial de novo because there was no record made of the proceedings below. But the point of the Association's appeal, at least as the Court understands it, is that there were no proceedings below. This case is thus distinguishable from one such as *Koller*, where the agency held a hearing but failed to provide a record of that hearing to the superior court.

Therefore,

IT IS ORDERED denying the Motion for Trial De Novo.

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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