

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2019-000075-001 DT

07/26/2019

HONORABLE DOUGLAS GERLACH

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 GERLACH
OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

MINUTE ENTRY

Appellant Hayden Square Condominium Homeowners Association appeals both a Default Decision that was issued by the Arizona Department of Real Estate and the Department's failure to treat with the Association's motion to vacate that decision. Because the Department has not issued a final appealable decision, dismissal of this matter is required. A.R.S. §12-905(A) (vesting jurisdiction in the superior court to review only "final administrative decision[s]").

The Department issued a "Default Decision" on January 25, 2018. That decision was served on the Association by mail on January 28, which filed a motion to vacate the default the three days later.¹

When, as here, a party submits "an application for rehearing or other method of administrative review," no administrative decision of an agency becomes final until "the rehearing or review is denied or the decision on rehearing or review is rendered." A.R.S. §12-901(2)

¹ The motion to vacate was timely filed. Ariz. Admin. Code R4-28-1304(B).

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(emphasis added). If not the equivalent of an application for rehearing, the Association's motion to vacate qualifies at least as an "other method of administrative review."

Thus, before the Department's Default Decision can become final and appealable, denial of the motion to vacate is required. Under the Arizona Administrative Code, which applies in this matter, the State Real Estate Commissioner is required to issue a ruling granting or denying that motion. Ariz. Admin. Code R4-28-1310(F); A.R.S. §32-2101(14). That has not occurred, and until it does, the Default Decision does not become final. A.R.S. §12-901(2).

Instead of the Commissioner denying the motion to vacate, the Department issued a letter (2/8/19), which stated that the Default Decision was "a final agency action." Under no applicable authority does that letter operate as a denial of the motion to vacate nor does it otherwise transform the Default Decision into a final, appealable order.

First, the letter was signed by a "Coordinator" and not the person charged with responsibility for ruling on the motion, *viz.*, the Commissioner. Thus, the letter does not represent the Commissioner's denial of the motion to vacate any more than an order signed by a judicial assistant is a final court order.

Second, an order denying a motion to vacate requires "a statement of the particular grounds and reasons" supporting that decision. A.R.S. §32-2199.04(C).² At the least, that means a final decision denying the motion to vacate that explains why the Default Decision is appropriate in the circumstances here despite (i) the policy in this state that contested issues should be decided on the merits,³ (ii) the absence of any discernible prejudice to the Petitioner that can be attributed to the Association filing its response merely nine days after the deadline set by applicable rule,⁴ (iii) the existence of what appears to be a meritorious defense that seemingly requires an evidentiary

² Although section 32-2199.04 refers to a rehearing, by any reasonable standard, the motion to vacate was a request for a rehearing, and in any event, nothing in the plain language of that statute suggests that a request for a rehearing is to be treated differently from a request for "an other method of administrative review," which, at a minimum, the motion to vacate is. See A.R.S. §12-901(2).

³ *E.g., Ramada Inns, Inc. v. Lane & Bird Adv., Inc.*, 102 Ariz. 127, 129, 426 P.2d 395, 397 (1967) (setting aside default judgment: recognizing that defaults "are not favored because they do not result in a determination of the merits of a claim"); *Davis v. Superior Court*, 25 Ariz. App. 402, 403, 544 P.2d 226, 227 (1976) (reversing denial of motion to set aside default: stating that "on a motion to vacate a default, . . . judicial discretion should be guided by the policy of favoring resolution of controversies on the merits").

⁴ See generally *MRF Const. Co. v. Industrial Comm'n*, 111 Ariz. 466, 469, 532 P.2d 528, 531 (1975) (recognizing that, in many "fields of law we have rules and abundant case law which affords relief in appropriate cases where a party fails to meet a specific time limitation. . . . It is the announced general policy of law that cases should be tried on their merits and not disposed of on technicalities" (citation and internal quotation marks omitted)).

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hearing,⁵ and (iv) the well-settled standard that all doubts are to be resolved in favor of the party asking to have the default set aside⁶.

IT IS ORDERED:

1. No final appealable order having been issued in Arizona Department of Real Estate Case No. HO19-18/041, this appeal is dismissed for lack of jurisdiction.
2. The court, in its discretion, declines to award attorney's fees and costs.
3. This is a final order.

/ s / HONORABLE DOUGLAS GERLACH

HONORABLE DOUGLAS GERLACH
JUDGE OF THE SUPERIOR COURT

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. **Therefore, you will have to deliver to the Judge a conformed courtesy copy of any new filings.**

⁵ When determining whether a meritorious defense or claim has been stated sufficiently, courts assume the truth of the facts asserted by the party seeking to set aside a judgment and disregard all contrary evidence presented by the opposing party. *Union Oil Co. of Calif. v. Hudson Oil Co.*, 131 Ariz. 285, 288, 640 P.2d 847, 850 (1982) (affirming order vacating default judgment: stating that standard for judging the sufficiency of a motion to set aside a default judgment requires the court to assume the truth of the facts asserted in support of the motion); *Phoenix Airport Travelodge v. Dolgin*, 12 Ariz. App. 358, 360, 470 P.2d 506, 508 (1970) (reversing default judgment and remanding with instructions to set it aside: stating that "[a] defense set up in support of [a] motion to set aside a default judgment is sufficient unless such defense would be subject to a general demurrer").

⁶ *Addison v. Cienega, Ltd.*, 146 Ariz. 322, 323, 705 P.2d 1373, 1374 (App. 1985) (affirming decision to set aside default: stating that "[b]ecause the law favors resolution on the merits, all doubts are to be resolved in favor of the moving party"); *Davis v. Superior Court*, 25 Ariz. App. 402, 403, 544 P.2d 226, 227 (1976) (reversing denial of motion to set aside default: stating that "[i]t is well settled in this state that on a motion to vacate a default, any doubt should be resolved in favor of the movant").