

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000055-001 DT

08/22/2025

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
N. Johnson
Deputy

R L WHITMER

ROSS P MEYER

v.

HILTON CASITAS COUNCIL OF
HOMEOWNERS (001)

EMILY H MANN

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

MINUTE ENTRY

Agency Case No. 25F-H001-REL

The Court has received and reviewed the Motion for Stay of Administrative Law Decision filed by the Respondent/Appellant Hilton Casitas Council of Homeowners Association; the objection thereto filed by the Petitioner/Appellee RL Whitmer (Mr. Whitmer); and the Reply filed by Hilton Casitas. This Court previously ordered a temporary stay to allow briefing to be completed on the motion. *See* Minute Entry, 6/5/25. For the reasons stated below, the motion is granted to stay the proceedings until the appeal before this Court is complete.

I. BACKGROUND

Mr. Whitmer filed a Petition with the Arizona Department of Real Estate (the Department or DRE) in June 2024 asking that the Association be required to amend the Condominium Declaration to include the name of the Association pursuant to A.R.S. § 33-1215 (A) (1). The Declaration was drafted and recorded in 1972, long before the adoption of A.R.S. § 33-1215 (A) (1). In his Petition, Mr. Whitmer argued that the Association violated A.R.S. § 33-1215 (A) (1) by

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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08/22/2025

not amending the declaration to substitute its reference to the “Council of Co-owners” with a reference to “Hilton Casitas Council of Homeowners.”

The Petition was heard before an Administrative Law Judge with the Office of Administrative Hearings who ruled in favor of Mr. Whitmer on November 12, 2024, and the Department denied the Association’s rehearing request on January 3, 2025. The Association filed a Notice of Appeal on January 30, 2025.

II. LEGAL STANDARD

The Administrative Review Act (“ARA”) provides that the Superior Court may stay an Administrative Decision, in whole or in part, pending final disposition of the case for good cause shown. A.R.S. § 12-911(A)(1). Good cause requires the Petitioner to show a colorable claim *and* that the balance of harm favors granting the stay. Rule 3(B), Rules of Procedure for Judicial Review of Administrative Decisions; *P & P Mehta LLC v. Jones*, 211 Ariz. 505, 507 ¶ 25 (App. 2005). A colorable claim is one “demonstrating, as regards substantive merit, a seemingly valid, genuine, or plausible claim under the circumstances of the case.” Rule 3(B) (1), Rules of Procedure for Judicial Review of Administrative Decisions.

Further, the ARA provides that a final decision of an administrative agency must be affirmed unless it is “contrary to law, is not supported by substantial evidence, arbitrary and capricious, or is an abuse of discretion.” A.R.S. § 12-910(F); *Berenter v. Gallinger*, 173 Ariz. 75, 77 (App. 1992). A decision that is supported by substantial evidence may not be set aside as arbitrary, capricious, or an abuse of discretion. *Smith v. Ariz. Long Term Care Syst.*, 207 Ariz. 217, 220 ¶ 14 (App. 2004). An agency’s decision will be found to be supported by substantial evidence as long as the “decision is supported by the record,” even if the record could also support a different conclusion. *Gaveck v. Ariz. State Board of Podiatry Examiners*, 222 Ariz. 433, 436 ¶ 11 (App. 2009). The Appellate Court will review conclusions of law *de novo*. *Rail N Ranch Corp. v. Hassell*, 177 Ariz. 487, 490 (App. 1994). A decision is an abuse of discretion if it is based on an error of law. *Grant v. Ariz. Public Service Company*, 133 Ariz. 434, 455-56 (1982).

III. DISCUSSION

A. Does the Motion Present a Colorable Claim?

In its Motion, the Association first argues that it presents a colorable claim because the Petition is time-barred by the applicable one-year statute of limitations in A.R.S. § 12-541 (5), or the four-year statute of limitations under A.R.S. §12-550. Next, the Association argues that the Declaration complies with A.R.S. § 33-1215 (A) (1) because the Declaration identifies the Association as the “council of co-owners” which is in fact the “Hilton Casitas Council of

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000055-001 DT

08/22/2025

homeowners.” He argues that this conclusion has been upheld by the Arizona Court of Appeals several times.

The Association next argues that it could not have violated the statute because it did not draft or record the Declaration. The Association further argues that it cannot be ordered to cure an error that was committed by the actual declarants. The Association finally argues that it cannot legally comply with the order because the Declaration must be approved by a 67% majority vote of the owners and consent from the SWVP Scottsdale LLC.

In his response, Mr. Whitmer argues that Arizona Law requires the Declaration for the Association to be recorded in order to provide the public with essential information, including the name of the condominium and its Association. He argues that to name the Association in the Declaration does not harm the Association but rather benefits the public and homeowners.

Mr. Whitmer further argues that this Court’s denial of the Association’s Motion to Stay in a previous matter, LC 2022-000424, is binding and preclusive on the Motion to Stay in this case. He further argues that the Association has breached its duty imposed by statute by refusing to amend the Declaration and is breaching its fiduciary duty described under the restatement of property by pursuing an appeal without justification. He argues that the appeal is meant only for delay and harassment.

Mr. Whitmer further argues that the Association’s appeal and motion were filed with unclean hands because the Association failed to enter into a settlement that he previously and reasonably offered.

The Court finds that the Association has a colorable claim that the Petition is time-barred, that the Declaration complies with the statute, and that it has not violated the statute. Each of these are plausible legal conclusions. Mr. Whitmer’s argument that the Court’s order in a previous matter is binding in this matter is not supported by the principle of issue preclusion. Issue preclusion requires that an issue be actually litigated. *Hancock v. O’Neil*, 253 Ariz. 509, 512, ¶ 10, n.3 (2022). The issuance of a stay in one case is based upon the facts and circumstances in that case. The determination does not carry over to a separate case.

In addition, a party does not act with unclean hands merely because it has not agreed to a settlement. Whether to enter into a settlement is entirely up to the will of the parties. This Court cannot force the parties to enter into a settlement or penalize a party for not reaching one.

Based on the foregoing, the Court finds that the Association has a colorable claim.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000055-001 DT

08/22/2025

B. Balance of harm

The Association argues that if it is forced to comply with the Department's decision prior to a ruling on the appeal, the appeal will be moot. It argues that if no stay were issued, it would be subject to a separate civil action filed by Whitmer seeking an order of contempt for failure to comply with the statute. The Association argues that, without a stay, it would be required to undertake the administrative effort to obtain membership approval and the consent of SWVP Scottsdale LLC for the proposed amendment. Mr. Whitmer argues that he has incurred substantial fees and costs to date and may be subject to fees and costs being awarded if he does not prevail in this appeal.

In this case, each side has and will continue to incur legal expenses and fees in the pursuit of or defense of this appeal. The Association would be forced to undertake action to seek an amendment of its name from its membership and incur administrative expenses associated with the vote if it does not obtain a stay. Mr. Whitmer does not bear those types of administrative expenses. Therefore, the balance of harm weighs in favor of the Association.

C. Timeliness of the motion to stay

Mr. Whitmer argues that the Motion to Stay was untimely. The rules and statutes applicable do not set forth a timeframe for submitting a Motion to Stay. Further, given the nature of the proceedings, the Court finds that the motion was not unduly delayed. The Association reasonably withheld additional expenses pending this appeal until Mr. Whitmer undertook the separate action to enforce the Department's order prior to the completion of the appeal. Therefore, Mr. Whitmer's additional actions make the Motion to Stay necessary.

IV. CONCLUSION

Based on the foregoing,

IT IS ORDERED granting the Motion to Stay.

In addition to the Motion to Stay, Mr. Whitmer filed a Motion to Supplement his Answering Brief. The Motion was filed after the deadline for filing the Answering Brief. The Association requested additional time and words in its Reply Brief to respond to the Supplemental Brief.

IT IS ORDERED denying the Motion to Supplement and the Motion for Additional Time and words for the Reply Brief.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000055-001 DT

08/22/2025

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 filings.