

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000055-001 DT

01/23/2026

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

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

MINUTE ENTRY

Agency Case No. 25F-H001-REL

Introduction

The Hilton Casitas Condominium was created in 1972, and the original creators established an association of condominium owners to manage the condominium. In 1985, Arizona changed the law governing condominiums. In 1994, the association changed its own legal structure and changed its name consistent with the new law. The association, however, did not change the Condominium's "declaration" documents to reflect the name change.

RL Whitmer, an owner of one of the Hilton Casitas condominiums, later asked the association to amend the condominium's legal "declaration" documents to comply with the new law requiring those documents to include the association's name. The association declined. Mr. Whitmer brought a Petition with the Department of Real Estate to compel the change. An Administrative Law Judge heard the matter consistent with Arizona's statutes for such disputes. The ALJ ordered the association to make the change. The association now asks this Court to overturn the ALJ's Decision because it argues that Mr. Whitmer waited too long to bring the

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petition to the Department, the Declaration already complies with Arizona Law, and that only the condominium homeowners, not the Association, could amend the Declaration.

Because there is no timeframe to bring a petition under the Condominium Laws, the Condominium's Declaration does not comply with state law without the proper association name, and the association is the proper entity to address any changes, this Court affirms the ALJ's Decision.

I. Background

The Hilton Casitas Condominium was created on May 22, 1972, when its Declaration of Horizontal Property Regime was recorded pursuant to A.R.S. § 33-551 et seq. The Declaration created the Hilton Casitas Council of Co-Owners, an unincorporated association, referred to here as the Council to manage the affairs of the Condominium.

In 1985, the Legislature repealed the Horizontal Property Regime Act and replaced it with the Condominium Act, A.R.S. § 33-1201 et sec. The Condominium Act requires that a Condominium Declaration contain the following: 1. The name of the condominium, which shall include the word condominium or be followed by the words "a condominium"; and 2. The name of the association.

In 1994, the Council President incorporated the Council in accordance with the Condominium Act. The Council became the Hilton Casitas Council of Homeowners, referred to here as the Association. The President, however, did not amend the Declaration to include the name of the condominium and the name of the Association.

RL Whitmer owns one of the condominiums and is a member of Association. Mr. Whitmer requested the Board of Hilton Casitas to amend the Declaration to include the name of the Condominium and name of the Association in accordance with the Condominium Act. The Association denied Mr. Whitmer's request to amend the Declaration.

On June 27, 2024, Mr. Whitmer filed a Petition with the Arizona Department of Real Estate alleging that the non-profit corporation violated the law by failing to amend its Declaration. On June 29, 2024, the Association filed its Response. The Department referred the Petition to the Office of Administrative Hearings which held a hearing on October 25, 2024. The Association and Mr. Whitmer provided arguments at the hearing. Given the nature of the issues, the Administrative Law Judge determined that testimony was not necessary.

The ALJ found that the name of the condominium was Hilton Casitas. Administrative Law Judge Decision, 11/12/2024, Finding of Fact 9. The plat contained in the declaration provides

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“Hilton Casitas a condominium development...” ALJ Decision, FOF 10. The Declaration defines “Council” as the “Council of Co-Owners as defined in the Horizontal Property Regime Act and consists of all owners of the Casitas.” Declaration, § 1.4. ALJ FOF ¶ 11. Neither party challenges the ALJ’s Findings of Fact.

The ALJ concluded that a member of a Condominium may file a Petition with the Department for a hearing concerning the Condominium Association’s alleged violations of A.R.S. § Title 33, Chapter 9 and its condominium documents. An ALJ must adjudicate complaints and ensure compliance with A.R.S. Title 33, Chapter 9 and applicable condominium documents. An ALJ may order any party to abide by the statute, condominium documents, community documents, or contract provisions and may levy a civil penalty on the basis of each violation. ALJ Conclusion of Law ¶ 1-2.

The ALJ concluded that the Condominium Act requires that the Declaration include 1) the name of the condominium, including the work condominium were to be followed by the words “a condominium”, and 2) the name of the condominium association. The ALJ concluded that the plat satisfied Act’s requirement to include the name of the condominium in the Declaration because the plat is a part of the Declaration and provides the name Hilton Casitas and the word “condominium.” ALJ Decision, COL ¶ 8. The ALJ further concluded that the Declaration provided the term “Council,” which is not the name of the Association. The ALJ Decision noted that even though the current Association has standing to proceed on behalf of its predecessor Council, its name was not present in the Declaration and therefore violated the Act. ALJ Decision, COL ¶ 7, 9.

The ALJ further concluded that the general statute of limitations does not apply in this case because the Office of Administrative Hearings is not a Court and proceedings before it or not actions to which the general statute of limitations apply. ALJ Decision, COL ¶ 11-14.

The ALJ also rejected the Association’s argument that it was unable to amend the declaration without a vote of the membership. The ALJ Decision concluded that “technical procedures and responsibility for amending the declaration, under a condominium’s document and Arizona statutes, is not a legal defense in this matter.” The ALJ concluded that it is responsible for ensuring that the Declaration is in compliance with the statute. ALJ Decision, COL ¶ 15-17.

II. Legal standard

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

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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. Statute of limitations

In its Opening Memorandum, the Association argues that Mr. Whitmer's complaints violate the statute of limitations that apply. It argues that Mr. Whitmer waited 10 years and that his claims are stale under either the one-year statute of limitation in A.R.S. § 12-541 (5) or the four-year statute of limitation in A.R.S. § 12-550. It argues that the Office of Administrative Hearings is not exempt from statutes of limitation as concluded by the ALJ.

Mr. Whitmer argues that the statute of limitations in Title 12 applies only to court proceedings, not administrative proceedings. He further argues that he is not seeking to impose liability and that he does not ask to recover damages. He argues that he only seeks to enforce the Association's statutory requirement to amend its Declaration. Mr. Whitmer argues that the Condominium Act provides that the owner may petition the Department for hearing concerning violations of condominium documents. *See* A.R.S. § 32-2199.01 (A). He further argues that the Association has an ongoing duty to properly manage the condominium, and that ongoing violations violate a statute of limitations.

In this case, the Legislature established an administrative process to resolve disputes between an owner and a condominium association concerning "violations of condominium documents ... or violations of the statutes that regulate condominiums...." A.R.S. § 32-2199.01(A). The statute does not provide a limitations period for an owner to bring a petition to the Department.

The limitation periods cited by the Association apply to "actions." For example, the one-year statute limits actions "upon a liability created by statute, other than a penalty or forfeiture." A.R.S. § 12-541 (5). The four-year statute limits actions "other than for recovery of real property for which no limitation is otherwise prescribed...." Under the definitions provided in Arizona Law, "'Action' includes any matter or proceeding in a court, civil or criminal." A.R.S. § 1-215. While the Association argues that an "action" also can be a legal matter outside of court, our Courts have recognized that the principle of "*expressio unius est exclusio alterius*—the expression of

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one item implies the exclusion of others—is appropriate when one term is reasonably understood as an expression of all terms included in the statutory grant or prohibition.” *City of Surprise v. Arizona Corporation Commission*, 246 Ariz. 206, 211 ¶ 13 (2019). In this case, the legislature expressly included court matters and did not include other legal matters. There are no other expressions for what is defined as an “action” established by statute.

This conclusion does not give agencies such as the Office of Administrative Hearings greater authority than courts. It simply means that the Legislature chose to address disputes over condominium documents differently than matters addressing liability between parties. Therefore, Mr. Whitmer’s Petition to the Department for the alleged violations are not barred by a statute of limitations.

B. Does the Declaration comply with the statute?

The statute provides that the Declaration shall contain:

“The name of the condominium, which shall include the word ‘condominium’ or be followed by the words ‘a condominium’, and the name of the association.”

A.R.S. §33-12-15.

The Association argues that it has been determined to be the same entity named in the Declaration. It also argues that the Declaration includes the plat which references the term “condominium.” It argues, therefore, that the Declaration complies with the Condominium Act.

Mr. Whitmer argues that while the entity may be the same as that named in the Declaration, the name of the condominium and Association is not included in the Declaration. Therefore, he argues that the Declaration does not comply with the Condominium Act.

In this case, the ALJ Decision correctly concluded that the statute requires that the Declaration include the name of the condominium, including the word condominium, as well as the name of the Association. Because the Declaration includes the plat, which includes the word condominium and the name of the condominium, the Declaration meets the requirement to include condominium name. The Declaration, however, does not include the name of the Association. Rather, it includes the name of the predecessor entity of what has now been superseded by the Association. Because the declaration does not include the name of the Association, the Declaration does not comply with the statute.

C. Does the statute impose a duty on the Association to ensure the Declaration complies?

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The Association argues that the statute does not impose a duty on it to ensure that the Declaration complies with the law. It argues that only the original declarers had that duty. Because the Association is not the original declarer, it argues that it is not obligated to change the Declaration.

Mr. Whitmer argues that the Association assumed the position of the original Association, which would have statutory obligations.

In this case, the statute requires that the Declaration contains the name of the Association. The Hilton Casitas' Declaration, however, does not. The Declaration can be amended only by a vote of the owners. A.R.S. § 33-1227. The Association, however, acts as a trustee on behalf of the condominium. A.R.S. § 33-1259. The Association has authority to exercise any "powers necessary and proper for the governance and operation of the Association." A.R.S. § 33-1242 (A)(18). Certainly, this authority includes the powers necessary to ensure that the condominium and its members remain in compliance with the law.

D. Can the Association comply with an order?

The Association argues that it cannot comply with an order to amend the Declaration. It argues that only the owners, by two-thirds vote, may amend the Declaration. Therefore, the ALJ order requires an impossibility. Mr. Whitmer argues that impossibility is not a defense. He argues that the Association can use its authority to put the Declaration change to a vote of the owners.

An association has an ongoing duty to use ordinary care and prudence in managing the affairs of the community. Restatement (Third) of Property: Servitudes § 6.13 (2000). In this case, the homeowners are members of the Association. See Declaration at Sections 1.4, 6.1. The Association has the responsibility to ensure legal compliance and is the proper entity to conduct votes of the homeowners. Declaration at Article VI. While the Association itself cannot change the Declaration, it is the proper organization of homeowners to ensure the amendment is completed.

E. Attorneys' fees and damages.

Mr. Whitmer requests attorneys' fees pursuant to A.R.S. § 12-349 and 12-350. The first statute provides that "in any civil action commenced or appealed in a court of record in this state, the court shall assess reasonable attorney fees, expenses and, at the court's discretion, double damages of not to exceed five thousand dollars against an attorney or party, including this state and political subdivisions of this state, if the attorney or party does any of the following...." A.R.S. § 12-349. The second statute provides factors to consider in awarding fees pursuant to the first statute.

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As noted previously, this matter is not a civil action. Rather it is a judicial review of an agency's decision to address a dispute between the condominium owner and a condominium association as provided by statute. As such, the statutes cited by Mr. Whitmer do not entitle him to an award of attorneys' fees or damages.

IV. Conclusion

Based on the foregoing,

IT IS ORDERED affirming the applicable Final Order in this case.

IT IS FURTHER ORDERED remanding the matter to Arizona Department of Real Estate for further proceedings as necessary.

No matters remain pending in connection with this appeal. This is a final order pursuant to J.R.A.D. 13 and Ariz. R. Civ. P. 54(c).

/s/ Joseph P. Mikitish
THE HON. JOSEPH P. MIKITISH
Judge of the Superior Court

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