

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000042-001 DT

01/17/2014

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

SUNRISE DESERT VISTAS PROPERTY
OWNERS ASSOCIATION INC

GUY W BLUFF

v.

SUZANNE SALLUS (001)
DEPARTMENT OF FIRE BUILDING AND LIFE
SAFETY (001)

SUZANNE SALLUS
14214 E LONE MOUNTAIN RD
SCOTTSDALE AZ 85262
MARY D WILLIAMS

OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Plaintiff-Appellant Sunrise Desert Vistas Property Owners Association, Inc., asks this Court to review the Administrative Law Judge Decision, dated October 2, 2012, which was adopted on November 8, 2012, as the Final Administrative Decision, and the Order, dated December 26, 2012, denying the Motion for Rehearing. For the following reasons, this Court affirms those Decisions and Orders.

I. FACTUAL BACKGROUND.

In late February 2011, Defendant-Appellee Suzanne Sallus (Sallus) entered into escrow for the purchase of a parcel (Parcel) in Sunrise Desert Vistas. On March 12, 2011, Equity Title Agency, Inc. (Equity), on behalf of Sallus, requested certain information from Plaintiff-Appellant Sunrise Desert Vistas Property Owners Association, Inc. (SDVPOA). By April 1, 2011, SDVPOA provided certain information to Sallus. On April 2, 2011, Sallus closed escrow on the Parcel, but had not received certain documents and information from SDVPOA.

On April 2, 2011, Sallus filed a petition with Defendant-Appellee the Arizona Department of Fire, Building, and Life Safety (AzDFBLS) alleging SDVPOA violated A.R.S. § 33-1806 by failing to provide her with the required documents. On June 11, 2012, the AzDFBLS issued a Notice of Hearing advising the parties that the Office of Administrative Hearings would hold a hearing on Sallus's petition.

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On September 12, 2012, Administrative Law Judge Tammy L. Eigenheer held the hearing on Sallus's petition. After receiving testimony, on October 2, 2012, ALJ Eigenheer issued her Administrative Law Judge Decision, which contained 17 Findings of Fact and 16 Conclusions of Law, and concluded Sallus had established that SDVPOA had violated its duty of disclosure. ALJ Eigenheer recommended that SDVPOA be ordered to comply with A.R.S. § 33-1806 and provide Sallus with the required documents, and further that SDVPOA be ordered to pay Sallus's filing fee of \$550.00. By November 6, 2012, the AzDFBLS had neither accepted, rejected, nor modified that Administrative Law Judge Decision, so on November 8, 2012, Cliff J. Vanell, Director of the Office of Administrative Hearings, certified that Decision as the Final Administrative Decision of the AzDFBLS.

On November 30, 2012, SDVPOA filed a Motion for Rehearing, and on December 26, 2012, the AzDFBLS issued its Order denying that Motion for Rehearing. On January 30, 2013, SDVPOA filed a Complaint for Judicial Review of Administrative Decision. This Court has jurisdiction pursuant to A.R.S. § 12-124(A) and A.R.S. § 12-905(A).

II. GENERAL STANDARDS FOR REVIEW.

The Arizona statutory authority and case law define the scope of administrative review:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

A.R.S. § 12-910(E).

The court must defer to the agency's factual findings and affirm them if supported by substantial evidence. If an agency's decision is supported by the record, substantial evidence exists to support the decision even if the record also supports a different conclusion.

Gaveck v. Arizona St. Bd. of Podiatry Exam., 222 Ariz. 433, 215 P.3d 1114, ¶ 11 (Ct. App. 2009) (citations omitted).

[I]n ruling on the sufficiency of the evidence in administrative proceedings, courts should show a certain degree of deference to the judgment of the agency based upon the accumulated experience and expertise of its members.

Croft v. Arizona St. Bd. of Dent. Exam., 157 Ariz. 203, 208, 755 P.2d 1191, 1196 (Ct. App. 1988).

A trial court may not function as a "super agency" and substitute its own judgment for that of the agency where factual questions and agency expertise are involved.

DeGroot v. Arizona Racing Comm'n, 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (Ct. App. 1984).

[The reviewing court must] view the evidence in a light most favorable to upholding the Board's decision and "will affirm that decision if it is supported by any reasonable interpretation of the record."

Baca v. Arizona D.E.S., 191 Ariz. 43, 46, 951 P.2d 1235, 1238 (Ct. App. 1998) (cites omitted).

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A question of statutory interpretation involves a question of law, and [the reviewing court] is not bound by the trial court's or the agency's conclusions [about] questions of law.

Siegel v. Arizona St. Liq. Bd., 167 Ariz. 400, 401, 807 P.2d 1136, 1137 (Ct. App. 1991).

On appeal, [the reviewing court] is free to draw its own conclusions in determining if the Board properly interpreted the law; however, the Board's interpretation of statutes and . . . regulations is entitled to great weight.

Baca, 191 Ariz. at 45–46, 951 P.2d at 1237–38.

Judicial deference should be given to agencies charged with the responsibility of carrying out specific legislation, and ordinarily an agency's interpretation of a statute or regulation it implements is given great weight. However, the agency's interpretation is not infallible, and courts must remain the final authority on critical questions of statutory construction.

U.S. Parking Sys. v. City of Phoenix, 160 Ariz. 210, 211, 772 P.2d 33, 34 (Ct. App. 1989) (citations omitted).

III. ISSUE: WAS THERE SUBSTANTIAL EVIDENCE TO SUPPORT THE ACTION OF THE AGENCY, AND WAS THE ACTION OF THE AGENCY CONTRARY TO LAW, ARBITRARY AND CAPRICIOUS, OR AN ABUSE OF DISCRETION.

SDVPOA asks this Court to vacate the Final Administrative Decision of the AzDFBLS based on the following arguments: (1) The AzDFBLS lacked subject matter jurisdiction over the dispute between Sallus and the SDVPOA because SDVPOA was not a “planned community association” or a “planned community”; (2) A.R.S. § 33–1806(A) did not apply to SDVPOA; (3) substantial evidence did not support the finding that SDVPOA violated A.R.S. § 33–1806(A); (4) the AzDFBLS abused its discretion in ordering SDVPOA to provide Sallus with copies of certain documents because Sallus already had copies of those documents; and (5) the AzDFBLS abused its discretion in ordering SDVPOA to pay Sallus the \$550.00 filing fee. SDVPOA has provided to this Court authorities and arguments in support of its position.

Sallus asks this Court to affirm the Final Administrative Decision of the AzDFBLS based on the following arguments: (1) The AzDFBLS had subject matter jurisdiction over the dispute between Sallus and the SDVPOA because SDVPOA is a “planned community”; (2) A.R.S. § 33–1806(A) does apply to SDVPOA; (3) substantial evidence supported the finding that SDVPOA violated A.R.S. § 33–1806(A); (4) SDVPOA never provided Sallus with copies of the requested documents; and (5) the AzDFBLS did not abuse its discretion in ordering SDVPOA to pay Sallus the \$550.00 filing fee. Sallus has provided to this Court authorities and arguments in support of her position. This Court concludes the authorities and arguments provided by Sallus are well-taken, and this Court adopts those authorities and arguments in support of its decision.

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IV. CONCLUSION.

Based on the foregoing, this Court concludes substantial evidence supported the action of the AzDFBLS, and the action of the AzDFBLS was not contrary to law, was not arbitrary and capricious, and was not an abuse of discretion. This Court further determines Sallus is entitled to recover her costs incurred in this appeal. As far as Sallus's request for attorneys' fees, it appears Sallus represented herself, and thus would not be entitled to attorneys' fees unless she can make some valid argument to this Court why she should receive attorneys' fees.

If any party wishes to appeal this Court's Decision to the Arizona Court of Appeals, that party must do so pursuant to A.R.S. § 12-913 and Rule 9(a) of the Arizona Rules of Civil Appellate Procedure. *See Eaton v. AHCCCS*, 206 Ariz. 430, 79 P.3d 1044, ¶ 7 (Ct. App. 2003) ("The [Arizona Court of Appeals] will allow an administrative decision to stand if there is any credible evidence to support it, but, because we review the same record, we may substitute our opinion for that of the superior court." "And when consideration of the administrative decision involves the legal interpretation of a statute, this court reviews *de novo* the decisions reached by the administrative officer and the superior court."); *accord, Pima Cty. Hum. Rts. Comm. v. Arizona D.H.S.*, 232 Ariz. 177, 303 P.3d 71, ¶ 7 (Ct. App. 2013) ("Because the superior court did not hold an evidentiary hearing or admit any new evidence, we review its judgment *de novo*, 'reaching the same underlying issue as the superior court.' "); *Blancarte v. Arizona DOT*, 230 Ariz. 241, 282 P.3d 442, ¶ 7 (Ct. App. 2012) ("Applying a *de novo* review of the superior court's decision . . ."); *Ritland v. Arizona St. Bd. Med. Exam.*, 213 Ariz. 187, 140 P.3d 970, ¶ 7 (Ct. App. 2006) ("In reviewing the Board's decision, we are not bound by the superior court's judgment because we review the same record.").

IT IS THEREFORE ORDERED affirming the Administrative Law Judge Decision, dated October 2, 2012; the Certification of Decision of Administrative Law Judge, dated November 8, 2012; and the Order, dated December 26, 2012, denying the Motion for Rehearing.

IT IS FURTHER ORDERED, by **February 6, 2014**, Sallus shall provide this Court with a proposed form of order for this Court's signature.

IT IS FURTHER ORDERED, if Sallus wants this Court to order SDVPOA to pay costs and attorneys' fees, by **February 6, 2014**, Sallus shall provide this Court with and appropriate request and appropriate supporting documentation.

IT IS FURTHER ORDERED, if Sallus wants this Court to order SDVPOA to pay costs and attorneys' fees, Sallus shall include in the proposed form of order blanks for this Court to use if it does decide to award either costs or attorneys' fees, or both.

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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.