

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2017-000142-001 DT

01/19/2018

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT  
C. Avena  
Deputy

OLIVE GROVE VILLAGE ASSOCIATION INC JONATHAN D EBERTSHAUSER

v.

BARBARA PRINTY (001)

PHILIP B WHITAKER

OFFICE OF ADMINISTRATIVE  
HEARINGS  
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Appellant Olive Grove Village Association, Inc. (“the Association”) seeks an order vacating the December 8, 2016 Final Administrative Decision of the Arizona Department of Real Estate (“the Department”) requiring the Association to pay a civil penalty of \$5,000.00. For the reasons that follow, this Court affirms that Decision.

The Court notes that neither party filed their briefs in a timely fashion. On July 17, 2017, the Court informed the Association that its Opening Brief had not been timely filed. The Association filed its Opening Brief on August 18, 2017; Appellee Barbara Printy (“Printy”) did not file a timely Answering Brief. The Court imposed a new deadline for filing of the Answering Brief, with which Printy complied. The Association then filed an untimely Reply Brief.

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The Court advises counsel to review the Rules of Procedure for Judicial Review of Administrative Decisions (specifically Rule 6, which sets out the due dates for filing of appellate briefs).

I. FACTS AND PROCEDURAL HISTORY

The Association is an association of condominium owners in Phoenix. (Administrative Law Judge (“ALJ”) Decision at 1.) Printy requested a copy of the Association’s audit report in April, 2015, October, 2015, and March, 2016. (ALJ Decision at 2.) The Association did not provide a copy of the audit to Printy. (*Id.*)

In March of 2016, Printy filed a Petition alleging that the Association violated the CC&Rs, Bylaws, and A.R.S. § 33-1243(J) by failing to complete an audit of its 2014 financials within 90 days of the end of the fiscal year. (*Id.*) In August of 2016, the Association hired a certified public accountant to perform an audit of the 2014 financials; the Association provided a copy of the audit to Printy on October 11, 2016, the day before the scheduled administrative hearing. (*Id.*)

The ALJ granted Printy’s Petition, and ordered the Association to pay her filing fee, as well as a civil penalty in the amount of \$5,000.00. (ALJ Decision at 3-4.)

The Department took no action, and the ALJ Decision was certified as the final administrative decision of the Department. The Association filed a Motion for Rehearing, which was denied.

This appeal followed. This Court has jurisdiction pursuant to A.R.S. §§ 12-124(A) and 12-905(A).

II. STANDARD OF REVIEW

A reviewing court shall affirm the action of an agency unless, after reviewing the record, “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. § 13-910(E).

A trial court makes its own rulings on questions of law. *Smith v. Arizona Long Term Care Sys.*, 207 Ariz. 217, 220, ¶ 14 (App. 2004). But in reviewing an agency’s decision, the superior court “does not conduct a trial de novo, act as the trier of fact, nor substitute its view of the evidence for that of the agency.” *Siler v. Arizona Dept. of Real Estate*, 193 Ariz. 374, 378, ¶

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13 (App. 1998). This 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.” *Id.* at 336.

III. ISSUES RAISED

1. Did the imposition of the civil penalty conflict with A.R.S. § 32-2199.02?
2. Was the penalty excessive?

IV. LEGAL ANALYSIS

*1. The imposition of a \$5,000 civil penalty does not conflict with A.R.S. § 32-2199.02.*

The Association first argues that imposition of the \$5,000 penalty conflicts with A.R.S. § 32-2199.02. That statute authorizes an ALJ to impose a civil penalty:

The administrative law judge may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation. All monies collected pursuant to this article shall be deposited in the condominium and planned community hearing office fund established by § 32-2199.05 to be used to offset the cost of administering the administrative law judge function. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by § 32-2199.01.

A.R.S. § 32-2199.02 (A).

The condominium and planned community hearing office fund is used to reimburse the Office of Administrative Hearings for conducting hearings:

Monies in the condominium and planned community hearing office fund shall be used to reimburse the actual costs of the office of administrative hearings in conducting hearings pursuant to § 32-2199.01. Monies remaining in the fund may be used by the department to offset the costs of administering cases filed pursuant to § 32-2199.01.

A.R.S. § 32-2199.05(B).

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According to the Association, because A.R.S. § 32-2199.02 indicates that the monies collected will be used “to offset the cost of administering the administrative law judge function,” and it supplied the audit prior to the hearing, no fine should have been imposed. The Association cites absolutely no law in support of this proposition.

Moreover, this argument ignores the fact that the Association complied only one day prior to the scheduled hearing. And while the Association may find it “difficult to believe” that the costs in this case exceeded \$5,000, it provides nothing but its disbelief in support of that statement.

On appeal, a court reviews the interpretation of statutes de novo. *Wade v. Ariz. St. Ret. Sys.*, 214 Ariz. 559, 561, ¶ 10 (2017). When analyzing a specific statutory provision, a court must “look to the statute as a whole” and “may also consider statutes that are in pari materia—of the same subject or general purpose—for guidance and to give effect to all of the provisions involved.” *Stambaugh v. Killian*, 242 Ariz. 508, 509, ¶ 7 575 (2017). When interpreting a statute, “[e]ach word, phrase, clause, and sentence . . . must be given meaning so that no part will be void, inert, redundant, or trivial.” *Williams v. Thude*, 188 Ariz. 257, 259 (1997).

Here, giving the statute a sensible reading, the civil penalty an ALJ is authorized to impose is meant to be deposited in a fund to offset the administrative law judge function in general, not on a case by case basis. Therefore, the Department did not err when it imposed a \$5,000 penalty here.

*2. The penalty is not excessive*

The Association also argues that the penalty imposed is excessive. An administrative penalty is excessive only if it is so disproportionate to the offense as to shock one's sense of fairness.” *Schillerstrom v. State*, 180 Ariz. 468, 471 (App. 1994). Whether a reviewing court would have imposed the same sanction is immaterial. *Bear v. Nicholls*, 142 Ariz. 560, 563 (App. 1984).

Here, Printy made three separate requests for the audit. At each turn, the Association provided her with a different answer. It was only after Printy filed a Petition that the Association conducted an audit. It did so at the eleventh hour, providing the audit the day before the administrative hearing. On this record, the Court finds the fine imposed was not excessive.

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V. CONCLUSION

Based on the foregoing, this Court concludes there was substantial evidence to support the Department's Order, and that Order was not contrary to law, was not arbitrary or capricious, and was not an abuse of discretion.

If any party wishes to appeal this decision, that party must do so pursuant to A.R.S. § 12-913 and Rule 9(a), Ariz. R. Civ. App. Proc.

IT IS THEREFORE ORDERED affirming the December 8, 2016 Final Administrative Decision of the Arizona Department of Real Estate.

IT IS FURTHER ORDERED that this judgment is final pursuant to Rule 54(c), Ariz. R. Civ. P., as no further matters remain pending.

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

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.**