Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2019-000424-001 DT 04/01/2020

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT
D. Tapia
Deputy

JOYCE H MONSANTO

JOYCE H MONSANTO
10907 W EDGEWOOD DR
SUN CITY AZ 85351

v.

FOUR SEASONS AT THE MANOR HOMEOWNERS ASSOCIATION (001)

JONATHAN D EBERTSHAUSER

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

MINUTE ENTRY

Joyce Monsanto has timely appealed the denial of a petition that she filed with the Arizona Department of Real Estate that stems from a dispute that she has had with the Four Seasons at the Manor Homeowners Association regarding her efforts to affix two flagpoles to her residence. That would allow her to fly both the United States and United States Marine Corps flags. The court has considered Monsanto's opening brief, the response memorandum filed on behalf of Four Seasons, Monsanto's reply, and the transcript of a hearing conducted by an administrative law judge on October 21, 2019. For the reasons explained below, the court has decided to affirm the denial of Monsanto's petition.[1]

[1] A request for oral argument accompanied Monsanto's opening brief. Oral argument is not an opportunity to raise issues or urge arguments that have not been briefed, and because Monsanto has had the opportunity to submit two briefs, there is no reason to think that the issues presented have not been fully addressed in the parties' written submissions. Therefore, the court has concluded that oral argument will not assist a decision, and the request is denied.

Monsanto filed her petition with the Department, which referred the petition to the Office of Administrative Hearings for an evidentiary hearing. After a hearing held on May 30, 2019, the administrative law judge denied Monsanto's petition. The Department, however, granted her request for a rehearing, and thus, a second hearing was held on October 21, 2019. The appeal here pertains only to the decision that followed from that second hearing.[2]

Rule 4 of the Rules of Procedure for Judicial Review of Administrative Decisions requires an appellant to state the issues presented for review in the notice of appeal. Any issue not stated there is not appealable. To suggest otherwise is to allow appeals to be taken after the jurisdictional deadline has passed, which is not permitted.

Monsanto's notice of appeal identifies three issues for review:

> (i) The asserted violation of relevant covenants, conditions, and restrictions that govern her property, the asserted violation of relevant provisions of the Association's by-laws and articles of incorporation, and the asserted violations of A.R.S. §§33-1803, 33-1804, and 33-1805.
>
> (ii) The asserted denial of procedural due process in connection with a meeting of the Association's board of directors on November 8, 2019, and the asserted denial of "substantial" due process.
>
> (iii) The asserted "lack of judicial fairness" exhibited by the ALJ.

1. Denial of the Petition.

This court is required to interpret the record in any reasonable way that supports the ALJ's decision. *Lewis v. Arizona St. Pers. Bd.*, 240 Ariz. 330, 334, ¶15, 379 P.3d 227, 231 (App. 2016) (stating that, on appeal, the evidence must be viewed "in the light most favorable to upholding" the agency's decision, which will be "affirm[ed] if any reasonable interpretation of the record supports the decision"); *Baca v. Arizona Dep't of Econ. Sec.*, 191 Ariz. 43, 46, 951 P.2d 1235, 1238 (App. 1997) ("[W]e view the evidence in a light most favorable to upholding the [agency's] decision"); *Warehouse Indem. Corp. v. Arizona Dep't of Econ. Sec.* 128 Ariz. 504, 505, 627 P.2d 235, 236 (App. 1981) (same). That does not mean that this court must adopt the ALJ's reasoning:

[2] References to the May 30 hearing appearing in Monsanto's opening brief are meaningless because it is long-standing law that, when a new hearing is granted, the first hearing is a nullity, and the parties are in the same position as if that hearing had not occurred. *United States v. Ayres*, 76 U.S. (9 Wall.) 608, 610, (1869) ("[I]t is quite clear, that the order granting the new trial has the effect of vacating the former judgment, and to render it null and void, and the parties are left in the same situation as if no trial had ever taken place in the cause. This is the legal effect of the new trial by a court competent to grant it"); *United States v. Recio*, 371 F.3d 1093, 1105 n.11 (9th Cir. 2004) (same).

this court is permitted to base its decision on reasons that the ALJ did not consider. *E.g., Arnold v. Knettle*, 10 Ariz. App. 509, 511, 460 P.2d 45, 47 (1969) (stating that "if the trial court was correct in its ruling for any reason, the reviewing court is bound to affirm"); *see also Glaze v. Marcus*, 151 Ariz. 538, 540, 729 P.2d 342, 344 (App. 1986) (stating that appellate court "will affirm the trial court's decision if it is correct for any reason, even if that reason was not considered by the trial court"); *City of Tucson v. Morgan*, 13 Ariz. App. 193, 195, 475 P.2d 285, 287 (1970) (stating that "if the trial court based its ruling upon wrong reasons but was correct in its ruling for any reason, the appellate court is bound to affirm").

It is undisputed that Monsanto purchased a home in February, 2017, and that property is subject to the Association's Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements. [ALJ Amended Decision (11/18/19) at 5, para. 15)] It is beyond reasonable dispute that, *before* she made that purchase, the following occurred:

- The CC&Rs were adopted and recorded for property that later would include the property that Monsanto purchased. [Pet. Exh. 1]

- The Association was incorporated and a Board of Directors was formed. [Pet. Exh. 2]

- As authorized by the CC&Rs, the Board adopted "Architectural and Landscape Design Guidelines." [Pet. Exh. 1 at 19, para. 7.5; Pet. Exh. 3] Those guidelines included the following provision: "[O]nly one flagpole is permitted per lot." [Pet. Exh. 3 at 5 ("Flagpoles" at para. 2)]

Thus, when Monsanto purchased her property, she did so with at least constructive notice about the authority of the Board to establish architectural guidelines *and* with notice about the substance of those guidelines, including the limit on the number of flagpoles allowed on any property. *See e.g., Hall v. World Sav. & Loan Ass'n*, 189 Ariz. 495, 500, 943 P.2d 855, 860 (App. 1997) ("Constructive notice includes both information available through recorded documents and knowledge of facts that impose a duty to inquire. . . . Notice of facts and circumstances which would put a [person] of ordinary prudence and intelligence on inquiry is equivalent to knowledge of all the facts a reasonably diligent inquiry would disclose").

Accordingly, Monsanto cannot be heard to complain that she was unaware of the flagpole restriction when she bought her property, and to be fair, her opening brief makes no such contention. Moreover, Monsanto also cannot be heard to complain that the adoption of the one-flagpole guideline was unauthorized, which the opening brief does seem to contest by asserting (at

7[3]) that "[t]he Architectural Committee has NO authority to amend the CC&Rs by adding rules, and "[t]he Architectural Committee has gone beyond the scope of their authority" (capital letters in original text). Those contentions, however, miss the point: the evidence in the record, at a minimum, supports the inference that the one-flagpole guideline was adopted by the Board and not the Architectural Committee *before* Monsanto purchased her home. And, the plain language of the CC&Rs permitted the Board to do so.

Further, the opening brief's contentions about the Architectural Committee are not supported by citations of any kind – no citations to the record, and no citations to any applicable legal authority. Accordingly, if asserted as factual propositions, they fail and warrant no consideration. *State v. One Single Family Residence at 1810 East Second Ave., Flagstaff, Ariz.*, 193 Ariz. 1, 2 n.2, 969 P.2d 166, 167 n.2 (App. 1997) (declining to consider facts stated in Appellant's brief that were not supported by citations to the record); *Matter of Estate of Killen*, 188 Ariz. 562, 563 n.1, 937 P.2d 1368, 1369 n.1 (App. 1996) (disregarding appellant's statement of facts because it was not "supported by appropriate references to the record"). And, if asserted as legal principles, they also fail and warrant no consideration. *In re $26,980.00 U.S. Currency*, 199 Ariz. 291, 299, ¶ 28, 18 P.3d 85, 93 (App. 2000) (arguments "offered without elaboration or citation to any . . . legal authority" are not considered on appeal); *Ness v. Western Sec. Life Ins. Co.*, 174 Ariz. 497, 503, 851 P.2d 122, 128 (App. 1993) (stating that "[a]rguments unsupported by any authority will not be considered on appeal"). In these circumstances, therefore, any argument that the one-flagpole guideline was adopted without authority to do so has been waived. *Polanco v. Industrial Comm'n*, 214 Ariz. 489, 492 n.2, ¶6, 154 P.3d 391, 394 (App. 2007) (stating that argument not fully developed in appellant's brief is waived); *see also State v. Dominguez*, 236 Ariz. 226, 231, ¶13, 338 P.3d 966, 971 (App. 2014) (declining to consider argument that appellant "failed to develop and support"); *Connie v. Adam*, No. 2 CA–JV 2016–0018, 2016 WL 4698932, at *2, ¶7 (App. 2016) (declining to consider argument that appellant had not developed).[4]

Leaving that aside, Monsanto's opening brief insists (at 7-9) that the one-flagpole restriction is unenforceable because it is barred by A.R.S. §33-1808. That argument, however, would have this court disregard well-settled rules of statutory construction.

[3] Monsanto failed to paginate her opening brief. Throughout this ruling, references to pages in that brief treat the front-cover as page 1.

[4] During the October 21 hearing, Monsanto attempted to impress on the ALJ that changes to the flagpole guidelines were adopted without authority to do so. As the ALJ correctly explained, none of the changes that Monsanto identified pertained to the one-flagpole restriction and, therefore, none of those changes were relevant to the claim that Monsanto was pursuing. In other words, if one were to assume that the changes Monsanto identified had been adopted impermissibly, denial of her two-flagpole request would have been warranted nevertheless.

Statutes are to be interpreted consistent with their plain, everyday meaning. *E.g., Arizona Dep't of Rev. v. Rally,* 204 Ariz. 509, 512, ¶¶14, 15, 65 P.3d 458, 461 (App. 2003) (recognizing that the "primary rule" of statutory construction is to give words their ordinary meaning); *Walgreen Ariz. Drug. Co. v. Arizona Dep't of Rev.*, 209 Ariz. 71, 73, ¶12, 97 P.3d 896, 898 (App. 2004) (when construing statutes, words are given their ordinary meaning unless the legislature has "clearly intended" a special meaning); *Prescott Newspapers, Inc. v. Yavapai Cmty. Hosp. Ass 'n,* 163 Ariz. 33, 38, 785 P.2d 1221, 1226 (App. 1989) (stating that plain and unambiguous statutory language must be given effect and other rules of construction will not be employed to contradict the language). Section 33-1808(B) states that the Association is not permitted to "prohibit the installation of a flagpole." "Flagpole" is singular and not plural. The statute says nothing about prohibiting the installation of more than one flagpole. And because the installation of two or more flagpoles is not a subject covered by the statute, it cannot be read to prohibit the Board from limiting homeowners to one flagpole. *Silver v. Pueblo Del Sol Water Co.*, 244 Ariz. 553, 564-65, 423 P.3d 348, 359-60 (2018) ("This Court does not have the constitutional authority to construe a statute so that it encompasses matters that were not covered or addressed by the legislature" (relying on Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 93 (2012) ("[A] matter not covered is not covered . . . . The judge should not presume that every statute answers every question, the answers to be discovered through interpretation"). Stated otherwise, the only way to read section 33-1808(B) as precluding the Association from prohibiting a second flagpole is to read words into the statute that are not there, which courts are not permitted to do. *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91, 93 (1965) ("[C]ourts will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself"); *see also Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) (rejecting an interpretation that "would have [the Court] read an absent word into the statute" because such an interpretation "would result not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (citation and internal quotation marks omitted, second and third alterations in original)).

Monsanto further maintains that the Association has violated A.R.S. §33-1808(A)(1), which prevents the Association from prohibiting the display of 10 different flags listed in that statute, including the flags of the United States and the Marine Corps, both of which she wishes to display. Monsanto's contention is that the one-flagpole guideline forces her to make a choice, thus impermissibly denying her the ability to fly the second flag. By the same reasoning, however, a homeowner's desire to display seven of the 10 flags and being limited to one flagpole would impermissibly deny that homeowner the opportunity to display the other six flags. That result is not supported by a common sense interpretation of section 33-1808(A)(1), and for that reason as well, Monsanto's argument fails. *E.g., Lake Havasu City v. Mohave County*, 138 Ariz. 552, 557, 675 P.2d 1371, 1376 (App. 1983) ("Statutes must be given a sensible construction which will avoid absurd results"); *see also Sharpe v. Arizona Health Care Cost Containment Sys.,* 220 Ariz. 488,

497, ¶30, 207 P.3d 741, 750 (App. 2009) ("One of the primary principles of statutory interpretation is not to construe statutes to give an absurd result").

Although the opening brief (at 6) refers to sections 8.1.6, 8.1.7, and 8.1.13 of the CC&Rs, nothing said in those sections overcomes (i) the plain language of the CC&Rs and the reference to Architectural Guidelines, (ii) the express guideline prohibiting more than one flagpole, and (iii) the analysis of A.R.S. §33-1808(b) that is explained above.

Monsanto's opening brief also maintains (at 9-11) that her request for two flagpoles should be allowed under sections 7.8 and 7.9 of the CC&Rs. Section 7.8 requires a homeowner to submit a request to the Architectural Committee, which then sends its recommendation to the Association board. Not later than 60 days after receipt of that recommendation, the Board must provide the homeowner with a written decision regarding the request, failing which the request must be treated as approved. Section 7.9 allows a homeowner to appeal the Board's written decision. In that event, the Board must "consult" with the Architectural Committee and then provide the homeowner with a written decision not later than 45 days after receipt of the appeal, failing which the homeowner's request must be treated as approved.

Although the opening brief identifies section 7.8 as an issue on appeal, the brief also concedes that no violation of that section occurred because the Board provided Monsanto with a written denial of her request fewer than 60 days after it was received. [Monsanto Open. Br. (1/28/20) at 9-10][5] With respect to the asserted violation of section 7.9, it is undisputed that Monsanto submitted an appeal on October 1, 2018, which was well before the 30-day deadline to do so. Testimony established that, as required by section 7.9, the Board consulted with the Architectural Committee before deciding to deny the appeal. [Hrg. Tr. (10/21/18) at 79] The Board then satisfied the requirement of section 7.9 to "render its written decision" by having it noted in the written minutes of the Board's November 8 meeting. [Exh. 9; Hrg. Tr. (10/21/18) at 79] As such, a written decision was in place before the 45-day deadline had passed.[6]

The opening brief attempts to make an issue out of the absence of any written records reflecting the Architectural Committee's actions in connection with her appeal, and especially the absence of anything in writing showing the manner and extent of any consulting that occurred

[5] The opening brief acknowledges that Monsanto submitted her request for two flagpoles to the Architectural Committee on August 31, 2018, and 22 days later, she received a written response from the Board denying the request.

[6] Unlike section 7.8, which requires the Board to provide a written denial to the requesting party, section 7.9 merely requires a written decision without any obligation to deliver it to the party who has appealed. Nevertheless, in this case, testimony established that Monsanto was notified orally at the November 8 meeting that her appeal had been denied. [Hrg. Tr. (10/21/18) at 80]

between the Committee and Board as required by section 7.9. But, testimony was presented that the necessary consultation did occur. [Hrg. Tr. (10/21/18) at 79] As the trier of fact, the ALJ was permitted to accept that testimony as credible and, at the same time, disregard the absence of any written records. *E.g., Lathrop v. Arizona Bd. of Chiropractic Examiners*, 182 Ariz. 172, 181, 894 P.2d 715, 724 (App. 1995) (credibility of witnesses is matter for the trier-of-fact in administrative matter); *Anamax Mining Co. v. Arizona Dep't of Econ. Sec.*, 147 Ariz. 482, 486, 711 P.2d 621, 625 (App. 1985) (same). And, an appellate court is not permitted to reevaluate the evidence, even when the appellate court would have reached a different decision. *Blake v. City of Phoenix*, 157 Ariz. 93, 96, 754 P.2d 1368, 1371 (App. 1988) ("We will not substitute our judgment for that of the agency if it was persuaded by the probative force of the evidence before it . . . [even when] we would have reached a different conclusion had we been the original arbiter"); *see also Culpepper v. State*, 187 Ariz. 431, 436, 930 P.2d 508, 531 (App. 1996) ("In reviewing factual determinations by an administrative agency, this court does not reweigh the evidence or substitute its judgment for that of the agency"); *Sigmen v. Arizona Dep't of Real Estate*, 169 Ariz. 383, 386, 819 P.2d 969, 972 (App. 1991) ("It is not [an appellate] court's function to reweigh the evidence. The hearing officer as trier of fact was the proper judge of witness credibility" (citations omitted)). Accordingly, the record here can be interpreted reasonably to support the conclusion that Monsanto's appeal was treated by the Board as section 7.9 required.[7]

2. Due Process.

a. Procedural.

To state a claim for the denial of procedural due process, Monsanto must show that she has been denied a protected liberty or property interest. *E.g., Backus v. Ellison*, No. 1 CA-CV 15-0019, 2016 WL 48210, at *1, ¶5 (Ariz. App. 2016) (recognizing that "[a] threshold requirement to a substantive or procedural due process claim is the plaintiffs showing of a liberty or property interest protected by the Constitution" (citation and internal quotation marks omitted)); *Alpha, LLC v. Dartt*, 232 Ariz. 303, 308, ¶23, 304 P.3d 1126, 1131 (App. 2013) (same). We are dealing here with whether Monsanto should be allowed to affix two flagpoles to her residence. Monsanto's brief did not, and no doubt could not, cite any legal authority – case law, statute, rule, or otherwise

[7] To be sure, the record could also be interpreted reasonably in a way that supports Monsanto. But when the evidence permits either of two inconsistent conclusions, an appellate court is required to accept the conclusion reached by the trier of fact (in this case, the ALJ). *Shaffer v. Arizona State Liquor Bd.*, 197 Ariz. 405, 409, ¶20, 4 P.3d 460, 464 (App. 2000) (stating that "[e]ven if the record supports inconsistent conclusions, neither we nor the superior court may substitute our judgment for that of the ALJ"); *DeGroot v. Arizona Racing Comm'n*, 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (App. 1984) ("If two inconsistent factual conclusions could be supported by the record, then there is substantial evidence to support an administrative decision that elects either conclusion"); *see also Smith v. Arizona Dep't of Transportation*, 146 Ariz. 430, 432, 706 P.2d 756, 758 (App. 1985) ("[I]f there was competent evidence to sustain the [agency's] decision," the decision must be affirmed).

– recognizing a constitutionally protected liberty or property interest in the placement of flag poles on one's property. Accordingly, the procedural due process claim fails. *In re $26,980.00 U.S. Currency*, 199 Ariz. at 299, ¶ 28, 18 P.3d at 93 (arguments "offered without elaboration or citation to any . . . legal authority" are not considered on appeal); *Ness*, 174 Ariz. at 503, 851 P.2d at 128 (stating that "[a]rguments unsupported by any authority will not be considered on appeal"); *see also Polanco*, 214 Ariz. at 492 n.2, ¶6, 154 P.3d at 394 (stating that argument not fully developed in appellant's brief is waived); *Sholes v. Fernando*, 228 Ariz. 455, 457, ¶1 n.1, 268 P.3d 1112, 1114 n.1 (App. 2011) (same).[8]

During the hearing before the ALJ, Monsanto protested about the failure of the Board to conduct an open meeting regarding her appeal of the decision to deny her request. If there is an argument to be made in that regard, it is not an argument that the opening brief develops with citations to supporting authority. Therefore, for purposes of this appeal, the argument has been waived. *Polanco*, 214 Ariz. at 492 n.2, ¶6, 154 P.3d at 394 (stating that argument not fully developed in appellant's brief is waived); *Sholes*, 228 Ariz. at 457, ¶1 n.1, 268 P.3d at 1114 n.1 (stating that arguments not sufficiently developed are waived); *see also Dominguez*, 236 Ariz. at 231, ¶13, 338 P.3d at 971 (App. 2014) (declining to consider argument that appellant "failed to develop and support"); *Connie*, 2016 WL 4698932, at *2, ¶7 (declining to consider argument that appellant had not developed).

b. "Substantial."

Monsanto's opening brief fails to explain clearly what is meant by "substantial due process." Arizona appellate courts have not adopted substantial due process as its own form of due process: instead, Arizona appellate courts have used substantial as a synonym for serious or, perhaps, significant. See e.g., *Horne v. Polk*, 242 Ariz. 226, 232, ¶21, 394 P.3d 651, 657 (2017) (referring to a "substantial due process question"); *State v. Vess*, 157 Ariz. 236, 237 n.1 756 P.2d 333, 334 n.1 (App. 1988) (same); *H.M.L. v. State*, 131 Ariz. 385, 388, 641 P.2d 873, 876 (App. 1981) (referring to "substantial due process violations"). Unlike other due process claims, moreover, no Arizona appellate court has explained what must be shown to succeed on a substantial due process claim.

[8] The court understands that Monsanto is representing herself without the assistance of an attorney. Under Arizona law, however, that does not entitle her even to a slight benefit of the doubt when it comes to crafting an appellate brief, which includes the need to cite relevant legal authority in support of a contention. *E.g., Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, 287, ¶ 16, 17 P.3d 790, 793 (App. 2000) (stating that a self-represented party "is entitled to no more consideration from the court than a party represented by counsel, and is held to the same standards expected of a lawyer"); *Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App.1985) (same).

If the expression "substantial due process" was meant to refer to what Monsanto contends was an unfair procedure that the Board adopted when treating with her request and appeal, the claim fails for the reasons stated above. On the other hand, if Monsanto is the victim of a typographical error, and "substantial" was meant to be "substantive," the claim fails because the Association is a private entity. Substantive due process applies only to the government, and "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989) (rejecting claim asserted under the Due Process Clause).

3. Judicial Unfairness.

Monsanto's notice of appeal asserts that the ALJ's lack of fairness is "reflect[ed]" by the judge's disregard for "ALL violations of the Homeowners Board and the admission of same under oath" and by holding Monsanto "accountable for one infraction." (Capital letters in original text)

In one sense, that is nothing more than a complaint that the ALJ failed to ascribe the same weight to the evidence that Monsanto would have liked. This court, however, like all appellate courts, does not decide what evidence is more persuasive than other evidence; that was exclusively the province of the ALJ. *Doria J. v. Department of Child Safety*, No. 1 CA-JV 19-0030, 2019 WL 4440385, at *3, ¶14 (Ariz. Ct. App. Sept. 17, 2019) ("We do not reweigh evidence on appeal and will not second-guess the fact-finder's evaluation of the evidence"); *Smith v. Arizona Long Term Care Sys.*, 207 Ariz. 217, 220, ¶14, 84 P.3d 482, 485 (App. 2004) (when considering an appeal of an administrative agency's decision, the superior court "cannot re-weigh the evidence and substitute the court's findings for that of the agency"); *Sigmen v. Arizona Dep't of Real Estate*, 169 Ariz. 383, 386, 819 P.2d 969, 972 (App. 1991) ("It is not this court's function to reweigh the evidence. The hearing officer as trier of fact was the proper judge of witness credibility" (citations omitted)).[9]

Apart from that, the ALJ is presumed to have been free of bias. *State v. Henry*, 189 Ariz. 542, 546, 944 P.2d 57, 61 (1997); *see also State v. Cropper*, 205 Ariz. 181, 185, ¶22, 68 P.3d 407, 411 (2003); *State v. Ramsey*, 211 Ariz. 529, 541, ¶38, 124 P.3d 756, 768 (App. 2010). To overcome the presumption, "[t]he moving party must set forth a specific basis for the claim of partiality and prove by a preponderance of the evidence that the judge is biased or prejudiced."

[9] Moreover, when deciding the case, the ALJ was permitted to accept all, some, or none of what was said by any witness [*Callender v. Transpacific Hotel Corp.*, 179 Ariz. 557, 562, 880 P.2d 1103, 1108 (App. 1993)], and any inferences to be drawn from the evidence were exclusively the prerogative of the ALJ [*see e.g., Harrington v. Industrial Comm'n*, 84 Ariz. 356, 359 328 P.2d 311, 313 (1958) (stating that "inference to be drawn was . . . exclusively the province of the triers of fact")].

Cropper, 205 Ariz. at 185, ¶22, 68 P.3d at 411 (citation and internal quotation marks omitted); *see also Simon v. Maricopa Med. Center*, 255 Ariz. 55, 63, ¶29, 234 P.3d 623, 631 (App. 2010) (same); *Ramsey*, 211 Ariz. at 541, ¶38, 124 P.3d at 768 (same).

The principal basis for the unfairness that Monsanto ascribes to the ALJ consists of decisions that the judge made during and after the evidentiary hearing. A judge's rulings, however, are insufficient to prove bias. *Simon*, 255 Ariz. at 63, ¶29, 234 P.3d at 631 (stating that superior court's consistent pattern of adverse rulings does not demonstrate bias); *State v. Curry*, 187 Ariz. 623, 631, 931 P.2d 1133, 1141 (App.1996) (recognizing that disagreements over rulings are insufficient to support a judge's disqualification).

The opening brief (at 12) states that "[t]he transcript of the October 21, 2019 rehearing should be reviewed in its entirety as it will show the judge made deferential remarks favoring the respondent and stated biased remarks to the plaintiff throughout the hearing." This court, like all appellate courts, owes no duty to an appellant to scour the record in search of material that may aid the appellant's cause. *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 343, 678 P.2d 525, 528 (App. 1984); *Hubbs v. Costello*, 22 Ariz. App. 498, 501, 528 P.2d 1257, 1260 (1974). It is an appellant's obligation to provide specific citations to the record where support for factual assertions can be confirmed, and when, as here, there is a failure to do so, the appellate court is permitted to disregard those assertions. *One Single Family Residence*, 193 Ariz. at 2 n.2, 969 P.2d at 167 n.2 (declining to consider facts stated in Appellant's brief that were not supported by citations to the record); *Estate of Killen*, 188 Ariz. at 563 n.1, 937 P.2d at 1369 n.1 (disregarding appellant's statement of facts because it was not "supported by appropriate references to the record"); *see also Woerth v. City of Flagstaff*, 167 Ariz. 412, 420, 808 P.2d 297, 305 (App. 1991) (recognizing that an unsworn and unproven factual assertion in a legal memorandum is not a fact that a court considers (citations omitted)). Nevertheless, this court has read the transcript of the October 21, 2019, hearing and has found nothing to suggest that the ALJ was biased or that Monsanto was otherwise treated unfairly. What that transcript does show is that the ALJ tried noticeably to be considerate of Monsanto, who was either unable to understand, or perhaps, unwilling to listen to and think about, what the ALJ tried patiently to explain.

In short, the contention that Monsanto was victimized by an unfair ALJ is not supported by any evidence, much less a preponderance of the evidence.

4. Other.

To the extent Monsanto's opening brief presents issues beyond those discussed above, they have been waived for failure to include them in the notice of appeal. See JRAD 4(c)(6).

IT IS ORDERED:

1. The amended decision of the administrative law judge in *Monsanto v. Four Seasons at the Manor Homeowners Association* (case no. 19F-H1919053-REL-RHG (11/18/19)) is affirmed.

2. Because this appeal is based on a claim that arises out of a contract with a provision for an award of attorney's fees, this court is required to grant the Association's request for attorney's fees on appeal. *Chase Bank of Ariz. v. Acosta*, 179 Ariz. 563, 575, 880 P.2d 1109, 1121 (App. 1994).[10] The court also must grant the Association's request for costs on appeal, as provided by the same contract. *Watson Constr. Co. v. AMFAC Mortgage Corp.*, 124 Ariz. 570, 584, 606 P.2d 421, 435 (App. 1979).

3. Within 15 days of the entry of this order, counsel for the Association should submit an application for an award of attorney's fees and a statement of costs to be awarded along with a proposed form of judgment. That form of judgment should reflect the following:

a. The decision of the Arizona Department of Real Estate is affirmed.

b. Attorney's fees on appeal are awarded, leaving a blank space for the amount.

c. Costs on appeal are awarded, leaving a blank space for the amount.

d. This matter is remanded to the Arizona Department of Real Estate for any further proceedings that may be necessary and otherwise to accomplish the return of the record in this case.

e. No matters remain pending in connection with this appeal, and the judgment is a final order, while citing Rule 13 of the Rules of Procedure for Judicial Review of Administrative Decisions and Rule 54(c) of the Arizona Rules of Civil Procedure.

4. Once the application, statement, and form of judgment are filed, Monsanto will be allowed up to 21 days to submit an opposition to those submissions. **No reply** should be filed unless requested by the court.

[10] The CC&Rs in this case are a contract between Monsanto and the Association. *E.g., Ahwatukee Custom Estates Mgt. Ass'n v. Turner*, 196 Ariz. 631, 634, ¶5, 2 P.3d 1276, 1279 (App. 2000).

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.