

Petition for appeal of ruling by APCHA

Hearing date

Petitioner's name

Address of affected property

Petitioner is: Applicant ve Tenant Owner

APCHA Representative and title

Hearing officers findings of fact and conclusions of applicable regulations.

Recommendation on appeal by Dianne Kessler 148 Woody Creek

Violation appealed: APCA found Ms. Kessler in violation of Part VI, 3, E of the APCA regulations prohibiting use of the APCA housing for short term rentals. She was also found to have in violation of the Master Deed Restriction for Woody Creek MHP. Both the regulations and the deed restriction prohibit short term rentals

Findings of Fact. Ms. Kessler admitted to having used a bedroom for short term rentals since at least 2014. She explains that income is small and her tax returns verify that she earns \$20,000 to \$40,000 in most years. She says she needed extra income to pay for significant capital improvements upon acquiring the house after a divorce. Hearing officer finds those statements truthful and supported by documents supplied.

She also admits to renting a bedroom on AirBNB on occasion for \$80 to \$100 per night under the name "Deanne." APCA investigators found 180 reviews of the rental online.

Examination of her last six years of tax returns shows gross reported rental income of \$52,084 for the last six years. Using Petitioner's estimated nightly rental rate of \$80 to \$100 per night, she rented the room between 520 and 651 times, about twice a week altogether.

Petitioner states the value of the home at \$601,000 with a remaining mortgage of \$114,000.

Findings of Fact: Petitioner violated the rules consistently for six years. Hearing officer is a bit skeptical that "Deanne" was not aware of the rule as she signed both the Master Deed Restriction and agreed to APCA rules. The complaint was anonymous.

Recommended penalty. Hearing officer recognizes that her ability to pay a large fine is limited by her income as a message therapist. Nonetheless, using a housing unit as a short term rental is clearly contradictory to the intent of the program and, unchecked, the practice would undermine the integrity of the program and the public confidence needed to provide housing for the many, many residents who are increasingly underserved or unserved by the housing program.

Hearing officer believes the violation of the deed restriction is serious but "stacking" two essentially identical violations (Master Deed Restriction, APCA rules) is unduly harsh considering that she may have acted out of ignorance.

While Petitioner has considerable equity in the house, approximately half a million dollars, her income and the present state of capital markets may make it impossible for her to obtain a HELOC or other financing. The hearing officer is not seeking the sale of the home but is focused on deterrence of others.

The hearing officer recommends the following penalty:

1. **\$10,000 fine with \$5,000 suspended pending satisfactory performance of an agreement to abide by the rules and pay \$5,000 in cash or provide a two year noted secured by a deed of trust at 4% interest. Payments would be \$217.12.**
2. **A signed agreement that further violations of this and related rules would reinstate the suspended \$5,000 in fines.**

A handwritten signature in blue ink, appearing to read "Michael C Ireland", with a horizontal line underneath the signature.

Michael C Ireland October 1, 2020