

1                                   **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3   In the Matter of

**No. 24F-H008-REL**

4   Keith W. Cunningham

**ORDER DENYING RESPONDENT'S  
PARTIAL MOTION TO DISMISS**

5   v

6  
7   The Residences at 2211 Camelback  
8   Condominium Association, IN

9               Respondent's Partial Motion to Dismiss is denied. On September 25, 2023,  
10   Respondent filed a Partial Motion to Dismiss. Respondent argued one of Keith W.  
11   Cunningham's (Petitioner) claims ought to be dismissed because he cited A.R.S. §33-  
12   1805, the statute for Planned Community Associations, when he filed the complaint  
13   form. Respondent is not a Planned Community Association, rather they are a  
14   Condominium Association and are not subject to A.R.S §33-1805. Implicit in  
15   Respondent's motion is the argument they are unfairly prejudiced by the claim such that  
16   they are unaware of the reason for Petitioner's complaint; they are unable to adequately  
17   prepare and thus, no meaningful notice is given depriving them of due process. While it  
18   may be true Petitioner hand wrote A.R.S. §33-1805 in the prompt directing petitioners to  
19   cite the statute for which Respondent allegedly violated, the context surrounding  
20   Petitioner's hand written statute provides adequate notice.

21           First, the Homeowners Association (HOA) Dispute Process Petition contained a  
22   mandatory series of boxes for every petition. One such mandatory box was the  
23   description of the parties including respondent type. Petitioner's choices within the  
24   respondent type box were Homeowner, Condominium/Community Association, and  
25   Planned Community Association. Petitioner selected Condominium/Community  
26   Association. Here, it is clear Petitioner was aware of Respondent's proper status as a  
27   Condominium and not a Planned Community because the Condominium box was  
28   checked and the Planned Community box was left blank. Thus, Respondent was put on  
29   notice of Petitioner's acknowledgement of their status as Condominium/Community  
30   Association and not Planned Community.

1 Next, petitioners were mandated to select the types of violations. The choices  
2 were Condominium Statutes, Planned Community Statutes, Bylaws, and CC&R's.  
3 Petitioner selected Condominium Statutes and CC&R's. Here, it is obvious Petitioner  
4 intended to apply the Condominium Statutes and not the Planned Community Statutes  
5 as he selected the Condominium Statutes box, but left the Planned Community Statutes  
6 box unchecked. Thus, Respondents were on notice that Petitioner's claim was intended  
7 to address the Condominium Statutes and not the Planned Community Statutes.

8 Finally, petitioners were mandated to fill out in their own words the Alleged  
9 Violation Description – Narrative Statement box. Petitioner stated, "[f]ailure to provide or  
10 make reasonably available for examination requested financial records/documentation  
11 original request 7/10/2023." Here, Petitioner plainly describes the crux of their  
12 complaint; he requested financial documents and Respondent failed to make them  
13 reasonably available. Thus, Respondent was made aware of the reason for Petitioner's  
14 complaint.

15 Again, it is true Petitioner cited the improper statute. If viewed in a vacuum, one  
16 may argue, Respondent was unaware of what they are accused and unable to  
17 adequately defend said complaint; however, this fact is not viewed in a vacuum.  
18 Petitioner cited A.R.S. §33-1805 which would have been the proper statute if  
19 Respondent was a Planned Community. Respondent could reasonably understand  
20 Petitioner intended to cite A.R.S. §33-1258, which is the corresponding Condominium  
21 Association statute. Petitioner's selections of "Condominium Association" within the  
22 respondent type box, "Condominium Statutes" within the complaint violation box, and  
23 the description of the violation within the alleged violation description box provide  
24 sufficient notice for a reasonable Respondent to be aware of what they are accused.

25 For the reasons listed above Respondent's Partial Motion to Dismiss is denied.

26 Done this day, October 5, 2023.

27 /s/ Brian Del Vecchio  
28 Administrative Law Judge

29 Transmitted by either mail, e-mail, or facsimile to:  
30

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2 Commissioner  
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