

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 Debbie Westerman,
3 Petitioner,

No. 25F-H029-REL

4 v.
5 Bridgewood Nine 30 Homeowners
6 Association,
7 Respondent.

**ADMINISTRATIVE LAW JUDGE
DECISION**

8 **HEARING:** February 20, 2025.

9 **APPEARANCES:**

10 For Petitioners: Debbie Westerman.

11 For Respondents: Attorney Mark Lines.

12 **ADMINISTRATIVE LAW JUDGE:** Samuel Fox

13 **EXHIBITS ADMITTED INTO EVIDENCE:** Notice of Hearing File, provided by the
14 Department of Real Estate. Respondent's Exhibits A and B.

15 **FINDINGS OF FACT**

16 1. Bridgewood Nine 30 Homeowners Association ("Respondent") is a
17 condominium association in Mesa, Arizona.

18 2. Debbie Westerman ("Petitioner") own a home located at 930 S. Dobson Rd,
19 Unit 31, Mesa, Arizona 85202, and is a member of Respondent.

20 3. On or about December 16, 2024, Petitioner filed a single-issue Petition with
21 the Arizona Department of Real Estate ("Department") alleging that Respondent had
22 violated Planned Community Statutes, A.R.S. § 33-1805. The issue identified in the
23 Petition, for which Petitioner paid the requisite \$500.00 filing fee, is as follows:

24 Per ARS 33-1805, I requested financial statements and associated minutes
25 outlined in "Question on Legal Fees" on 11/26/24 and have had no
26 response. I am petitioning the ADRE to intervene and dispel concerns of
27 having misappropriated funds for legal representation at the expense of the

Association. All owners' Private Personal Information (PPI), as well as other confidential information, should be redacted. Thank you.¹

4. Respondent, through its President, Michael Brubaker, filed a written response to the Petition, requesting dismissal.²

5. The Department referred the Petition to the Office of Administrative Hearings, an independent state agency, for an evidentiary hearing.

6. A hearing was held on February 20, 2025. Administrative Notice was taken of the agency record. The parties agreed that the applicable statute was A.R.S. § 33-1258. Petitioner testified on her own behalf. Michael Brubaker, Community Manager, testified for Respondent.

7. It is undisputed that on November 26, 2024, Petitioner sent an email, which stated, in relevant part, as follows:

2. Could you please obtain **all statements** from **Shaw and Lines** from **2015 through today**, and email these to the current Board for review? I am also requesting a copy of these statements so I may review them as well.³

8. It is undisputed that Respondent did not respond to that email until December 30, 2024, when Michael Brubaker invited Petitioner to a board meeting.⁴

9. Ms. Westerman stated that she just wanted to know how much money Respondent had paid in legal fees in the past decade. She sent the email request for that information, and she did not receive a timely response.

10. Mr. Brubaker testified consistently with not responding within ten business days. He testified in support of his efforts to work with Petitioner regarding her request.

¹ Resp. Exh. A at 003.

² Resp. Exh. A at 002.

³ Resp. Exh. A at 006.

⁴ Resp. Exh. B at 0012.

CONCLUSIONS OF LAW

1
2 1. A.R.S. § 32-2199 authorizes the administrative law judge to “adjudicate
3 complaints regarding and ensure compliance with . . . [t]itle 33, chapter 9 and
4 condominium documents.”

5 2. A.R.S. § 32-2199.01 permits a member of a condominium association to file
6 a petition with the Department for a hearing concerning the planned community
7 association’s alleged violations as set forth in Title 33, Chapter 9. This matter lies within
8 the Department’s jurisdiction.

9 3. A.R.S. § 32-2199.02 authorizes the administrative law judge to “order any
10 party to abide by the statute, condominium documents, community documents or contract
11 provision at issue and may levy a civil penalty on the basis of each violation.”

12 4. Petitioner bears the burden of proof to establish that Respondent violated
13 applicable statutes, CC&Rs, and/or Bylaws by a preponderance of the evidence.⁵
14 Respondent bears the burden to establish affirmative defenses by the same evidentiary
15 standard.⁶ “A preponderance of the evidence is such proof as convinces the trier of fact that
16 the contention is more probably true than not.”⁷

17 5. A.R.S. § 33-1258 provides as follows:

18 A. Except as provided in subsection B of this section, all financial and other
19 records of the association shall be made reasonably available for
20 examination by any member or any person designated by the member in
21 writing as the member’s representative. The association shall not charge a
22 member or any person designated by the member in writing for making
23 material available for review. The association shall have ten business days
to fulfill a request for examination. On request for purchase of copies of
records by any member or any person designated by the member in writing
as the member’s representative, the association shall have ten business
days to provide copies of the requested records. An association may
charge a fee for making copies of not more than fifteen cents per page.

24 ⁵ See A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837
(1952).

25 ⁶ See A.A.C. R2-19-119(B)(2).

26 ⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 B. Books and records kept by or on behalf of the association and the board
2 may be withheld from disclosure to the extent that the portion withheld
3 relates to any of the following:

4 1. Privileged communication between an attorney for the association and
5 the association.

6 6. Respondent argued that the documents Petitioner requested, bills issued to
7 Respondent by Respondent's counsel, were subject to the exception in A.R.S. § 33-
8 1258(B)(1). Respondent's counsel also represented that the documents were privileged.

9 7. Based upon counsel's representation that the requested documents were
10 privileged, the Tribunal finds that the preponderance of the evidence supports the
11 requested documents were privileged.

12 8. The production and ten-day requirements apply to all documents "[e]xcept
13 as provided in subsection B."

14 9. Therefore, Petitioner failed to meet her burden that Respondent failed to
15 comply with A.R.S. § 33-1258.

16 **ORDER**

17 **IT IS ORDERED** that Respondent be deemed the prevailing party in this matter.

18 **NOTICE**

19 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties
20 unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.
21 Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter
22 must be filed with the Commissioner of the Department of Real Estate
23 within 30 days of the service of this Order upon the parties.**

24 Done this day, March 12, 2025.

25 /s/ Samuel Fox
26 Administrative Law Judge
27

Transmitted by either mail, e-mail, or facsimile March 12, 2025 to:

Susan Nicolson, Commissioner
Arizona Department of Real Estate

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By: OAH Staff