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No. 25F-H2222050-REL-RMD

Minute Entry

Desert Ranch Homeowners Association,
Respondent.

5. On May 25, 2022, the Department referred consolidated matters 22F-H2222050-REL (ROOT) and 22F-H2222054-REL to the Office of Administrative Hearings (“OAH”), an independent state agency, for an evidentiary hearing on July 25, 2022.¹ Per

¹ On July 06, 2022, the matters were continued and reset for hearing on September 27, 2022. On September 27, 2022, the matters were continued and reset again for hearing January 09-10, 2023, whereby they were heard.

1 the NOTICE OF HEARING, the following issues were to be adjudicated based on Petitioner's
2 petition(s):

3 **Petitioner states that Respondent "has failed and/or is refusing to**
4 **provide various records requested pursuant to A.R.S. § 33-1805**
5 **(sic.)", and that Respondent "forbids video and audio recordings of**
6 **meetings" in violation of A.R.S. § 33-1804(A).**

7 6. On February 21, 2023, OAH issued an ADMINISTRATIVE LAW JUDGE DECISION
8 ("ALJ DECISION") ordering that petitions 1 and 4 in this matter be granted, in relevant parts,
9 and that all remaining portions of petitions 1 and 4, and the entirety of petitions 2 and 3, in
10 this matter be denied. Petitioner's request to levy civil penalties against Respondent were
11 also denied. Notice was provided, pursuant to ARIZ. REV. STAT. §32-2199.02(B), that the
12 ALJ DECISION was binding on the parties unless a rehearing request, filed with the
13 Commissioner of the Department of Real Estate within thirty (30) days of the service of the
14 ALJ DECISION, was granted pursuant to ARIZ. REV. STAT. § 32-2199.04.

15 7. On March 26, 2023, Petitioner, the aggrieved party in the aforementioned
16 action, filed a timely revised Dispute Rehearing Petition with the Department on the
17 following grounds:

- 18 a. Irregularity in the proceedings or any order or abuse of discretion by the
19 administrative law judge that deprived a party of a fair hearing.
- 20 b. Misconduct by the prevailing party.
- 21 c. Newly discovered material evidence that could not with reasonable
22 diligence have been discovered and produced at the original hearing.
- 23 d. Insufficient penalties.
- 24 e. Error in the admission or rejection of evidence or other errors of law
25 occurring during the proceeding.
- 26 f. That the findings of fact or decision is arbitrary, capricious, or an abuse
27 of discretion.
- 28 g. That the findings of fact or decision is not supported by the evidence or is
29 contrary to law.

30 8. On April 07, 2023, Respondent provided a timely response.

1 9. On April 18, 2023, the Department issued an Order Denying the Petitioner's
2 Rehearing Request ("Department's Decision").

3 10. On or about June 06, 2023, the Department was notified of Petitioner's
4 appeal of the Department's Decision being heard in the Maricopa County Superior Court
5 of Arizona under LC2023-000179-001 DT.

6 11. On or about April 04, 2024, the Court ordered as follows, in pertinent parts:

7 **III. DISCUSSION**

8 **(1) Membership lists**

9 In this case, Desert Ridge has kept membership lists as a part of their
10 records undoubtedly for a variety of reasons. Unless those records qualify
11 for an exception, they must be made available to all members. While not
12 clearly stated in the ALJ's ruling, the ALJ appeared to conclude that
13 membership lists are personal records. Those membership lists containing
14 names and addresses, however, do not appear to fall within the exemption
15 for personal records. While they relate to individuals named in the statute,
16 they do not relate to information that individuals normally keep private. See
17 *Com v. Duncan*, 572 Pa 438, 455 (2003); *International Union, United Plant*
18 *Guard Workers of America v. Department of State Police*, 422 Mich. 432,
19 458 (1985); *Tobin v. Michigan Civil Service Commission*, 416 Mich. 661
20 (1982). In addition, in order to actively participate in HOA affairs, all
21 members must have the ability to know who is in the Association and which
22 home or land they own.

23 The desire for additional personal information, including email addresses
24 and phone numbers and the like, while understandable, is not necessary for
25 active participation in the affairs of the Association. A member may contact
26 other members by knocking on doors, leaving pamphlets, or sending mail
27 concerning their views. Email addresses and phone numbers, however, are
28 more personal and less public in nature. In addition, this contact information
29 more readily can be used for marketing purposes or harassment. While
30 disclosure of names and property addresses, without some further showing
of the potential for harm, may be essential to having a homeowners
association, the disclosure of email addresses and phone numbers is not.

25 **(2) Error in finding of fact regarding 2021 list**

26 [Petitioner] argues that the ALJ erred in concluding that the 2020
27 membership list was withheld, when in fact it was the 2021 roster. He
28 argues that the exhibits in the record show a pattern of having received
29 membership lists through 2020. Based on the Court's rulings, the Court
30 holds that this purported error is inconsequential to the decision in the case.

30 **(3) Injunctive relief**

[Petitioner] argues that the ALJ should have issued injunctive relief ordering that the list be disclosed.

(4) Request for fees and costs

[Petitioner] argues that he is incurred fees and costs on appeal. He argues that there is a statutory basis for fees and costs. The Court will allow [Petitioner] to submit an affidavit for an award of fees and costs. The Court, however, notes that [Petitioner] filed his opening brief pro per, without representation by a paid attorney. The Court notes that a party cannot receive attorney's fees for his or her own time and working on an appeal.

IV. CONCLUSION

IT IS ORDERED reversing, in part, the decision of the Department.

12. On or about August 02, 2024, the Court ordered that Petitioner was not entitled to recover court costs or fees, and further reaffirmed its April 04, 2024, ruling. In doing so, the Court remanded only the reversed portion of the Department's Decision for "proceedings consistent" with its order.

13. On March 03, 2025, the Department issued an AMENDED ORDER REMANDING MATTER TO THE OFFICE OF ADMINISTRATIVE HEARINGS AND NOTICE OF HEARING ("AMENDED NOTICE") in the above-captioned matter, granting Petitioner's Dispute Rehearing Petition and setting a hearing before OAH on March 31, 2025, at 9:00 a.m.²

14. On March 07, 2025, OAH issued a Minute Entry scheduling a telephonic prehearing conference for March 18, 2024, at 10:15 a.m.

15. On March 18, 2024, during the scheduled telephonic prehearing conference the parties disagreed on the issue(s) for hearing. This MINUTE ENTRY is being issued to provide clarification.

In light of the foregoing,

IT IS ORDERED that the issue to be addressed at the hearing in the above-captioned matter, pursuant to the Court's April 04, 2024, ORDER, is whether Respondent failed to timely fulfill records requests submitted by Petitioner March 26, 2021, April 27,

² Subpoena requests and disclosure, if any, are due no later than March 24, 2025. The parties may appear in-person or remotely via use of the following Google Meet information:

Meeting ID: meet.google.com/cxw-eyqa-hvp

-OR-

Phone Number: (614) 948-6533

PIN: 158 687 021#

2021, October 21, 2021, November 08, 2021, December 07, 2021, January 19, 2022, February 28, 2022, and/or March 30, 2022, by providing Petitioner with a full roster of Association Member names and corresponding property addresses per his request(s) in violation of ARIZ. REV. STAT. § 33-1805.

IT IS FURTHER ORDERED that in all other respects, the ALJ DECISION issued February 21, 2023, remains unchanged and in full force and effect.

Done this day, March 24, 2025.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

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

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Courtesy copy issued to:

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30 By: OAH Staff

³ Please submit a NOTICE OF APPEARANCE to the Office of Administrative Hearings upon receipt of this Order.