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Tom Barrs,
Petitioner,
vs.

Desert Ranch Homeowners Association,
Respondent.

ADMINISTRATIVE LAW JUDGE DECISION

APPEARANCES: Jonathan A. Dessaulles, Esq. appeared on behalf of Tom Barrs (Petitioner). Michel Olley appeared on behalf of the Desert Ranch Homeowners Association (“Respondent” and “Association”). Brian Schoeffler, Petitioner, and Stephen Barrs observed.

EXHIBITS ADMITTED INTO EVIDENCE: The Arizona Department of Real Estate's ("Department's") March 03, 2025, AMENDED ORDER REMANDING MATTER TO THE BOARD OF ADMINISTRATIVE HEARINGS AND NOTICE OF HEARING ("AMENDED NOTICE"), including the Department's attached agency file, April 04, 2024, and August 02, 2024, Superior Court of Arizona – Maricopa County MINUTE ENTRIES from Judge Mikitish in Case Number LC2023-000179-001 DT, and March 24, 2025, post-prehearing conference MINUTE ENTRY were entered into the evidentiary record.

FINDINGS OF FACT

1. On April 18, 2022, Petitioner filed a single-issue petition against the Association with the Department that alleged violation(s) of ARIZ. REV. STAT. § 33-1805 for document requests submitted in April 2021, November 2021, and February 2022. On April 27, 2022, Petitioner tendered \$500.00 to the Department for this petition.

1 2. On April 18, 2022, Petitioner filed a second single-issue petition against the
2 Association with the Department that alleged violation(s) of ARIZ. REV. STAT. § 33-1804(A)
3 for an alleged audio recording preclusion and failure to provide a recording. On April 27,
4 2022, Petitioner tendered \$500.00 to the Department for the second petition.

5 3. On April 18, 2022, Petitioner filed a third single-issue petition against the
6 Association with the Department that alleged violation(s) of ARIZ. REV. STAT. § 33-1805 for
7 a membership roster request submitted in October 2021. On April 27, 2022, Petitioner
8 tendered \$500.00 to the Department for the third petition.

9 4. On May 12, 2022, Petitioner filed a fourth single-issue petition against the
10 Association with the Department that alleged violation(s) of ARIZ. REV. STAT. § 33-1805 for
11 document requests submitted in October 2021, December 2021, November 2021,
12 January 2022, February 2022, and March 2022. On May 11, 2022, Petitioner tendered
13 \$500.00 to the Department for the fourth petition.

14 5. On May 25, 2022, the Department referred consolidated matters 22F-
15 H2222050-REL (ROOT) and 22F-H2222054-REL to the Office of Administrative Hearings
16 (“OAH”), an independent state agency, for an evidentiary hearing on July 25, 2022.¹ Per
17 the NOTICE OF HEARING, the following issues were to be adjudicated based on Petitioner’s
18 petition(s):

19 **Petitioner states that Respondent “has failed and/or is refusing to**
20 **provide various records requested pursuant to A.R.S. § 33-1805**
21 **(sic.)”, and that Respondent “forbids video and audio recordings of**
22 **meetings” in violation of A.R.S. § 33-1804(A).**

23 6. On February 21, 2023, OAH issued an ADMINISTRATIVE LAW JUDGE DECISION
24 (“ALJ DECISION”) ordering that petitions 1 and 4 in this matter be granted, in relevant parts,
25 and that all remaining portions of petitions 1 and 4, and the entirety of petitions 2 and 3, in
26 this matter be denied. Petitioner’s request to levy civil penalties against Respondent were
27 also denied. Notice was provided, pursuant to ARIZ. REV. STAT. §32-2199.02(B), that the
28 ALJ DECISION was binding on the parties unless a rehearing request, filed with the

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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.

Commissioner of the Department of Real Estate within thirty (30) days of the service of the ALJ DECISION, was granted pursuant to ARIZ. REV. STAT. § 32-2199.04.

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

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

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

9. On April 18, 2023, the Department issued an ORDER DENYING THE PETITIONER'S REHEARING REQUEST ("DEPARTMENT'S DECISION").

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

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

III. DISCUSSION

(1) Membership lists

In this case, Desert Ridge has kept membership lists as a part of their records undoubtedly for a variety of reasons. Unless those records qualify for an exception, they must be made available to all members. While not clearly stated in the ALJ's ruling, the ALJ appeared to conclude that membership lists are personal records. Those membership lists containing names and addresses, however, do not appear to fall within the exemption for personal records. While they relate to individuals named in the statute, they do not relate to information that individuals normally keep private. See

1 *Com v. Duncan*, 572 Pa 438, 455 (2003); *International Union, United Plant*
2 *Guard Workers of America v. Department of State Police*, 422 Mich. 432,
3 458 (1985); *Tobin v. Michigan Civil Service Commission*, 416 Mich. 661
4 (1982). In addition, in order to actively participate in HOA affairs, all
members must have the ability to know who is in the Association and which
home or land they own.

5 The desire for additional personal information, including email addresses
6 and phone numbers and the like, while understandable, is not necessary for
7 active participation in the affairs of the Association. A member may contact
8 other members by knocking on doors, leaving pamphlets, or sending mail
9 concerning their views. Email addresses and phone numbers, however, are
10 more personal and less public in nature. In addition, this contact information
11 more readily can be used for marketing purposes or harassment. While
12 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.

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

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

17 **(3) Injunctive relief**

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

20 **(4) Request for fees and costs**

21 [Petitioner] argues that he is incurred fees and costs on appeal. He argues
22 that there is a statutory basis for fees and costs. The Court will allow
23 [Petitioner] to submit an affidavit for an award of fees and costs. The Court,
24 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.

25 **IV. CONCLUSION**

26 **IT IS ORDERED** reversing, in part, the decision of the Department.
(*Emphasis in original.*)

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28 12. On or about August 02, 2024, the Court ordered that Petitioner was not
29 entitled to recover court costs or fees, and further reaffirmed its April 04, 2024, ruling. In
30

1 doing so, the Court remanded only the reversed portion of the Department's Decision for
2 "proceedings consistent" with its order.

3 13. On March 03, 2025, the Department issued an AMENDED NOTICE in the
4 above-captioned matter, granting Petitioner's Dispute Rehearing Petition and setting a
5 hearing before OAH on March 31, 2025, at 9:00 a.m.

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

8 15. On March 18, 2024, during the scheduled telephonic prehearing conference
9 the parties disagreed on the issue(s) for hearing. As a result, on March 24, 2025, the
10 Tribunal issued a MINUTE to provide clarification as follows regarding the issue(s) for
11 hearing:

12 **[T]he issue to be addressed at hearing in the above-captioned matter,**
13 **pursuant to the Court's April 04, 2024, ORDER, is whether Respondent failed**
14 **to timely fulfill records requests submitted by Petitioner March 26, 2021,**
15 **April 27, 2021, October 21, 2021, November 08, 2021, December 07, 2021,**
16 **January 19, 2022, February 28, 2022, and/or March 30, 2022, by providing**
17 **Petitioner with a full roster of Association Member names and corresponding**
18 **property addresses per his request(s) in violation of ARIZ. REV. STAT. § 33-**
19 **1805.**

20 *(Emphasis added.)*

21 HEARING EVIDENCE

22 16. Prior to commencement of proceedings, the parties participated in an
23 Informal Settlement Conference whereby they agreed to the following stipulated facts:

- 24 • Respondent committed a violation of ARIZ. REV. STAT. § 33-1805 by failing to
25 provide Petitioner with a "membership roster list" in response to his October 21,
26 2021, request. Respondent's response to Petitioner's October 21, 2021, records
27 request was untimely, as it was not fulfilled until May 2023.
- 28 • Respondent agreed to tender a total of \$975.00 to Petitioner in certified funds,
29 including \$500.00 for the reimbursement of filing fees associated with this matter,
30 on a date to be determined by the parties.

By entering these stipulations, the parties further agreed to dismiss the current action. As
a result, no testimony was taken.

CLOSING ARGUMENTS

17. In closing, Petitioner argued that because it took three (3) months after the ALJ Decision in 22F-H2222050-REL (ROOT) was issued for Respondent to comply with Petitioner's records request, which was nineteen (19) months after the request had originally been submitted to Respondent, that, at minimum, a nominal assessment of \$25.00 in civil penalties was warranted against the Association due to its "unconscionable conduct."

18. Respondent declined to provide a closing argument.

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction. Pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 et al., regarding a dispute between an owner and a planned community association, the owner or association may petition the department for a hearing concerning violations of community documents or violations of the statutes that regulate planned communities as long as the petitioner has filed a petition with the department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(D), 32-2199.02, and 41-1092, OAH has the authority to hear and decide the contested case on remand.

3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1805.²

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."³ A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."⁴

² See ARIZ. ADMIN. CODE R2-19-119.

³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁴ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

1 5. ARIZ. REV. STAT. § 1-243 provides, in relevant part, that “[T]he time in which
2 an act is required to be done shall be computed by excluding the first day and including
3 the last day, unless the last day is a holiday, and then it is also excluded.”

4 6. ARIZ. REV. STAT. § 33-1805 provides, in relevant part, as follows:

5 A. Except as provided in subsection B of this section, all financial and other
6 records of the association shall be made reasonably available for
7 examination by any member or any person designated by the member in
8 writing as the member's representative. The association shall not charge a
9 member or any person designated by the member in writing for making
10 material available for review. The association shall have ten business days
11 to fulfill a request for examination. On request for purchase of copies of
12 records by any member or any person designated by the member in writing
13 as the member's representative, the association shall have ten business
14 days to provide copies of the requested records. An association may
15 charge a fee for making copies of not more than fifteen cents per page.

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

19 1. Privileged communication between an attorney for the association
20 and the association.

21 2. Pending litigation.

22 3. Meeting minutes or other records of a session of a board meeting
23 that is not required to be open to all members pursuant to section 33-
24 1804.

25 4. Personal, health or financial records of an individual member of the
26 association, an individual employee of the association or an
27 individual employee of a contractor for the association, including
28 records of the association directly related to the personal, health or
29 financial information about an individual member of the association,
30 an individual employee of the association or an individual employee
of a contractor for the association.

 5. Records relating to the job performance of, compensation of,
health records of or specific complaints against an individual
employee of the association or an individual employee of a contractor
of the association who works under the direction of the association.

1 C. The association shall not be required to disclose financial and other
2 records of the association if disclosure would violate any state or federal
3 law.

4 7. "In applying a statute . . . its words are to be given their ordinary meaning
5 unless the legislature has offered its own definition of the words or it appears from the
6 context that a special meaning was intended."⁵ Each word, phrase, clause, and sentence
7 must be given meaning so that no part of the legislation will be void, inert, or trivial.⁶

8 8. Legislation must also be given a sensible construction that avoids absurd
9 results.⁷ If the words do not disclose the legislative intent, the court will scrutinize the
10 statute as a whole and give it a fair and sensible meaning.⁸

11 9. Because the parties entered into factual stipulations regarding
12 Respondent's violation of ARIZ. REV. STAT. § 33-1805, a detailed factual analysis is
13 unnecessary. The statutory violation has been established by a preponderance of the
14 evidence.

15 10. Therefore, the only outstanding issue remaining is Petitioner's request for a
16 \$25.00 civil penalty assessment against Respondent. Upon consideration of the
17 foregoing, the Tribunal finds the request to be reasonable and appropriate based on the
18 underlying factual circumstances.

19 In light of the foregoing,

20 **ORDER**

21 **IT IS ORDERED** that Petitioner's remanded petition be granted.

22 **IT IS FURTHER ORDERED** that Petitioner's request to assess civil penalties
23 totaling \$25.00 against Respondent is granted.

24 **IT IS FURTHER ORDERED** pursuant to ARIZ. REV. STAT. § 32-2199.02(A) and
25 stipulation that Respondent shall reimburse Petitioner's \$500.00 filing fee as required by
26 ARIZ. REV. STAT. § 32-2199.01.

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28 ⁵

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

30 ⁶ See *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 204, ¶ 17 (App. 2007).

⁷ See *State v. Gonzales*, 206 Ariz. 469, 471, ¶ 12 (App. 2003).

⁸ See *Luchanski v. Congrove*, 193 Ariz. 176, 178, ¶ 9.

1 **IT IS FURTHER ORDERED** that in all other respects, the related ALJ DECISION
2 issued in 22F-H2222050-REL (ROOT) on February 21, 2023, remains unchanged and in
3 full force and effect.

4 **NOTICE**

5 **Pursuant to ARIZ. REV. STAT. §32-2199.02(B), this ORDER is binding on the**
6 **parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. § 32-2199.04.**
7 **Pursuant to ARIZ. REV. STAT. § 41-1092.09(A)(1), a request for rehearing in this**
8 **matter must be filed with the Commissioner of the Department of Real Estate within**
9 **thirty (30) days of the service of this ORDER upon the parties.**

10 Done this day, April 01, 2025.

11 **Office of Administrative Hearings**

12
13 /s/ Jenna Clark
14 Administrative Law Judge

15
16 Transmitted electronically to:

17
18 Susan Nicolson, Commissioner
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By: OAH Staff