

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

No. 25F-H018-REL

4 Allan, Joseph P

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 Petitioner,
6 v.

7 The Springs Condominiums Association

8 Respondent.
9
10

11 **HEARING:** March 11, 2025

12 **APPEARANCES:** Joseph P. Allan, (hereinafter "Petitioner"), appeared on behalf
13 of himself. Belen Guzman appeared on behalf of The Springs Condominium
14 Association, (hereinafter "Respondent").

15 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

16 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioner's Exhibits 1 and 2.
17 Respondent's Exhibit A.
18

19 **FINDINGS OF FACT**

20 1. On December 4, 2024, the Arizona Department of Real Estate,
21 (hereinafter "Department"), issued a Notice of Hearing setting the above-captioned
22 matter for hearing on January 14, 2025 at 1:00 p.m., at the Office of Administrative
23 Hearings in Phoenix, Arizona.

24 2. The Notice of Hearing provided that the issue set for determination was
25 whether Respondent violated Arizona Revised Statutes, (hereinafter, "A.R.S."), section
26 33-1258, when Petitioner requested "bank statements from four accounts on September
27 24, 2024, and original invoices for May 2024 on July 29, 2024."

28 3. The matter was continued and the hearing was conducted on March 11,
29 2025.
30

1 4. At hearing, Petitioner testified on behalf of himself. Belen Guzman, the
2 owner of Respondent's property management company, testified on behalf of
3 Respondent.

4 5. Respondent is a non-profit corporation located in Surprise, Arizona.

5 6. Petitioner is a member of Respondent.

6 7. On July 9, 2024, Petitioner requested to examine original invoices for May
7 2024 from several board members, including the President and the Vice President.¹ The
8 request was sent by e-mail. The request was not sent to Respondent's property
9 management company.²

10 8. On September 23, 2024, Petitioner requested to examine bank statements
11 from four of Respondent's accounts.³ Petitioner sent the request by e-mail to several
12 board members, including the President and the Vice President. The request was sent
13 by e-mail. The request was not sent to Respondent's property management company.⁴

14 9. Respondent did not respond to Petitioner's requests.

15 10. In or around October of 2024, the Department received a single-issue
16 petition wherein Petitioner alleged that Respondent had violated A.R.S. section 33-
17 1258, when it failed to respond to two requests from Petitioner: (1) a September 24,
18 2024 request for bank statements from four accounts and, (2) a July 29, 2024 request
19 for original invoices for the month of May 2024.

20 11. Respondent filed a response to the petition.

21 12. The matter was referred to the Office of Administrative Hearings for an
22 evidentiary hearing.

23 13. At hearing, Petitioner acknowledged that he wrote incorrect dates in the
24 petition: the request for examination of bank statements was made on September 23,
25 2024;⁵ the request for examination of the May 2024 original invoices was made on July
26

27 ¹ See Exhibit 2.

28 ² See id.

29 ³ See Exhibit 1.

30 ⁴ See id.

⁵ See Exhibit 1.

1 9, 2024⁶. Ms. Guzman acknowledged that she was aware that the dates provided on the
2 petition were incorrect. Ms. Guzman was aware that the correct request dates were
3 September 23, 2024 with regard to the bank statements and July 9, 2024 with regard to
4 the original invoices for May 2024.

5 14. There was no dispute at hearing that the Board failed to respond to
6 Petitioner's requests before the petition in the above-entitled matter was filed.
7 Ms. Guzman testified that such requests for the examination of records must be sent to
8 the property management company. Ms. Guzman stated that Petitioner was a prior
9 member of the Board and was aware that record requests must be sent to the property
10 management company. Ms. Guzman did not dispute that the requests were received by
11 the Board.

12 15. Ms. Guzman presented evidence at hearing that Petitioner submitted a
13 request for records to the property management company and to several board
14 members on May 27, 2024.⁷

15 16. Petitioner testified that he did not send the requests to the property
16 management company because he is investigating the company.

17 17. Petitioner did not dispute that requests are routinely sent to the property
18 management company.

19 18. It is undisputed that Respondent provided copies of the documents that
20 Petitioner requested to examine on March 10, 2025.

21 **CONCLUSIONS OF LAW**

22 1. A.R.S. section 32-2199(1) permits a condominium unit owner to file a
23 petition with the Department for a hearing concerning the condominium association's
24 alleged violations of the Condominium Act set forth in Title 33, Chapter 9. This matter
25 lies within the Department's jurisdiction.
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28

29 ⁶ See Exhibit 2.

30 ⁷ See Exhibit A.

1 2. Petitioner bears the burden of proof to establish that Respondent violated
2 A.R.S. § 33-1258 (A) by a preponderance of the evidence.⁸ Respondent bears the
3 burden to establish affirmative defenses by the same evidentiary standard.⁹

4 3. “A preponderance of the evidence is such proof as convinces the trier of
5 fact that the contention is more probably true than not.”¹⁰ A preponderance of the
6 evidence is “[t]he greater weight of the evidence, not necessarily established by the
7 greater number of witnesses testifying to a fact but by evidence that has the most
8 convincing force; superior evidentiary weight that, though not sufficient to free the mind
9 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one
10 side of the issue rather than the other.”¹¹

11 4. A.R.S. § 33-1258 (A) provides:

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

23 5. It is undisputed that Respondent failed to allow Petitioner to examine the
24 May 2024 original invoices and bank statements from four of Respondent's accounts,
25 within ten business days as required by A.R.S. section 33-1258(A). Ms. Guzman
26 explained that Respondent would have provided access to the records if Petitioner
27 would have sent the request to the property management company. However,
28 Respondent did present any legal authority to establish that it was not obligated to
29 comply with A.R.S. section 33-1258(A), for the reason that the requests were not sent to
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27 ⁸ See A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837
28 (1952).

28 ⁹ See A.A.C. R2-19-119(B)(2).

29 ¹⁰ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ¹¹ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

Respondent's property management company. Ms. Guzman eventually received
Petitioner's requests for the examination of records from Respondent's board members.

6. Upon consideration of the undisputed evidence presented at hearing, the
Administrative Law Judge concludes that Petitioner has met his burden of establishing
by a preponderance of the evidence that Respondent violated A.R.S. section 33-
1258(A) when it failed to allow Petitioner to examine the May 2024 original invoices and
bank statements from four of Respondent's accounts, within ten business days of the
date of Petitioner's requests as required by A.R.S. section 33-1258(A).

ORDER

IT IS ORDERED that Petitioner be deemed the prevailing party in this matter.

IT IS FURTHER ORDERED that Respondent pay Petitioner his filing fee of
\$500.00, to be paid directly to Petitioner within thirty (30) days of this Order.

IT IS FURTHER ORDERED that Respondent is directed to comply with the
requirements of A.R.S. section 33-1258 (A) going forward.

No Civil Penalty is found to be appropriate in this matter.

NOTICE

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

Done this day, March 31, 2025.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile March 31, 2025 to:

Susan Nicolson
Commissioner
Arizona Department of Real Estate

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By: OAH Staff