

1 **Final agency action regarding decision below:**

2
3 **ALJFIN ALJ Decision final by statute**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 Jeremy R. Whittaker

8 Petitioner

9
10 vs

11 The Val Vista Lakes Community Association

12 Respondent

No. 25F-H045-REL

25F-H054-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

13
14
15 **HEARING:** July 15, 2025, with the record held open until July 24, 2025 for
16 submission of written closing arguments.

17 **APPEARANCES:** Petitioner Jeremy R. Whittaker appeared on his own behalf.
18 Joshua M. Bolen, Esq. appeared on behalf of Respondent The Val Vista Lakes
19 Community Association.

20 **ADMINISTRATIVE LAW JUDGE:** Adam D. Stone

21 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioner's Exhibits 1-21 and
22 Respondent's Exhibits 1-16 were admitted into evidence.

23
24 **FINDINGS OF FACT**

25 1. The Department is authorized by statute to receive and to decide petitions
26 for hearings from members of homeowners' associations and from homeowners'
27 associations in Arizona.

28 2. Petitioner filed two single-issue petitions against The Val Vista Lakes
29 Community Association (Val Vista), with the Department. Petitioner tendered \$500.00 to
30 the Department with each petition.

1 3. Val Vista timely responded to each petition, and the Department referred
2 the matter to the Office of Administrative Hearings ("OAH"), an independent state
3 agency, for an evidentiary hearing. For the sake of judicial economy, the tribunal
4 consolidated the matters.

5 4. Respondent is a homeowners' association whose members own
6 properties in a residential real estate development located in Maricopa County, Arizona.

7 5. Petitioners are property owners and member of Val Vista.

8 6. TFE is governed by its Covenants, Conditions, and Restrictions
9 ("CC&Rs"), and overseen by a Board of Directors ("the Board"). The Association is also
10 regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised Statutes ("ARIZ. REV.
11 STAT.")

12 **25F-H045-REL**

13 7. On May 8, 2025, the Department issued a Notice of Hearing in this case,
14 with the following dispute:

15 Petitioner alleges Respondent of violating, "A.R.S. § 33-1805 by
16 failing to provide the requested records with the ten-business-day
17 statutory deadline, conditioning production on a legally
18 unenforceable 'Records Request Form', and withholding critical
19 attorney fee information-particularly troubling given its counsel's
20 documented disciplinary history for inflated or misleading HOA fee
21 practices.

22 8. On February 27, 2025, Petitioner requested that Val Vista produce the
23 following items:

24 1. **Final, Fully Executed Records Retention and Request**
25 **Policy**

26 ○ Provide the exact version adopted by the Board on or
27 about February 25, 2025, including any exhibits, attachments, or
28 attorney commentaries formally incorporated into the policy.

29 2. **Relevant Meeting Minutes (Draft or Final)**

30 ○ Any minutes or draft minutes from the February 25, 2025,
Board meeting that reflect the discussion, modification, or adoption
of this "Records Retention and Request Policy."

1 **3. Any Related Correspondence**

2 ○ If available, please include any Board memos, explanatory
3 documents, or other communications discussing the rationale for or
4 scope of the adopted policy.¹

5 9. Also on that same day, Petitioner requested that Val Vista produce the
6 following items:

7 **1. Current and Past Legal Services Agreements**

8 ○ Final, fully executed retainer or engagement agreements
9 with **any law firm** or individual attorney who has represented or is
10 currently representing the Association.

11 ○ Any amendments, extensions, or addenda to such
12 agreements.

13 **2. Attorney Rate Schedules and Fee Structures**

14 ○ Any rate sheets, fee schedules, billing guidelines, or other
15 formal documents outlining how legal services are charged to the
16 Association.

17 ○ Copies of any contract exhibits or schedules addressing
18 standard hourly rates, flat fees, contingencies, or other
19 compensation arrangements.

20 **3. Invoices, Billing Statements, and Payment Records**

21 ○ All invoices or statements submitted by the attorney or law
22 firm for legal services rendered(with legally permitted redactions).

23 ○ Documentation of payments made by the Association to
24 the attorney or law firm.

25 **4. Meeting Minutes or Board Resolutions Discussing
26 Attorney Engagement**

27 ○ Minutes (draft or final) from any Board or committee
28 meetings where attorney contracts, legal representation, or the
29 continuation of attorney services were discussed.

30 ○ Any resolutions approving retention of legal counsel or
specifying scope of services.

5. Selection Process and Related Correspondence

○ RFPs (Requests for Proposal) or bid solicitations (if any)
related to retaining legal counsel.

¹ Petitioner's Exhibit 4(b).

1 ○ Correspondence among Board members, management, or
2 committees that discuss the selection or evaluation of legal counsel,
3 including but not limited to emails, memoranda, or letters.

4 **6. Conflict-of-Interest Disclosures or Waivers**

5 ○ Any declarations, disclosures, or waivers pertaining to
6 potential conflicts of interest concerning the attorney or law firm prior
7 to this law firm being retained.

8 **7. Policies, Guidance Documents, or Additional Records**
9 **Governing Legal Representation**

10 ○ Internal policies, guidelines, or explanatory documents that
11 define or clarify the Association's relationship with its legal counsel.
12 ○ Any official communications or directives issued by legal
13 counsel to the Board or the management staff in relation to the
14 contractual arrangement.

15 **8. All Other Relevant Records**

16 ○ Any other written or electronic records that detail or impact
17 the contractual or advisory relationship between the HOA and its
18 attorney(s).²

19 10. No documents have been turned over by Val Vista.

20 **25F-H054-REL**

21 11. On June 3, 2025, the Department issued a Notice of Hearing in this case,
22 with the following dispute:

23 Petitioner alleges Respondent of violating, A.R.S. § 33-1805(A), 'by
24 failing to provide the requested bank statements and FSR-related
25 communications, and is operating in ongoing breach or its statutory
26 obligations.'

27 12. On March 21, 2025, Petitioner requested that Val Vista produce the
28 following items:

29 **1. Operating Bank Statements (January 2024 – Present)**

30 ○ **Monthly Statements for Any Operating/Checking**
Accounts

 Please provide complete copies of the original bank
statements from each financial institution maintaining the

² Petitioner's Exhibit 6(b)

Association's operating or checking accounts, covering the period from January 1, 2024, through the most recently available statement date in 2025.

○ **Verification of Issuing Financial Institution**

These should be official statements as issued by the bank(s). If additional transaction details are needed for clarity, please also provide any accompanying pages or enclosures that were part of the bank's original statement.

2. **Reserve Account Statements (January 2024 – Present)**

○ **Monthly or Quarterly Statements**

Please provide official copies of all reserve-account statements from the relevant financial institution(s), covering the period from January 1, 2024, through the present.

○ **Verification of Issuing Financial Institution**

These statements should be the original or exact copies of what the institution produced, reflecting the account number(s), balance(s), and any earned interest to verify their authenticity.³

13. Val Vista failed to respond to this request.

Arguments:

14. Petitioner argued in the first petition, that Val Vista failed to produce the requested records within the statutory timeline, and/or otherwise respond to his request with further clarification and the like. As to the second request, Petitioner argued that not only did Val Vista fail to produce the requested records within the statutory timeline, it also had no authority to make him complete the records request on a specific form, and ignore the request without submission of the form. Petitioner argued that it should be reimbursed its filing fees and that a civil penalty should be awarded.

15. Val Vista argued that A.R.S. §33-1805 was outdated and misunderstood. It argued that only after an examination of records would it have 10 days to provide copies. Further because of previously broad requests for documents by members of the Association, Val Vista created a Records Policy in an attempt to streamline the process. Val Vista also argued that some of the records requested by Petitioner were privileged or otherwise expressly excluded by statute.

CONCLUSIONS OF LAW

³ Petitioner's Exhibit 18(b).

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

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

9 3. In this proceeding, Petitioner bears the burden of proving by a
10 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1805.⁴

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

18 11. A.R.S. § 33-1805(A) provides in pertinent part:

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

⁴ See ARIZ. ADMIN. CODE R2-19-119.

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

⁶ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

12. The tribunal finds that Val Vista wrongfully withheld the requested documents. If there were documents which were privileged and/or contained sensitive data they could have properly been withheld and/or redacted. This conclusion applies to both requests. The fact that the second request was not made on the form, does not excuse Val Vista from at a minimum responding. However, the tribunal finds that Petitioner complied with the statute as his request was in writing, and if Val Vista needed clarification on what was to be requested it should have reached out to Petitioner, rather than ignoring him. Likewise, if Val Vista determined the total cost and informed Petitioner of the same and Petitioner did not pay the fee that could be a valid justification for failing to provide the documents. No response by Val Vista was simply unacceptable, and in violation of the statute.

ORDER

IT IS ORDERED that Petitioner's petition in **25F-H045-REL** be granted and that Respondent shall follow the A.R.S. § 33-1805(A). **IT IS FURTHER ORDERED**, that Respondent shall reimburse Petitioner's \$500.00 filing fee as required by ARIZ. REV. STAT. § 32-2199.01. **IT IS FURTHER ORDERED** that a civil penalty is awarded in the amount of \$500.00.

IT IS ORDERED that Petitioner's petition in **25F-H054-REL** be granted and that Respondent shall follow A.R.S. § 33-1805(A). **IT IS FURTHER ORDERED**, that Respondent shall reimburse Petitioner's \$500.00 filing fee as required by ARIZ. REV. STAT. § 32-2199.01. **IT IS FURTHER ORDERED** that a civil penalty is awarded in the amount of \$500.00.

1 ///

2 **NOTICE**

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

8 Done this day, August 8, 2025.

9 /s/ Adam D. Stone
10 Administrative Law Judge

11 Transmitted by either mail, e-mail, or facsimile August 8, 2025 to:

12 Susan Nicolson
13 Commissioner
14 Arizona Department of Real Estate
15 Attn:
16 SNicolson@azre.gov
17 vnunez@azre.gov
18 djones@azre.gov
19 labril@azre.gov
20 mneat@azre.gov
21 lrecchia@azre.gov
22 gosborn@azre.gov

23 Josh Bolen
24 CHDB Law LLP
25 josh.bolen@chdblaw.com

26 Jeremy Whittaker
27 me@JeremyWhittaker.com

28 By: OAH Staff
29
30