

**BEFORE THE DEPARTMENT OF REAL ESTATE
OFFICE OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA**

John Sellers,

Petitioner,

VS.

Grayhawk Community Association,

Respondent.

CASE NO. HO 17-16/016

DOCKET NO. 17F-H1716016-REL

FINAL ORDER

Pursuant to Arizona Revised Statutes (“A.R.S.”) § 41-1092.08, the attached Administrative Law Judge (“ALJ”) Decision is adopted by the Commissioner of the Department of Real Estate (“Commissioner”) and is accepted as follows:

ORDER

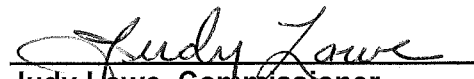
The Commissioner accepts the Recommended Order that Respondent shall comply with the applicable provisions of Arizona Revised Statutes ("A.R.S.") § 33-1804 (A) in the future; and

The Commissioner accepts the ALJ decision that the petition in this matter be denied.

Pursuant to A.R.S. § 41-1092.09, a party may file a motion for rehearing or review within thirty (30) days after the service of this final Order. A written request for rehearing should be addressed to Abby Hansen, 2910 N. 44th Street, Suite 100, Phoenix, Arizona, 85018.

This Order is a final administrative action and is effective immediately from the date service is complete. A party may appeal this final administrative decision by filing a complaint for judicial review pursuant to title 12, chapter 7, article 6. The Order will not be stayed unless a stay is obtained from the court in conjunction with the judicial review action.

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4 DATED this 3rd day of March, 2017.
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9 Judy Lowe, Commissioner
DEPARTMENT OF REAL ESTATE

10 The foregoing mailed this 3rd day of March, 2017,
11 via certified mail receipt number 7015 1520 0000 8792 1349 to:

12 John Sellers
13 6231 East Mark Way Unit 12
14 Cave Creek AZ 85331

15 Copy sent via certified mail receipt no. 7015 1520 0000 8792 1356 to:

16 Grayhawk Community Association
17 c/o Carpenter, Hazlewood, Delgado & Bolan, PLC
18 1400 E. Southern Ave. Suite 400
19 Tempe AZ 85282

20 COPY electronically transmitted to:

21 The Office of Administrative Hearings
22 1400 W Washington St, Suite 101
23 Phoenix, AZ 85007

24 By: 
25 Abby Hansen
26 HOA Coordinator
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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

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John Sellers,

Petitioner,

vs.

Grayhawk Community Association,

Respondent.

No. 17F-H1716016-REL

ADMINISTRATIVE LAW JUDGE

DECISION

HEARING: February 16, 2017

APPEARANCES: Petitioner John Sellers appeared personally. Respondent Grayhawk Community Association was represented by its attorney, Curtis Ekmark, Esq.

ADMINISTRATIVE LAW JUDGE: Suzanne Marwil

Based upon the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Petitioner's position is that after asking that Alliance Association Bank create an online, view-only password for Petitioner, Respondent unilaterally restricted his access to that information and refused to restore him access by the close of business on November 25, 2016 in violation of A.R.S. § 33-1805(A).

2. Respondent argues that it went beyond its statutory obligation and created an online password for Petitioner to obtain electronic access to a certificate of deposit account, that Petitioner accessed the account and was thereafter unable to access the account for unknown reasons. Respondent denies that it interfered or restricted Petitioner's access to the account. Respondent notes that Alliance Association Bank closed the account in question on November 28, 2016, meaning there is no longer any electronic access available for the account.

1 3. The facts that support Respondent's position. In particular, the record reflects
2 that on October 18, 2016, Petitioner requested among other items, an electronic, read-
3 only password for Respondent's Alliance Association Bank account. On that date, such
4 a password did not exist as Petitioner was notified on November 2, 2016. Nonetheless,
5 Respondent requested that the bank create such a password for Petitioner and
6 forwarded Petitioner the login information on November 16, 2016.

7 4. Sometime thereafter, Petitioner logged on using the information provided and
8 changed the password. The next time Petitioner logged on to the account on
9 Thanksgiving Day, he could not see anything and unilaterally assumed that Respondent
10 had restricted his access. Based on that assumption, Petitioner emailed the community
11 manager, Michael Fee, on Thanksgiving Day and set a deadline for Respondent to
12 restore access by the end of business the following day or this Petition would be filed.
13 Mr. Fee advised he would contact the bank, but because Petitioner did not hear from
14 Respondent again until the following Monday, November 28, 2016. He filed the Petition
15 in this matter.¹

16 5. On November 28, 2016, Respondent indicated it did not know the reason for
17 Petitioner's lack of access to the bank account. Fee denied that anyone affiliated with
18 Respondent did anything to interfere with Petitioner's access to that bank account.
19 Petitioner offered no evidence that Respondent took any action to deny Petitioner online
20 access to the account after it requested that he be given access to the electronic
21 account information.

22 6. It is undisputed that the bank closed the account in question without the
23 Petitioner ever attempting to access the account again.

24 7. Given the closure of the account, electronic access is currently unavailable.

25 CONCLUSIONS OF LAW

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28 ¹ Petitioner paid a \$500.00 fee and specified that his Petition contained one issue, which he specified was
29 whether he was he was wrongfully denied electronic access to the bank account's electronic information
30 on Thanksgiving Day because access was not restored by the close of business November 25, 2016.
Petitioner cannot now be heard to challenge whether the Respondent provided a timely response to his
October 18, 2016 records request.

1. Petitioner filed his petition against Respondent with the Department pursuant to A.R.S. § 32-2199 *et seq.*

2. The Department referred this matter to the Office of Administrative Hearings for hearing and the issuance of an Order, pursuant to A.R.S. §§ 32-2199.01(D) and 32-2199.02.

3. Pursuant to A.A.C. R2-19-119(B), Petitioner has the burden of proof in this matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).

4. A.R.S. §33-1805(A) provides that:

Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making 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.

5. Petitioner has failed to meet his burden of proof. First, the record is devoid of any evidence that Petitioner was denied the electronic log-in information he requested. The parties agreed that log-in information for the bank account was provided and enabled Petitioner to obtain access to the information he requested before he changed the password. The record did not establish why the log-in information changed by Petitioner did not work on Thanksgiving Day, but Petitioner offered no proof that the Respondent restricted his access to the account in any way. Lastly, the access issue is moot given that the bank closed the account and Respondent offered to furnish the Petitioner paper copies of documents it possessed related to that bank account.

6. Petitioner's argument that paper access to the account information is inferior to electronic access constitutes a policy argument that should be addressed to the Legislature. The plain language of the statute requires only that records of Respondent be made reasonable available for Petitioner's examination. Respondent complied with the statute.

1 7. The evidence of record does not support Petitioner's request for relief outlined in
2 their petition.

3 **ORDER**

4 IT IS ORDERED that Petitioner's petition in this matter be denied. Pursuant to
5 A.R.S. § 32-2199.02(B), this Order is binding on the parties unless a rehearing is granted
6 pursuant to A.R.S. § 32-2199.04 based on a petition setting forth the reasons for the
7 request for rehearing, in which case the order issued at the conclusion of the rehearing
8 is binding on the parties.

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10 Done this day, February 21, 2017.

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12 /s/ Suzanne Marwil
13 Administrative Law Judge
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15 Transmitted electronically to:

16 Judy Lowe, Commissioner
17 Arizona Department of Real Estate
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