

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Annette Cohen
4 Petitioner

No. 18F-H1818033-REL

5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 CBS 136 Homeowners Association
7 Respondent

8 **HEARING:** June 6, 2018

9 **APPEARANCES:** Petitioner Annette Cohen appeared on her own behalf.
10 Respondent CBS 136 Homeowners Association was represented by Brian Ditsch.

11 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

12
13 **FINDINGS OF FACT**

14 1. CBS 136 Homeowners Association (Respondent or CBS) is an association
15 of condominium owners located in Sun City West, Arizona.

16 2. On or about March 9, 2018, Annette Cohen (Petitioner) filed a petition with
17 the Arizona Department of Real Estate (Department), alleging that Respondent had
18 violated the provisions of A.R.S. Title 33, Chapter 16, Section 33-1258. Petitioner
19 specifically alleged, in relevant part, as follows:

20 The sign-in sheets from the February 15, 2018 CBS HOA meeting was
21 requested for review and to copy by Ms. Cohen on 02/19/2018 and
22 acknowledged receipt of email from PRM management received. The other
23 request dates for the same information were made 02/21/2018, 02/26/2018,
24 02/27/2018 and 03/05/2018. . . .

25 Ms. Cohen had requested a review of the sign-in sheets from the January
26 10, 2018 annual meeting. She had requested the January sign-in sheets
27 on or about 1/10/2018, and they were not received until 2/15/2018 by email.
28 There were appointments set for her to review them, but these were both
29 cancelled by the management company.

30 3. On or about March 20, 2018, the Department issued a notice to Respondent
regarding the petition.

 4. On or about April 10, 2018, Respondent filed an answer to the petition
denying all allegations.

1 5. On or about April 19, 2018, the Department issued a Notice of Hearing to
2 the parties notifying them that a hearing on the petition would be conducted by the Office
3 of Administrative Hearings.

4 6. On June 6, 2018, a hearing was held on the petition and the parties
5 presented evidence and argument regarding the violation alleged in the petition.

6 7. At the June 6, 2018 hearing, Respondent acknowledged that the requested
7 documents were not provided within the 10 day timeframe set forth in statute, but that the
8 documents were ultimately provided to Petitioner prior to the hearing.

9 8. Given that Respondent acknowledged a technical violation of the applicable
10 statute, the hearing was limited to what remedy, if any, was appropriate.

11 9. Petitioner argued that Respondent intentionally ignored her request for the
12 documents and, as such, a civil penalty was appropriate. Petitioner indicated that the
13 documents could have easily been emailed to her within the 10 day deadline in the
14 statute, but Respondent did not present that as an option until after the deadline had
15 passed.

16 10. Respondent presented the testimony of Susan Rubin with PRM who
17 testified that no requests are ever purposefully ignored. Ms. Rubin stated that PRM took
18 over the management of Respondent in January 2018, and that PRM was still getting
19 documents from the former management company. Ms. Rubin indicated that she never
20 ignored Petitioner's request, but it took a little longer than expected to provide the
21 documents.

22 **CONCLUSIONS OF LAW**

23 1. The Department has jurisdiction to hear disputes between a property owner
24 and a condominium owners association. A.R.S. § 32-2199 *et seq.*

25 2. In this proceeding, Petitioner bear the burden of proving by a
26 preponderance of the evidence that Respondent violated A.R.S. § 33-1258. A.A.C. R2-
27 19-119.

28 3. A preponderance of the evidence is "[e]vidence which is of greater weight or
29 more convincing than the evidence which is offered in opposition to it; that is, evidence which
30 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S
LAW DICTIONARY 1182 (6th ed. 1990).

1 4. A.R.S. § 33-1258 provides, in relevant part, as follows:

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

13 5. There was no dispute that Respondent failed to provide the requested
14 documents within 10 days. Thus, Petitioner established by a preponderance of the
15 evidence that Respondent violated A.R.S. § 33-1258(A). While Petitioner asserted a civil
16 penalty should be imposed, the Administrative Law Judge does not find such a penalty to
17 be appropriate given the circumstances in this matter.

18 **ORDER**

19 **IT IS ORDERED** that Petitioner be deemed the prevailing party.

20 **IT IS FURTHER ORDERED** that Respondent comply with the applicable
21 provisions of A.R.S. § 33-1258(A) in the future.

22 **IT IS FURTHER ORDERED** that Respondent pay Petitioner her filing fee of
23 \$500.00, to be paid directly to Petitioner within thirty (30) days of this Order.

24 Done this day, June 26, 2018

25 /s/ Tammy L. Eigenheer
26 Administrative Law Judge

27 **NOTICE**

28 Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties
29 unless a rehearing is granted pursuant to A.R.S. § 32-
30 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.

1 Transmitted by either mail, e-mail, or facsimile June 26, 2018 to:

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3 Judy Lowe, Commissioner
4 Arizona Department of Real Estate
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15 By Felicia Del Sol
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