Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Robert E. Wolfe, Petitioner. v. Warner Ranch Association, Respondent.	**No. 25F-H062-REL** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: October 7, 2025
APPEARANCES: Robert E. Wolfe ("Petitioner") appeared on his own behalf. Melanie Zimmer, HOA President ("President"), appeared on behalf of Warner Ranch Association.
ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn
EXHIBITS ADMITTED INTO EVIDENCE: Arizona Department of Real Estate Notice of Hearing Packet/File (File); Petitioner's Exhibits 2, 4, 5, 6, 7, 9, 11, and 18;[1] Respondent's Exhibits 1 through 4.

FINDINGS OF FACT

1. The Arizona Department of Real Estate ("Department") is authorized by statute to receive and to decide petitions for hearings from members of homeowners' associations and from homeowners' associations in Arizona.
2. Robert E. Wolfe ("Petitioner") filed a single-issue petition ("Petition") dated May 13, 2025 against the Warner Rach Association ("HOA"), with the Department.[2] Petitioner paid the appropriate $500.00 filing fee for a single issue Petition. Petitioner alleged that an HOA Board meeting was held without the requisite 48 hours notice to the members.

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[1] On October 3, 2025, Petitioner dropped off proposed exhibits to counsel for the HOA. On October 7, 2025, Petitioner brought copies of those proposed exhibits to the hearing; not all of Petitioner's exhibits were admitted to the hearing record.
[2] *See* File, Petition.

3. The Department referred the matter to the Office of Administrative Hearings (OAH), an independent state agency, for an evidentiary administrative hearing.

BACKGROUND

4. HOA is a homeowners' association whose members own properties in a residential real estate development located in Maricopa County, Arizona.
5. Petitioner is a property owner and member of HOA.
6. HOAs are typically governed by Covenants, Conditions, and Restrictions ("CC&Rs"), and Bylaws, and overseen by a Board of Directors ("Board"). HOAs are also regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised Statutes ("Ariz. Rev. Stat.")
7. Effective April 1, 2025, HOA was managed by Spectrum Association Management, *i.e.*, SpectrumAM ("Spectrum").[3]
8. Prior to Spectrum becoming the management company. Spectrum arranged for HOA members to be invited to a ZOOM "kick start" meeting for March 28, 2025 at 1:00 p.m., at which time the HOA Members could meet the Spectrum team and ask questions regarding Spectrum.[4]
9. On March 26, 2025, Spectrum issued a generic email notification ("Notification") indicating that there would be a "kickstart meeting".[5] The Notification was sent to HOA members for whom Spectrum had email addresses.[6] Attached to that Notification was a link to Spectrum information. Included within the Notification was an "Agenda" which indicated there would be: (1) a Call to Order; (2) Establishment of a Quorum; (3) Announcement; (4) Miscellaneous; (5) Project Updates; and (6) Adjournment; however, it was noted that "this agenda is subject to change."

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[3] *See* HOA Exhibit 1; *see also* Petitioner Exhibit 2. The hearing record demonstrates dissatisfaction with a prior management company.
[4] *Id.*
[5] See Petitioner Exhibits 4, 9, 10, 11, and 18. Each document provides a date of March 26, 2025 but presented different computer-generated receipt times ranging from 1:36 p.m. to 1:45 p.m.
[6] Testimony indicated that Spectrum did not have the email addresses for all members.

10. HOA members the Andersons received the email at 1:36 p.m.[7]
11. HOA members the Carlsons received the email at 1:36:39 p.m.[8]
12. Ms. Steele, the HOA Community Manager for Spectrum, received the email at 1:37:01 p.m.[9]
13. HOA President received the email at 1:45 p.m.[10]
14. Petitioner never received the mail directly from Spectrum at his personal email.
15. Spectrum had also mailed a postcard measuring 8 ½ by 5 ½ to each of the 803 HOA members regarding the "Kick Start" meeting.[11]
16. At some point, on March 27, 2025, Petitioner became aware of the Notification having been sent to the members. President forwarded to Petitioner the Spectrum March 26, 2025 Notification.[12] On March 27, 2025, Petitioner advised President to be wary of any violation of the Open Meeting law and stated: "I have a meeting at 1:00 PM up in Scottsdale, so will not be available. Also Zoom is a bit challenging to me. …"[13]
17. On March 27, 2025, Petitioner responded to a different email from President, and copied a Spectrum email address, stating that the Notification violated the Open Meeting laws because 48 hour [advance] notice wasn't given.[14] Petitioner suggested that the meeting be rescheduled.
18. Later on March 27, 2025, Petitioner again responded to President stating that his earlier email copy had been rejected [to Spectrum] as undeliverable.
19. Spectrum hosted a Kick Start meeting on March 28, 2025 over ZOOM. Some of the HOA Board members attended the meeting in person at Spectrum offices.

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[7] *See* Petitioner Exhibit 9.
[8] *See* Petitioner Exhibit 10.
[9] *See* Petitioner Exhibit 18.
[10] *See* Petitioner Exhibit 4.
[11] *See* Petitioner Exhibit 11; Petitioner advised President that he did receive the postcard on March 27, 2025.
[12] *See* Petitioner Exhibit 6.
[13] *See* Petitioner Exhibit 11.
[14] *See* Petitioner Exhibit 7.

20. Minutes ("Minutes") were developed of the March 28, 2025 meeting.[15] Spectrum team members are listed as well as HOA Board members; there is no specific indication in the Minutes that each listed person was present.[16]

21. The Minutes reflect various discussions between Board members and Spectrum members regarding the parties' perspectives as to the existing circumstances, the transition to Spectrum management, the parties' expectations, and the parties' duties and responsibilities. The Minutes do not reflect any motions, votes, or actions taken by the Board at the meeting on behalf of the HOA. The Minutes specify that [HOA] Board meetings take place "on the third Tuesday of the month each month."

HEARING PROCESS

22. On August 6, 2025, the Department issued a Notice of Hearing in this case, with the following stated dispute:[17]

> The Petitioner alleges Respondent of violating A.R.S. § 33-1804(D) by holding a meeting without timely notice.

23. Petitioner argued that the Spectrum Notification was in violation of the 48-hour advance notice required for an HOA Board meeting in Ariz. Rev. Stat. § 33-1804(D). Petitioner argued that President received the email on March 26, 2025 at 1:45 p.m., which was untimely for a March 28, 2025 at 1:00 p.m. meeting and, further, that he never received a timely notice.

24. Petitioner argued that an Agenda was issued. Petitioner noted that a Quorum was needed for a Board meeting. Petitioner surmised that, based on the Minutes, all the Board members were listed as being present and, therefore, there was a Quorum. Petitioner's position is that the meeting was a "Board" meeting which was held without giving the required 48 hours advance notice.

25. President testified that, based on the prior management company's performance, the HOA and Spectrum wanted to get to know each other, which was the

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[15] *See* HOA Exhibit 2. Ms. Steele, the HOA Community Manager, stated that they have a different business partner who develops the minutes.

[16] The hearing record is unclear regarding actual attendance or any member participation.

[17] *See* File, Notice of Hearing.

purpose of the informal meeting. She noted that, as to receipt of electronic mail, that is computer issue and the HOA could not guarantee when a person will actually receive an email.

26. HOA Treasurer, Bonnie S., testified that the Board had had no part in the Spectrum decision to hold the Kick Start meeting and that the meeting was informal, for the purpose of Spectrum and the HOA Board to get to know each other, describing it as a "meet and greet" event.

27. Spectrum Division President, Diana T., also testified that the Kick Start was simply a "meet and greet" event.

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, either an owner or the 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 at bar.
3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated Ariz. Rev. Stat. § 33-1804(D).[18]
4. Ariz. Rev. Stat. § 33-1804(D) states as follows:

> D. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to members of meetings of the board of directors and meeting agendas shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the corporation is prima facie evidence that notice was given as prescribed by this section. Notice

[18] *See* ARIZ. ADMIN. CODE R2-19-119.

> to members of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the date, time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors or a meeting agenda does not affect the validity of any action taken at that meeting.

5. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[19] 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."[20]
6. After review of the relevant testimony and hearing evidence, the Administrative Law Judge concludes that the subject March 28, 2025 Kick Start meeting, which was arranged by Spectrum prior to Spectrum becoming the HOA's contracted management company, was not an HOA Board meeting at which any HOA business was transacted. As a result, the Administrative Law Judge concludes that 48 hour advance notice was not required. Additionally, the hearing evidence sufficiently demonstrated that Spectrum had mailed to each of the HOA's 803 members a large postcard regarding the Kick Start meeting.
7. The Administrative Law Judge concludes that Petitioner has not met his burden to demonstrate the alleged violation of Ariz. Rev. Stat. § 33-1804(D).

ORDER

IT IS ORDERED that Petitioner's petition in 25F-H062-REL be dismissed.

IT IS FURTHER ORDERED that Petitioner bears the $500.00 filing fee.

NOTICE

[19] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).
[20] BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

Pursuant to Ariz. Rev. Stat. § 32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to Ariz. Rev. Stat. § 32-2199.04. Pursuant to Ariz. Rev. Stat. § 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.

ORDERED this day, November 11, 2025.

/s/ Kay Abramsohn
Administrative Law Judge

Transmitted electronically to:

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