Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of R.L. Whitmer, PETITIONER, v. Hilton Casitas Council of Homeowners, RESPONDENT.	**No. 25F-H056-REL** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: November 03, 2025 at 1:00 PM.

APPEARANCES: Emily Mann, Esq. appeared on behalf of Hilton Casitas Council of Homeowners ("Respondent") with Robert Westbrook as a witness. Rial Lamar ("R.L.") Whitmer ("Petitioner") appeared on his own behalf.

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

EXHIBITS ADMITTED INTO EVIDENCE: The NOTICE OF HEARING, including the Registrar's attached agency file, Petitioner Exhibit B, Respondent Exhibits 1-3 were admitted into the record.

After review of the hearing record in this matter, the undersigned Administrative Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The 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. On or about April 09, 2025, Petitioner filed a single-issue HOA DISPUTE PROCESS PETITION with the Department.[1] In the petition, Petitioner marked and identified a single-issue: an alleged violation of Arizona Revised Statute ("ARIZ. REV. STAT.") § 33-1248 and Art. 23, sec. 23.9 of the Association's Declaration stemming from an incident that occurred on April 07, 2025.[2] In his narrative description of his underlying complaint, however, Petitioner specifically identified three (3) issues for hearing: (1) an alleged failure to provide a meeting agenda in violation of ARIZ. REV. STAT. § 33-1248(E)(1); (2) an alleged refusal to permit Petitioner to speak during a noticed meeting in violation of ARIZ. REV. STAT. § 33-1248(A), and (3) Respondent's holding of an allegedly unnoticed meeting in violation of ARIZ. REV. STAT. § 33-1248(E)(4).[3] Petitioner requested an order directing Respondent to abide by ARIZ. REV. STAT. § 33-1248, as well as the imposition of a civil penalty against Respondent.[4]

a. On April 30, 2025, Petitioner tendered a $500.00 filing fee to the Department for the petition.[5]

3. On an unknown date, the Department issued a HOA NOTICE OF PETITION to Respondent.

4. On June 06, 2025, Respondent returned its ANSWER to the Department whereby it denied all complaint items in the petition.[6]

5. On June 24, 2025, the Department issued a NOTICE OF HEARING setting the above-captioned matter for hearing before the Office of Administrative Hearings ("OAH"), an independent state agency, on August 01, 2025, to address Respondent's alleged violation(s) of ARIZ. REV. STAT. § 33-1248 and Art. 23, sec. 23.9 of the Association's Declaration.[7]

6. On August 01, 2025, at the commencement of the scheduled hearing, Petitioner moved to continue proceedings so that he could amend his petition with the

[1] *See* Agency File, page 10-12.
[2] *Id*.
[3] *Id*.
[4] *Id*.
[5] *See* Agency File, page 6.
[6] *See* Agency File, page 14.
[7] *See* Agency File, pages 2-5.

Department. Petitioner's MOTION TO CONTINUE was granted by the Tribunal. As a result, on August 04, 2025, a CORRECTED ORDER GRANTING STAY was issued that required Petitioner to submit a Status Update to OAH no later than September 17, 2025, regarding the status of his amended petition. Petitioner was specifically advised that if the Department accepted the amended petition, including payment for the corresponding number of additional issues, and agreed to consolidate that action with Docket No. 25F-H056-REL, an AMENDED NOTICE OF HEARING would be issued by the Department setting the consolidated matters for hearing.

7. On August 11, 2025, Petitioner submitted an AMENDED HOA DISPUTE PROCESS PETITION which, on its face, appeared to be identical to his originally plead petition. No information was provided to establish that Petitioner tendered a $1,000.00 filing fee for the two (2) additional issues contained in the petition.

8. On September 19, 2025, per Petitioner's request the above-captioned matter was placed back on OAH's hearing calendar for November 03, 2025, at 1:00 p.m.

9. On September 21, 2025, Petitioner field a MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR ORDER TO COMPLY WITH A.R.S. § 33-1248 AND REQUEST FOR POSTPONEMENT OF THE NOVEMBER 03, 2025 HEARING, as well as a SEPARATE STATEMENT OF FACTS IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR ORDER TO COMPLY.

10. On September 23, 2025, Respondent submitted a REQUEST FOR NEW HEARING DATE AND ORDER SETTING FORTH FILING DEADLINE FOR RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT.

11. On September 23, 2025, Petitioner submitted a reply to Respondent's ORDER SETTING FILING DEADLINE.

12. On September 24, 2025, OAH issued a MINUTE ENTRY that tabled Petitioner's motion pending the receipt of Respondent's reply to his motion, and also tabled both parties' request for continuance pending review of Respondent's reply, if any.

13. On October 06, 2025, Respondent submitted a RESPONSE AND OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT and a CROSS-MOTION FOR SUMMARY JUDGMENT.

14. On October 08, 2025, OAH issued an ORDER denying Petitioner's MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR ORDER TO COMPLY WITH A.R.S. § 33-1248, and denied Respondent's CROSS-MOTION FOR SUMMARY JUDGMENT in part by dismissing Petitioner's AMENDED HOA DISPUTE PROCESS PETITION with prejudice, but permitting Petitioner's original HOA DISPUTE PROCESS PETITION to move forward to address whether Respondent violated ARIZ. REV. STAT. § 33-1248 and/or Art. 23, sec. 23.9 of the Association's Declaration based on alleged conduct occurring on or about April 07, 2025, and denying both parties' request for continuance of proceedings scheduled at 1:00 p.m. on November 03, 2025.[8]

THE PARTIES AND GOVERNING DOCUMENTS

15. Respondent is a homeowners' association formed in August 1994, whose members own properties in a residential real estate development located in Scottsdale, Arizona.[9] Membership for the Association is compromised of the Hilton Casitas subdivision.

16. Petitioner is a Hilton Casitas property owner and a member of the Association.

17. The Association is recognized by the State of Arizona as a domestic nonprofit corporation.[10]

18. The Association is governed by a Declaration of Covenants, Conditions, and Restrictions ("Declaration") and overseen by a Board of Directors ("the Board" and "Council"). The Declaration empowers the Association to control certain aspects of property use within the development. When a party buys a residential unit in the development, the party receives a copy of the Declaration and Bylaws and agrees to be bound by their terms. Thus, the Declaration forms an enforceable contract between the Association and each property owner, and the Bylaws outline how the Association is permitted to operate.

[8] This ruling was clarified in a MINUTE ENTRY dated October 20, 2025, per Respondent's request.
[9] *See* Agency File, page 7.
[10] *Id*.

19. Article 23 – **General Provisions**, Section 23.9 **Rules and Regulations** of the Declaration[11] provides the following:

> The Council shall have the right to adopt rules and regulations, and amend, cancel, and adopt new rules and regulations from time to time with respect to all aspects of the Council's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration or the Bylaws or Articles (if any) of the Council.[12]

PARTY STIPULATIONS

20. Petitioner abandoned his allegation that Respondent violated Art. 23, sec. 23.9 of the Association's Declaration.

HEARING EVIDENCE

21. Petitioner testified on his own behalf. Robert Westbrook testified on behalf of Respondent. The substantive evidence of record is as follows:

a. Respondent is a gated community in Scottsdale, Arizona that is comprised of approximately 29 units.

b. The Association's Board of Directors are comprised of a sitting President, Mr. Westbrook, and 5 other directors.

c. After the Board completed its 2025 Budget Assessment, it was determined that the Association was insolvent, and that the only way to fix the shortage was to increase monthly member dues.

d. On an unknown date, the Association advised members that they would need to vote "I approve" or "I do not approve" to ratify the 2025 Budget and approve a $300.00 per month dues increase, because they were over the 2024 Budget by 21% due to increases in maintenance, insurance, and legal expenses.[13] Members were instructed to vote via postal mail, email, or deliver their ballots in-person.[14] The Association advised members that upon conclusion of voting, the Board would hold a special meeting at Mr.

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[11] *See* Respondent Exhibit 5.
[12] *Id*.
[13] *See* Respondent Exhibit 1.
[14] *Id*.

Westbrook's residence on April 07, 2025, at 4:00 p.m. to count ballots.[15] A copy of the revised budget and ballot were attached to the correspondence.[16]

e. On April 07, 2025, after polling closed, the Board held the special meeting. Petitioner was in attendance. Minutes[17] reflect the following occurrences:

> @4:02 PM: Roll Call yields quorum, 4 of 5 Directors present. 14 homeowners (1 of which was a late arrival.) 15 total homes represented.
>
> * * *
>
> @4:02 PM: The meeting was called to order by [Mr. Westbrook] HOA President, a quorum was recognized.
>
> @4:03 PM: [Mr. Westbrook] discussed the order of events and purpose of the meeting.
>
> @4:06 PM: [Director 1] moved to approve the minutes from the last meeting. [Director 2] seconded, and all were in favor.
>
> @4:08 PM: Ballot Count and Ratification: 25 of 29 ballots received, 24 YES votes, 1 NO vote.
>
> @4:09 PM [Director 1] moved to adjourn the meeting. [Director 2] seconded. The motion passed, and the meeting was adjourned.
> (*Emphasis in original*.)

f. During the special meeting, Mr. Westbrook asked Petitioner, "Do you care to vote?"[18] To which, Petitioner replied, "I'm waiting for the public comment."[19] Mr. Westbrook followed-up in clarification with, "I'm just asking if you're going to vote."[20] Petitioner replied, "No, I'm not."[21]

g. After the special meeting concluded, Mr. Westbrook invited special meeting attendees to stay and "discuss matters affecting the Hilton Casitas

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[15] *Id*.
[16] *Id*.
[17] *See* Respondent 2.
[18] *See* Respondent Exhibit 3.
[19] *Id*.
[20] *Id*.
[21] *Id*.

community." This gathering was colloquially referred to as a Town Hall by a Board member.

ADDITIONAL EVIDENCE

h. The parties have an acrimonious relationship. Petitioner has filed approximately 25 legal actions against Respondent over the course of the past 10 years. An increase in the number of recent actions between the parties have contributed to the Association's budgetary shortfall.

i. Petitioner testified that he stayed for the Town Hall because he had questions regarding assessment increases, but he was "steamrolled" and not afforded an opportunity to speak – though he admittedly never specifically requested to do so nor was he stopped from speaking. Per Petitioner, there was no reason for a quorum to be established for a "friendly discussion between neighbors."

j. Mr. Westbrook testified that although invited and encouraged to participate in voting, Petitioner abstained and chose to remain standing. Although Petitioner did stay for the Town Hall, he refused to answer questions from neighbors regarding the motivations behind his perceived litigiousness,[22] but questioned Mr. Westbrook directly regarding the Association's determination to appeal another ALJ Decision issued involving the parties. The purpose of Mr. Westbrook's invitation after the special meeting concluded was to afford members an opportunity to "hang out and be neighborly." People gathered in small groups and had discussions amongst themselves.

CLOSING ARGUMENTS

22. In closing, Respondent argued that Petitioner failed to sustain his burden of proof, and opined that the underlying petition should be dismissed. Specifically, Respondent argued that no violation of ARIZ. REV. STAT. § 33-1248(A) occurred because Petitioner never explicitly requested to speak on April 07, 2025, and also was never

[22] *See* Respondent Exhibit 2.

prohibited from doing so. Respondent also argued that no violation of ARIZ. REV. STAT. § 33-1248(E)(1) existed because it solely applied to meeting of the board of directors, which is not the type of meeting that occurred on April 07, 2025. Instead, what took place was a special meeting of members to count and ratify votes for the Association's 2025 budget. Respondent further argued that ARIZ. REV. STAT. § 33-1248(E)(4) existed because the Town Hall gathering after the special meeting was not an "informal meeting of a quorum of board directors," and no board business was discussed. Respondent opined that prohibiting board members from attending meetings in their capacity as individual members of the Association would lead to an absurd result of barring them from gathering anywhere. Respondent concluded by opining that the record did not support the imposition of a civil penalty, and asked that the entire petition be dismissed with prejudice.

23. In closing, Petitioner argued the April 07, 2025, meeting lacked an agenda, as the letter and ballot previously issued were insufficient, and that the meeting did not allow for public comment in violation of ARIZ. REV. STAT. § 33-1248(A). Petitioner further argued that after the meeting was adjourned, Mr. Westbrook and four (4) other board members remained to "discuss HOA business" at the Town Hall; an unnoticed meeting, in violation of ARIZ. REV. STAT. § 33-1248(E)(4). Petitioner agreed that no evidence was presented to establish one or more violations of violated Art. 23, sec. 23.9 of the Association's Declaration, as the allegation was plead in error, and offered no argument in support of his request for the assessment of civil penalties.

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a condominium and/or planned community association. The owner or 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.

a. Condominiums are regulated by ARIZ. REV. STAT. Title 33, Chapter 9, Article 4.

b. Pursuant to ARIZ. REV. STAT. § 33-1202(12) a "condominium" is defined as real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

c. Pursuant to ARIZ. REV. STAT. § 33-1241 a unit owners' association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D), 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested case at bar. OAH has the authority to interpret the contract between the parties.[23]

3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent committed the alleged statutory violation.

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[24] 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."[25]

5. ARIZ. REV. STAT. § 33-1248(A) provides, in pertinent parts, that "Any portion of a meeting may be closed only if that portion of the meeting is limited to consideration of one or more of the following:

(1) Legal advice from an attorney for the board or the association; and/or

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[23] *See Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).
[24] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).
[25] BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

a. The definition of legal advice is "guidance given by lawyers to their clients."[26]

(2) Pending or contemplated litigation.

ARIZ. REV. STAT. § 33-1248(A) also provides that the board may place reasonable time restrictions speakers during a meeting, but shall allow a member to speak on either side of an issue after the board has discussed a specific agenda item but before the board takes formal action on said item.

6. ARIZ. REV. STAT. § 33-1248(F) provides that all meetings of a condominium, whether meetings of members or the board of directors, be conducted openly and that notices and agendas be provided in advance for those meetings containing information reasonably necessary to inform unit owners of the matters to be discussed or decided, and to ensure that unit owners have the ability to speak after discussion of agenda items before a vote is taken.

7. ARIZ. REV. STAT. § 33-1248(E) provides, in pertinent parts, that notwithstanding any provision in the declaration, bylaws or other condominium documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

(1) The agenda shall be available in advance for all unit owners attending.

* * *

(4) Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

8. The crux of the case at bar is whether Respondent's conduct on April 07, 2025, violated ARIZ. REV. STAT. §§ 33-1248(A), 33-1248(E)(1), and/or 33-1248(E)(4), and if so, whether grounds exist for the imposition of a civil penalty and/or filing fee reimbursement pursuant to ARIZ. REV. STAT. § 32-2199.01.

9. Based upon a review of the credible and relevant evidence in the record, Petitioner has sustained his burden of proof, only in part.

[26] Black's Law Dictionary (11th Ed. 2019).

10. Here, the record clearly reflects that the April 07, 2025, special meeting was not a meeting of the board of directors, and did have an agenda issued to members in advance – as evidenced by the ballot and memorandum which provided objectively reasonable detail regarding the purpose and scope of the meeting, as well as the simple ballot count and ratification that took place during the seven (7) minute meeting on April 07, 2025. However, the record also reflects that prior to vote ratification, although Petitioner unequivocally indicated that he wished to be heard, there was never a clear and unambiguous opportunity for him to do so. Respondent's argument that Petitioner's request was not explicitly offered, is disingenuous. Petitioner specifically advised Mr. Westbrook that he was "waiting for the public comment." It cannot be faithfully argued that the HOA President was unaware Petitioner was desirous of speaking. Animosity notwithstanding, Petitioner should have been afforded a reasonable amount of time to be heard prior to adjournment. To that end, Petitioner is amiss that the Town Hall meeting which took place in the immediate wake of the special meeting constituted an unnoticed meeting. The existence of a quorum, intentional or otherwise, absent open discussion of Association business does not a meeting make. Here, Respondent is correct that holding such would unintentionally result in absurdity.

11. Therefore, the Tribunal holds that Petitioner established sufficient ground to find Respondent in violation of ARIZ. REV. STAT. § 33-1248(A). No violation(s) of ARIZ. REV. STAT. §§33-1248(E)(1), 33-1248(E)(4), or Art. 23, sec. 23.9 of the Association's Declaration exist. As a result, the undersigned concludes that Petitioner's petition must be granted in part, and denied in part.

FINAL ORDER

In light of the foregoing,

IT IS ORDERED that Petitioner's petition be granted in part, with the remainder being denied and dismissed.

IT IS FURTHER ORDERED that Petitioner's request to be reimbursed for the filing fee paid in this matter be denied. The parties shall bear their own costs.

IT IS FURTHER ORDERED that Petitioner's request to impose a civil penalty against Respondent for its violation of ARIZ. REV. STAT. § 33-1248(A) be granted.

Respondent shall tender one hundred sixty-seven dollars ($167.00) to the Department, in certified funds, as a civil penalty for its violation of ARIZ. REV. STAT. § 33-1248(A) within thirty (30) days of this Order. Respondent shall not violate this statutory provision henceforth.

NOTICE

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 Arizona Department of Real Estate within thirty (30) days of the service of this ORDER upon the parties.

Done this day, November 19, 2025.

Office of **A**dministrative **H**earings

/s/ Jenna Clark
Administrative Law Judge

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