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No. 23F-H039-REL

**ORDER REGARDING MOTIONS,
GRANTING CONTINUANCE, SETTING
DISCLOSURE**

On or about January 21, 2023, Petitioner filed his Petition with the Arizona Department of Real Estate. The Petition states, in pertinent part:

ARS Section 33-1804(A) provides, in pertinent part:

1. Legal advice from an attorney for the board or the association. ...

¹ Emphasis added here.

1 After the matter was noticed for hearing, the matter was continued and reset for
2 administrative hearing to convene on May 25, 2023 by Order dated March 9, 2023.²

3 On March 28, 2023, the Tribunal had issued an ORDER denying Respondent's
4 Motion to Dismiss the matter, indicating that Petitioner's Petition had raised a valid issue,
5 pursuant to A.R.S. Section 33-1804, regarding whether Respondent had improperly
6 prevented members in attendance at a Board meeting from recording the meeting.

7 This matter was subsequently reset for administrative hearing to convene on
8 August 8, 2023 by ORDER dated May 24, 2023.³

9 **FILINGS**

10 The parties have made the following series of filings:

- 11 (a) Petitioner's May 19, 2023 motion to continue;⁴
- 12 (b) Respondent's May 24, 2023 hearing memorandum with one exhibit attached;⁵
- 13 (c) Respondent's July 21, 2023 list of witnesses and exhibits;⁶
- 14 (d) Petitioner's July 28, 2023 motion to amend the caption to include the property
15 owner's joint owner;
- 16 (e) Petitioner's July 30, 2023 list of witnesses and exhibits;⁷
- 17 (f) Petitioner's July 30, 2023 motion to accept as timely his disclosure based on
18 mistakenly calendared the disclosure date;
- 19 (g) Respondent's August 1, 2023 motion to continue, indicating counsel was out of
20 state at the time and unavailable to address any issues or Petitioner's filings prior
21 to the August 8, 2023 hearing;
- 22 (h) Respondent's August 1, 2023 motion, filed by an associate, contained multiple
23 counter motions and arguments: argument regarding timeliness of Petitioner's
24 July 28, 2023 and July 30, 2023 filings; objection to amend the parties;
25 objection to accept Petitioner's disclosure as timely; motion to produce
26 documents by a date certain so both parties may effectively prepare for the
27 hearing; and motion to exclude irrelevant and redundant evidence.

28 ² The Tribunal did not set a disclosure date for the May 25, 2023 hearing.

29 ³ The Tribunal set a disclosure date of July 21, 2023 for the August 8, 2023 hearing.

30 ⁴ Previously granted.

⁵ This filing was made the day before the then-scheduled hearing.

⁶ While Respondent's list setting forth exhibits was provided, the exhibits themselves were not provided.

⁷ While Petitioner's list setting forth exhibits was provided, the exhibits themselves were not provided.

- 1 (i) Petitioner's August 2, 2023 stipulation for a continuance;
2 (j) Petitioner's August 6, 2023 response to Respondent's August 1, 2023 motions;
3 (k) Respondent's August 8, 2023 response to Petitioner's August 6, 2023 response;
4 (l) Petitioner's August 9, 2023 motion for summary judgment, arguing therein that
5 Respondent had appropriately specified the issue for hearing to be:
6 The Petition is limited to the sole issue of whether Respondent,
7 Tonto Forest Estates, properly closed a portion of its September
8 2022 Board Meeting.
9
10 (m) Petitioner's August 9, 2023 filing of a recording of the September 28, 2022
11 meeting;⁹
12 (n) Respondent's August 22, 2023 filing of a response to Petitioner's August 9, 2023
13 motion for summary judgment;¹⁰
14 (o) Petitioner's August 24, 2023 motion to strike a Declaration by Kurt Meister;¹¹ and
15 (p) Petitioner's August 24, 2023 filing of an additional recording from September 28,
16 2022.

17 **CONTINUANCE**

18 On August 3, 2023, the Tribunal advised the parties that the August 8, 2023
19 hearing would be continued and that a new date would be issued. Due to the size of the
20 hearing calendar, the Tribunal was unable to calendar a slot for a pre-hearing conference to
21 take the place of this ORDER. Therefore, at the request of **Respondent**, cause appearing,

22 IT IS ORDERED the administrative hearing in the above-entitled matter is
23 continued to convene on **September 29, 2023 at 9:00 A.M. at the Tribunal offices unless**
24 **a party requests that the hearing be conducted virtually by telephone or**
25 **videoconference; the case is calendared until Noon.**

26 IT IS FURTHER ORDERED, based on the more recent filings, Respondent's
27 motions objecting to amend the parties and objecting to accept Petitioner's disclosure as
28 timely are now moot, given the additional information Petitioner apparently provided to

29 ⁸ Respondent withdrew, and clarified, several of its August 1, 2023 motions.

30 ⁹ Any parties' use of a recording during the administrative hearing is heard on the record only as to
relevant portions that can be located through clocked timing.

¹⁰ Only the cover sheet was received by the Tribunal;

¹¹ No such Declaration was found listed in the parties' exhibit lists previously filed to the Tribunal.

1 Respondent and due to the motion to continue the matter (with its request to set a new
2 disclosure date).

3 IT IS FURTHER ORDERED Respondent's motion to continue is moot, the Tribunal
4 granting the motion herein.

5 IT IS FURTHER ORDERED the parties' disclosure of any additional or
6 supplemental witness list and exhibits is due no later than August 15, 2023.

7 IT IS FURTHER ORDERED the issue for hearing is as set forth in the Petition and
8 the Notice of Hearing, *i.e.*, whether:

9 On September 28, 2022, the TFE association board held an open meeting.
10 The TFE association board did not video or audio record this meeting. At
11 that meeting, the TFE association board PROHIBITED any and all
12 homeowners participating in that open meeting from recording that open
13 meeting. ... Furthermore, the TFE association board FORCED any and all
14 members currently recording the open meeting to STOP RECORDING.
Forcing homeowners to stop recording an open board meeting (that is not
being recorded by the association) is also contrary to A.R.S. [Section] 33-
1804(A). This was neither a closed nor emergency meeting.

15 Petitioner bears the burden of proof to demonstrate facts in support of his allegations. Both
16 parties shall present for consideration only relevant evidence and testimony regarding the
17 September 28, 2022 meeting.¹² The Tribunal will apply A.R.S. Section 33-1804(A) to the
18 relevant facts to make its determination.

19 ORDERED this day, August 27, 2023.

20
21 /s/ Kay Abramsohn
22 Administrative Law Judge

23 Transmitted by either mail, e-mail, or facsimile to:

24 Susan Nicolson, Commissioner
25 Arizona Department of Real Estate
26 Attn:
27 SNicolson@azre.gov
28 AHansen@azre.gov
29 vnunez@azre.gov
30 djones@azre.gov
labril@azre.gov

¹² Only relevant evidence and testimony will be admitted to the hearing record.

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