

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 Michael Holland,
3 Petitioner,

4 v.
5 Tonto Forest Estates Homeowner's
6 Association,
 Respondent.

No. 23F-H039-REL

**ORDER REGARDING HEARING,
DENYING MOTIONS**

7 By motion dated September 20, 2023, the parties indicate they are prepared for
8 the Administrative Law Judge to rule, prior to the scheduled September 29, 2023 hearing,
9 on the multiple motions filed in this matter since July 28, 2023. These motions relate to
10 various requests, arguments regarding positions and evidence, objections and replies
11 regarding the evidence to be considered or allowed at the administrative hearing, and for
12 summary judgment.¹

13 **PETITION**

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

16 On September 28, 2022, the TFE association board held an open meeting.
17 The TFE association board did not video or audio record this meeting. At
18 that meeting, the TFE association board PROHIBITED any and all
19 homeowners participating in that open meeting from recording that open
20 meeting. ... Furthermore, the TFE association board FORCED any and all
21 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.

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

23 *Persons attending may audiotape or videotape those portions of the*
24 *meetings of the board of directors and meetings of the members that are*
25 *open. The board of directors of the association shall not require advance*
26 *notice of the audiotaping or videotaping and may adopt reasonable rules*
27 *governing the audiotaping and videotaping of open portions of the meetings*
28 *of the board and the membership, but such rules shall not preclude such*
29 *audiotaping or videotaping by those attending, unless the board audiotapes*
30 *or videotapes the meeting and makes the unedited audiotapes or*
 videotapes available to members on request without restrictions on its use

¹ Some motions were mooted by the parties' own actions and responses.

as evidence in any dispute resolution process. Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:²

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

The Tribunal is authorized to conduct an administrative hearing regarding Petitioner's Complaint. At the time of the administrative hearing, the Administrative Law Judge hears the parties' evidence, admits exhibits and/or rules on objections to evidence that is being presented at hearing for consideration and, thereafter, is authorized to consider the relevant evidence and make a recommendation to the agency regarding whether the party with the burden has met their burden.

In this case, concurrent with a denial to dismiss the matter, an Administrative Law judge found that Petitioner's petition set forth a justiciable issue to be heard and determined through an administrative hearing, not through any other method such as motion practice.³ Further, in the ORDER dated August 27, 2023, the Administrative Law Judge set forth a disclosure date⁴ and the following:

Petitioner bears the burden of proof to demonstrate facts in support of his allegations. Both parties shall present for consideration only relevant evidence and testimony regarding the September 28, 2022 meeting.⁵ The Tribunal will apply A.R.S. Section 33-1804(A) to the relevant facts to make its determination.

The September 29, 2023 hearing was reset to be conducted at the Tribunal offices. Petitioner has now requested that a virtual opportunity be provided for witnesses and other persons he believes would be interested member of the public. Therefore, the following VIRTUAL information is provided:

² Emphasis added here.

³ The Tribunal's rules do not anticipate prehearing motions to rule on admissibility of evidence prior to the conduct of the administrative hearing. See A.A.C. R2-19-106(A). In circumstances when no facts are at issue and the parties have stipulated to the facts, written legal memorandum are sometimes permitted.

⁴ The typographical error of a disclosure date of August 15, 2023 therein was questioned by the parties and the Tribunal issued a corrective email on September 1, 2023 to the parties for disclosure to be made by September 15, 2023. Complainant had filed disclosure on July 30, 2023. Respondent filed an updated disclosure on September 15, 2023.

⁵ Only relevant evidence and testimony will be admitted to the hearing record.

GOOGLE Meeting ID
meet.google.com/vdp-hapn-wgg
Phone Numbers
(US)+1 307-939-2149
PIN: 771 889 942#

Based on the foregoing,

IT IS ORDERED the parties' pre-hearing motions regarding admissibility, presentation of, and/or relevancy of evidence, and/or summary judgment are Denied. The matter remains set for administrative hearing regarding Petitioner's petition at which time relevant evidence and testimony will be taken and, thereafter, considered.

ORDERED this day, September 21, 2023.

/s/ Kay A. Abramsohn
Administrative Law Judge

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

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