

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Thomas Barrs,

4 Petitioner,

5 Desert Ranch Homeowners Association,

6 Respondent.
7
8

No. 18F-H1817008-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

9
10 **HEARING:** December 1, 2017

11 **APPEARANCES:** Thomas Barrs on his own behalf; Brian Schoeffler for
12 Respondent

13 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden
14

15 **FINDINGS OF FACT**

16 1. On October 10, 2017, the Arizona Department of Real Estate issued a
17 Notice of Hearing setting the above-captioned matter for hearing on December 1, 2017,
18 at the Office of Administrative Hearings in Phoenix, Arizona.

19 2. The Notice of Hearing shows that Petitioner Thomas Barrs alleged that
20 Respondent Desert Ranch Homeowners' Association violated ARIZ. REV. STAT. sections
21 33-1805 and 33-1812.

22 3. On September 4, 2017, Mr. Barrs filed with the Department the petition
23 that gave rise to this matter.

24 4. Through his Petition Mr. Barrs alleges that in nine instances the
25 Respondent violated section 33-1805 when it failed to accommodate his requests either
26 to inspect records or to have records emailed to him. Respondent disputes this and
27 asserts that it has made efforts to accommodate Mr. Barrs, but he has refused to accept
28 their efforts.

29 5. Mr. Barrs' nine requests are:

- 30 a. A request to view documents related to the April 29, 2017 Board
 election, initially made on May 19, 2017 (Issue 1);

- 1 b. A request to view documents related to the March 18, 2017 Board
2 election, initially made on June 17, 2017 (Issue 2);
3 c. A request for copies of the Respondent's insurance policies to be
4 provided by email, initially made on July 11, 2017 (Issue 3);
5 d. A request for the insurance company's phone number and the policy
6 number, initially made on August 26, 2017 (Issue 4);
7 e. A request for the Secretary's shorthand notes from the March 18, 2017
8 meeting to be provided by email, initially made on July 11, 2017¹ (Issue
9 5);
10 f. A request for the annual budget to be provided by email, initially made
11 on July 11, 2017 (Issue 6);
12 g. A request for a written record of all actions taken by the EDC after July
13 2016, including all correspondence, initially made on July 11, 2017
14 (Issue 7);
15 h. A request for the name of the EDC chairperson from March 2016 to
16 March 2017, to be provided by email, initially made on July 11, 2017
17 (Issue 8); and
18 i. A request for a list of the dates of all Board meetings held in the prior
19 year, to be provided by email, initially made on July 11, 2017 (Issue 9).

20 6. At the hearing, Mr. Barrs withdrew his allegations regarding the name of
21 the EDC chairman (Issue 8) and for the list of meeting dates (Issue 9).

22 Issues 4 and 5

23 7. At the hearing, Mr. Barrs effectively acknowledged that he has received
24 the insurance company's phone number and the policy number. Mr. Barrs did not
25 demonstrate that the Respondent violated section 33-1805 regarding this request.

26 8. The preponderance of the evidence shows that there are no shorthand
27 notes from the March 18th meeting at issue, which is something that the Board had
28 informed Mr. Barrs of shortly after he made his request. Mr. Barrs did not demonstrate
29 that the Respondent violated section 33-1805 regarding this request.

30 ¹ Mr. Barrs asserts that he first made this request on June 23, 2017, but that does not appear to be supported by the exhibits.

Issue 1

9. On Friday May 19, 2017 at 8:59 p.m., through an email Mr. Barrs made his request to view the documents related to the April 29, 2017 Board election. Because the request was made after business hours on Friday, Respondent effectively received that request on Monday May 22nd.

10. On June 3, 2017, the Board fulfilled Mr. Barrs' request by allowing Mr. Barrs to view this documentation. At that time however, Board president Catherine Overby, informed Mr. Barrs that there was one late ballot that was in the possession of Board member Patrick Rice. Ms. Overby was mistaken and what she thought was a late ballot was a petition to nomination a candidate.

11. Through emails to the Board and at the hearing, Mr. Barrs asserted that he had not been given the opportunity to view the ballots that the Post Office returned to the Board as undeliverable. The mailed ballots did not have any return address and so no ballots were returned as undeliverable. As early as June 17, 2017, Mr. Barrs had been informed of that no ballots had been returned as undeliverable.

12. Considering that Mr. Barrs' request was emailed after the close of business on Friday May 19th, June 3rd was within ten business days of his request. Mr. Barrs did not demonstrate that the Respondent violated section 33-1805 regarding this request.

Issues 3, 6 and 7

13. Both parties had submitted into evidence emails regarding Mr. Barrs' July 11th requests. Pertinent to those emails, in March 2017, Mr. Schoeffler asked to be removed from an email thread among various residents. In response, Mr. Barrs stopped sending email to Mr. Schoeffler all-together and he also blocked any incoming emails from Mr. Schoeffler.

14. Through a July 11, 2017 email to Board members, Mr. Barrs requested that they sent to him by email the insurance policies, the budget, and the written record of all actions by the EDC, and he renewed his requests to inspect the ballots from the March and April elections. In making his request, Mr. Barrs cited not only ARIZ. REV. STAT. section 33-1805, but also CC&R section VII. Mr. Barrs did not include Mr. Schoeffler in this email.

1 15. On July 11, 2017, Ms. Overby responded to Mr. Barrs, informing him that
2 she would forward the request to Mr. Schoeffler.

3 16. On July 12, 2017, Mr. Barrs again emailed Ms. Overby asking when he
4 would have access to the material. Ms. Overby responded, asking why Mr. Schoeffler
5 was not being copied on the emails, and stating that Mr. Schoeffler had the material and
6 that Mr. Barrs should go to Mr. Schoeffler's house to look at it.

7 17. On July 12, 2017, Mr. Schoeffler emailed Mr. Barrs and informed him that
8 he could meet any day but the 13th, and that Mr. Schoeffler would at that time make
9 copies of any documents that Mr. Barrs wanted. Mr. Schoeffler also informed Mr. Barrs
10 that pursuant to the bylaws, a "proper purpose" was required to view the information.

11 18. Through email on July 16, 2017, Mr. Barrs informed Ms. Overby that he
12 was not including Mr. Schoeffler in the emails he sent to the Board based on Mr.
13 Schoeffler's request to be dropped from the email thread back in March.

14 19. On July 18, 2017, Mr. Barrs emailed the Board members, but again he did
15 not include Mr. Schoeffler. Mr. Barrs understood that the documents that he wanted to
16 see in person were available at Mr. Schoeffler's house.

17 20. On July 19, 2017 Ms. Overby again informed Mr. Barrs that he should
18 contact Mr. Schoeffler regarding his requests. Mr. Barrs responded on July 21st, but he
19 failed to include Mr. Schoeffler in his response.

20 21. On July 25, 2017, Mr. Barrs emailed the Board members other than Mr.
21 Schoeffler to re-urge requests. In that email he explained for the first time that not only
22 was he not sending emails to Mr. Schoeffler, but that he had also blocked Mr.
23 Schoeffler's emails so that Mr. Barrs was not receiving those sent by Mr. Schoeffler. Mr.
24 Barrs went on to tell the Board that if Mr. Schoeffler was available to meet him, the
25 Board should let Mr. Barrs know.

26 22. On July 28, 2017, Mr. Schoeffler sent an email to Mr. Barrs that
27 summarized his previous emails and in which he offered dates on which he could meet
28 Mr. Barrs. Mr. Schoeffler also noted that the by-laws require a proper purpose for the
29 inspection of documents and that ARIZ. REV. STAT. section 33-1805 required only that
30 the documents be made reasonably available. Mr. Schoeffler explained that he would
provide the documents for Mr. Barrs to review and that he would provide copies of those

1 Mr. Barrs wanted. Mr. Schoeffler also asked for the specific EDC actions that were at
2 issue, explaining that he did not want to print hundreds of emails regarding the various
3 issues that had arisen during the pertinent time period.

4 23. On July 29, 2017, Mr. Barrs responded to Mr. Schoeffler and the rest of
5 the Board stating that he "will not stipulate to the preconditions" that Mr. Schoeffler
6 placed on his ability to review the documentation and that "apparently" the documents
7 were not available for his review.

8 24. The Board responded to Mr. Barrs' July 11th requests on July 12th and
9 continued to try to accommodate those requests for the next two weeks. Through his
10 email of July 29th, Mr. Barrs effectively declined the opportunity to examine the
11 documents he had requested.

12 Issue 2

13 25. Through an email dated June 17, 2017, Mr. Barrs requested to view the
14 ballots from the March 18, 2017 election, including the envelopes and any email
15 transmittals. Through an email dated June 19, 2017, Ms. Overby informed Mr. Barrs
16 that Board member Mr. Schoeffler had those materials and that Mr. Barrs should
17 contact Mr. Schoeffler to set up a time to view that material.

18 26. At the hearing, Mr. Barrs asserted that this request has never been
19 honored. The Board takes the position that this request was honored, but the date on
20 which this occurred is not readily apparent from the record.

21 27. In the emails dated July 12th and July 28th (among others) Respondent
22 offered Mr. Barrs the opportunity to inspect these ballots. Considering that Mr. Barrs
23 turned down that offer, even if Respondent initially failed to grant him access within ten
24 days after his request, Respondent has cured its breach.

25 CONCLUSIONS OF LAW

26 1. The Department of Real Estate has authority over this matter. ARIZ. REV.
27 STAT. Title 32, Ch. 20, Art. 11.

28 2. Mr. Barrs bears the burden of proof to show that the Respondent
29 committed the alleged violation(s). The standard of proof on all issues in this matter is
30 that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

3. A preponderance of the evidence is:

1 The greater weight of the evidence, not necessarily established
2 by the greater number of witnesses testifying to a fact but by
3 evidence that has the most convincing force; superior
4 evidentiary weight that, though not sufficient to free the mind
5 wholly from all reasonable doubt, is still sufficient to incline a fair
6 and impartial mind to one side of the issue rather than the other.
7 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

8 4. Statutes should be interpreted to provide a fair and sensible result.
9 *Gutierrez v. Industrial Commission of Arizona*, 226 Ariz. 395, 249 P.3d 1095 (2011)
10 (citation omitted); *State v. McFall*, 103 Ariz. 234, 238, 439 P.2d 805, 809 (1968)
11 ("Courts will not place an absurd and unreasonable construction on statutes.")

12 5. The tribunal may "not inflate, expand, stretch or extend a statute to matters
13 not falling within its expressed provisions." *City of Phoenix v. Donofrio*, 99 Ariz. 130,
14 133, 407 P.2d 91, 94 (1965).

15 6. ARIZ. REV. STAT. section 33-1805(A) provides that:

16 Except as provided in subsection B of this section, all financial
17 and other records of the association shall be made reasonably
18 available for examination by any member or any person
19 designated by the member in writing as the member's
20 representative.... The association shall have ten business days
21 to fulfill a request for examination. On request for purchase of
22 copies of records by any member or any person designated by
23 the member in writing as the member's representative, the
24 association shall have ten business days to provide copies of
25 the requested records. An association may charge a fee for
26 making copies of not more than fifteen cents per page.

27 7. Because Mr. Barrs' May 19, 2017 request to view the documents related to
28 the April 29, 2017 election was sent to Respondent after business hours on a Friday,
29 Respondent was not required to comply with that request until June 5, 2017. See ARIZ.
30 REV. STAT. § 1-243 ("[T]he time in which an act is required to be done shall be
computed by excluding the first day and including the last day, unless the last day is a
holiday, and then it is also excluded."). The preponderance of the evidence shows that
Respondent complied with Mr. Barrs' request by allowing him to examine the requested
documents on June 3, 2017.

1 8. ARIZ. REV. STAT. section 33-1805 does not require Respondent to email
2 copies of records to Mr. Barrs, but rather requires only that it allow him to examine
3 records and to purchase copies of those records. Consequently, Respondent was under
4 no legal obligation to email any records to Mr. Barrs.

5 9. In response to Mr. Barrs' July 11, 2017 request to have records emailed to
6 him, Respondent offered Mr. Barrs the opportunity to examine the records and to have
7 copies made of the records for which he wanted copies. Mr. Barrs initially delayed
8 matters by refusing to contact Mr. Schoeffler and he then declined Respondent's offers.
9 Mr. Barrs has not shown by a preponderance of the evidence that Respondent violated
10 ARIZ. REV. STAT. section 33-1805 by failing to email to him the documents in his July 11,
11 2017 request.

12 10. The preponderance of the evidence shows that there are no shorthand
13 notes from the March 18, 2017 Board meeting. Consequently, Respondent has not
14 violated ARIZ. REV. STAT. section 33-1805 by failing to email to Mr. Barrs any such
15 notes.

16 11. Mr. Barrs has not shown by a preponderance of the evidence that
17 Respondent violated ARIZ. REV. STAT. section 33-1805 by failing to allow him to
18 examine the ballots from the March 18, 2017 election. Assuming that such a violation
19 had occurred, on July 12th and July 28th, Respondent offered Mr. Barrs the opportunity
20 to examine those records, but he declined those offers.

21 12. Mr. Barrs has not shown by a preponderance of the evidence that
22 Respondent violated ARIZ. REV. STAT. section 33-1805 by failing to email to him the
23 phone number of Respondent's insurance company and the policy number.

24 13. Mr. Barrs' petition should be dismissed and the Respondent should be
25 deemed the prevailing party in this matter.

26 ORDER

27 **IT IS ORDERED** that Thomas Barrs' petition is dismissed.

28 NOTICE

29 Pursuant to ARIZ. REV. STAT. section 32-2199.02(B), this Order is binding on the
30 parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. section 32-
2199.04. Pursuant to ARIZ. REV. STAT. section 41-1092.09, a request for rehearing

1 **in this matter must be filed with the Commissioner of the Department of Real**
2 **Estate within 30 days of the service of this Order upon the parties.**

3 Done this day, December 27, 2017

4
5 /s/ Thomas Shedden
6 Thomas Shedden
7 Administrative Law Judge

8 Transmitted to:

9 Judy Lowe, Commissioner
10 Arizona Department of Real Estate
11 2910 North 44th Street, Room 100
12 Phoenix, AZ 85018

13 Thomas Barrs
14 P O Box 14122
15 Scottsdale, Arizona 852627

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18 Scottsdale, AZ 85262
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