IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Annette Cohen Petitioner vs. CBS 136 Homeowners Association Respondent	**No. 18F-H1818033-REL** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: June 6, 2018

APPEARANCES: Petitioner Annette Cohen appeared on her own behalf. Respondent CBS 136 Homeowners Association was represented by Brian Ditsch.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

FINDINGS OF FACT

1. CBS 136 Homeowners Association (Respondent or CBS) is an association of condominium owners located in Sun City West, Arizona.

2. On or about March 9, 2018, Annette Cohen (Petitioner) filed a petition with the Arizona Department of Real Estate (Department), alleging that Respondent had violated the provisions of A.R.S. Title 33, Chapter 16, Section 33-1258. Petitioner specifically alleged, in relavant part, as follows:

> The sign-in sheets from the February 15, 2018 CBS HOA meeting was requested for review and to copy by Ms. Cohen on 02/19/2018 and acknowledged receipt of email from PRM management received. The other request dates for the same information were made 02/21/2018, 02/26/2018, 02/27/2018 and 03/05/2018. . . .
> Ms. Cohen had requested a review of the sign-in sheets from the January 10, 2018 annual meeting. She had requested the January sign-in sheets on or about 1/10/2018, and they were not received until 2/15/2018 by email. There were appointments set for her to review them, but these were both cancelled by the management company.

3. On or about March 20, 2018, the Department issued a notice to Respondent regarding the petition.

4. On or about April 10, 2018, Respondent filed an answer to the petition denying all allegations.

5. On or about April 19, 2018, the Department issued a Notice of Hearing to the parties notifying them that a hearing on the petition would be conducted by the Office of Administrative Hearings.

6. On June 6, 2018, a hearing was held on the petition and the parties presented evidence and argument regarding the violation alleged in the petition.

7. At the June 6, 2018 hearing, Respondent acknowledged that the requested documents were not provided within the 10 day timeframe set forth in statute, but that the documents were ultimately provided to Petitioner prior to the hearing.

8. Given that Respondent acknowledged a technical violation of the applicable statute, the hearing was limited to what remedy, if any, was appropriate.

9. Petitioner argued that Respondent intentionally ignored her request for the documents and, as such, a civil penalty was appropriate. Petitioner indicated that the documents could have easily been emailed to her within the 10 day deadline in the statute, but Respondent did not present that as an option until after the deadline had passed.

10. Respondent presented the testimony of Susan Rubin with PRM who testified that no requests are ever purposefully ignored. Ms. Rubin stated that PRM took over the management of Respondent in January 2018, and that PRM was still getting documents from the former management company. Ms. Rubin indicated that she never ignored Petitioner's request, but it took a little longer than expected to provide the documents.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to hear disputes between a property owner and a condominium owners association. A.R.S. § 32-2199 *et seq*.

2. In this proceeding, Petitioner bear the burden of proving by a preponderance of the evidence that Respondent violated A.R.S. § 33-1258. A.A.C. R2-19-119.

3. A preponderance of the evidence is "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

4. A.R.S. § 33-1258 provides, in relevant part, as follows:

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

5. There was no dispute that Respondent failed to provide the requested documents within 10 days. Thus, Petitioner established by a preponderance of the evidence that Respondent violated A.R.S. § 33-1258(A). While Petitioner asserted a civil penalty should be imposed, the Administrative Law Judge does not find such a penalty to be appropriate given the circumstances in this matter.

ORDER

IT IS ORDERED that Petitioner be deemed the prevailing party.

IT IS FURTHER ORDERED that Respondent comply with the applicable provisions of A.R.S. § 33-1258(A) in the future.

IT IS FURTHER ORDERED that Respondent pay Petitioner her filing fee of $500.00, to be paid directly to Petitioner within thirty (30) days of this Order.

Done this day, June 26, 2018

/s/ Tammy L. Eigenheer
Administrative Law Judge

NOTICE

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

Transmitted by either mail, e-mail, or facsimile June 26, 2018 to:

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