

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Patricia Wiercinski,

4 Petitioner,

5 vs.

6
7 Long Meadow Ranch East Property
8 Owners Association, Inc.,

9 Respondent.

No. 19F-H1918028-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

10
11 **HEARING:** January 10, 2019, at 8:30 a.m.

12 **APPEARANCES:** Patricia Wiercinski ("Petitioner") appeared on her own behalf;
13 Long Meadow Ranch East Property Owners Association, Inc. ("Respondent") was
14 represented by Ashley N. Moscarello, Esq., Goodman Law Group.

15 **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

16
17 **FINDINGS OF FACT**

18 **BACKGROUND AND PROCEDURE**

19 1. The Arizona Department of Real Estate ("the Department") is authorized by
20 statute to receive and to decide Petitions for Hearings from members of homeowners'
21 associations and from homeowners' associations in Arizona.

22 2. Respondent is a homeowners' association whose members own property
23 and/or residences in Long Meadow Ranch East development in Prescott, Arizona.

24 3. Petitioner owns a house on property in Long Meadow Ranch East and is a
25 member of Respondent.

26 4. On or about October 18, 2018, Petitioner filed a single-issue petition with the
27 Department that alleged that Respondent had violated A.R.S. § 33-1805 by failing to
28 produce its documents regarding its deliberations, decisions, and actions with respect to
29 an incident that occurred on or about June 19, 2017, that allegedly involved Petitioner's
30

1 husband, Wayne Coates, being belligerent and cursing at a potential buyer of the
2 property across the street from Petitioner's house.¹

3 5. Respondent filed a written answer to the petition, denying that it had violated
4 any statute by refusing to produce any records. The Department referred the petition to
5 the Office of Administrative Hearings, an independent state agency, for an evidentiary
6 hearing.

7 6. A hearing was held on January 10, 2019. Petitioner submitted eight exhibits,
8 including a video, and testified. Respondent submitted one exhibit and presented the
9 testimony of three witnesses: (1) Michael "Mike" Olson, the President of Respondent's
10 board; (2) Gregg Arthur, a Director on Respondent's board; and (3) Kathy Andrews,
11 Respondent's community manager.

12 **HEARING EVIDENCE**

13 7. John Allen owned property on Puntenney Rd. that he was trying to sell in
14 2017 that was located across the street from Petitioner and Mr. Coates' house in
15 Respondent's development. On June 19, 2017, Mr. Allan received an email from a
16 purchaser about Mr. Coates threatening a purchaser. Mr. Allan subsequently shared
17 the email with members of Respondent's Board.

18 8. Mr. Olson testified that, although Respondent did not consider
19 communications to or among Board Directors to be official communications because no
20 member of Respondent ever asked the Board to take action about the incident and
21 neither Mr. Olson nor any Board Director ever suggested that they thought it was
22 appropriate for Respondent to take any action about the incident, Respondent
23 voluntarily provided an email string that was not kept as an official record but was
24 obtained from its President's and Directors' personal email servers regarding the June
25 19, 2017 incident.

26 9. Mr. Olson testified that because Mr. Coates has a history of threatening and
27 bullying neighbors and others in Respondent's development, Respondent redacted the

28 ¹ The petition generally alleges Respondent's failure to produce records responsive to Petitioner's records
29 request that did not provide any specific description of the records sought. The Administrative Law Judge
30 bases her statement of the issue on the evidence that the parties presented at the hearing. Petitioner
acknowledged that her records request was for documents showing the response to the June 19, 2017
incident.

names of the potential purchasers and real estate agent. The Administrative Law Judge has inferred the role of the redacted names based on context and other evidence offered at the hearing.

10. The email string provided in relevant part as follows:

Mon 6/19/2017 9:36 PM
From: [Redacted (Potential Purchaser)]
To: John Allen

Something really weird just happened. [Redacted] the Builder went out with his wife and architect and son to look at the property again. The neighbor across the street on the west side of Punttenney came out of his house and was belligerent and cursing at them telling them nothing was for sale around here and they shouldn't be snooping around. His wife said there were for sale signs right there and they were there to look at a lot and he was very verbally abusive to them. He called to let me know as a courtesy and said they are not sure if they are interested in the lot now since they would have to go by that house every day...

I just wanted to let you guys know and I'll keep you posted if anyone else has similar complaints. I planned on going out tomorrow to check on Flyers and add more flyers to the boxes. So I'll let you know if I hear from the guy.

From: [Redacted (Potential Purchasers)]
Jun 20, 2017 at 10:30 AM
Subject: Re: Puntenny Property
To: [Redacted (Real Estate Agent)]

Date: June 19th 2017, at approximately 5:00 pm.

. . . .

We entered the subdivision with notification of 3 realtors that we wanted to look at the property they had listed. Gate code was provided and in 2 vehicles we entered.

At the intersection of the lot Easement from the west entrance to said property listed by [redacted] my wife [redacted] and my Son were parked at entrance on Punttenney Dr, when an elderly man came out of a home to the west and began to yell and scream questioning why [we] were on premises.

1 The individual was verbally abusive and extremely
2 confrontational. Making rude remarks while cussing.

3 My wife told the individual that we were looking at property
4 and that we had notified realtors that we would be looking
5 today.

6 The individual continue[d] to display extreme aggressive
7 behavior, to include stating that there is not any properties
8 for sale on the area and that we needed to leave
immediately.

9 In an attempt to explain our situation the man continued to
10 display more aggressive behavior. So my wife and son
11 drove up to meet with myself in the other vehicle, in which
myself and my architect were told us what had occurred.

12 In closing when we returned one thing that stands out is
13 would we want to live next to this type of behavior of [a]
14 neighbor? The answer is no, this lot was one that we had in
15 our top 2 Lots as a consideration for purchase but due to the
16 volatile potential of this man, we have decided at this point to
remove it from our list.

17 [In] addition any property that would require us to drive past
18 or have the chance of contact with this individual.

19 We are seeking a quiet, peaceful, and neighborly place to
20 retire. Not a place with hostility and confrontation.

21

22 On June 20, 2017, at 8:41 AM, [Redacted Real Estate
23 Agent] write:

24 Thank you so much for informing me of the situation you
25 encountered yesterday with your family and Architect.
Again, I apologize.

26 I wrote an e-mail last night to the out-of-state owner and this
27 morning I received an e-mail back. He knows this person,
28 Wayne Coates, and said he has been an issue in the
29 neighborhood before. He has contacted Hoamco
30 [Respondent's property management company] and is
seeking legal [counsel] to stop this menace.

1 The owner, John Allen is asking a favor of you. Can you
2 please write something to me explaining what you told me
3 on the phone of his belligerent and obnoxious behavior
4 yesterday? He would like to have "proof" to show the HOA
5 that they need to put a stop to this behavior.

6
7 Also, Here is a map of his property and position as it relates
8 to the lot.

9 John will be coming into town this coming weekend
10 (Sunday), and we are meeting at the lot, probably Monday.
11 We could coordinate a meeting with you, your wife and
12 Architect next week when you return and see if it is a good fit
13 for you.

14 From Joe Zielinski
15 Subject: Re: LMR Problem
16 Date June 20, 2017 at 7:33:41 AM
17 To: Gregg Arthur, Mike Olson, Boris Biloskirka, Kathy
18 Andrews, Jim Robertson

19 Gregg and all,
20 The YCSO [Yavapai County Sheriff's Office] may file
21 charges against Wayne for disorderly conduct/harassment,
22 based on what happened to Mr. Allan and the others in
23 attendance, given Wayne's arrest record and prison term
24 and criminal history. It would involve a trip/call by Mr. Allan
25 to YCSO and an Incident Report. It would involve testimony
26 at . . . trial, since I don't believe Wayne would ever plead
27 guilty or accept a plea. The Arizona disorderly conduct
28 statute is 13-2904. Sub Paragraphs 1.3, and 4 seem
29 applicable. Unfortunately, I am familiar with the routine,
30 because of Wayne's actions against me. I don't believe
Wayne (and Patricia's) aggressive and disruptive behavior
will stop.

I've been trying to get an appointment with Shelia Polk's
office, either with her or one of her Assistant AGs to discuss
my own ongoing problems with Wayne and Patricia.

. . . .

From Gregg Arthur
To: Mike Olson, Joe Zielinski, Boris Biloskirka, Kathy
Andrews, Jim Robertson
Cc: John Allan
Sent Tuesday, June 20, 2017 6:34 AM

1 Subject: FW: LMR Problem

2 Dear LMR Board and HOAMCO

3 I was hoping that this would not be a situation we would
4 have to encounter with Wayne Coates and Patricia however
5 here it is on our door step. Many owners at LMR have
6 waited long and patiently for the market to recover so that
7 they can sell their properties or build the home that they may
8 have postponed until retirement and the timing was right. In
the Real Estate World, this is about as bad as it gets . . For a
property owner the same.

9 Wayne thru his actions appears to have interfered with and
10 destroyed a property sale. We need to meet and take action
11 on this matter as it will have a broad and chilling effect
12 amongst the realtor community (effecting us all) not to
13 mention the property owners. I feel Mr. Allen has been
14 harmed by Wayne Coates in this matter and we could not sit
by, action needs to be taken and quickly to prevent this from
happening again.

15

16 From: JOHN ALLAN

17 Date: Tuesday, June 20, 2017 at 6:11 AM

18 To: Gregg Arthur

19 Subject: LMR Problem

20 Good Morning Gregg

21 My wife and I are coming to Prescott and will arrive late
22 Saturday night. Will be there for 3 days or so. Wondering if
23 you would like to get together for lunch so as to finally have
a chance to meet. Please let me know. I would like to meet
with my LMR friend.

24 As you know, I have been trying to sell our other lot at LMR
25 with what I thought was little or no action. Yesterday, I rec'd
26 an e-mail from my realtor whom I had prodded into action
27 only to find that there is a major problem with a neighbor
28 who is apparently going out of his way to scare potential
29 buyers off. I am attaching the e-mail from my realtor and ask
30 that you share it with the BOD in that from my point of view,
an owner should not be allowed to interfere with a potential
sale of another owner's property. Would appreciate your

1 thoughts on the matter. Plan to send this to HOAMCO as
2 well and will employ legal action if necessary.

3

4 From: Michael Olson
5 To: Kathy Andrews
6 CC: Gregg Arthur, Jim Robertson, Joe Zielninski, Tom Reid
7 Subject: Re: LMRE questions
8 Date: Monday, February 26, 2018 4:08:47PM

9 I would be willing to consider a deal with Patricia. We will
10 help them with the gate if they take down their no
11 videotaping sign.

12 I have no comment on buying a Go Pro. In my eyes it would
13 be for [Josh's] personal protection. Video from his phone
14 would be just as efficient if need be.

15

16 On Feb 26, 2018, at 12:05 PM, Kathy Andrews wrote:

17 Hello everyone,
18 I just have a couple of questions for you.
19 Wayne & Patricia would like to hold a garage sale on March
20 16th & 17th. Do you have any issues with that? You could
21 deny their request to have the gate open for their sale to the
22 open violations. Your call.

23 I haven't heard back from anyone regarding the 'Go Pro' for
24 Compliance use. Is this something the Board wants to
25 authorize, or provide for Josh to use when he does his
26 inspections?²

27 11. Mike Olson is president of Respondent's Board. Gregg Arthur, Jim
28 Robertson, Joe Zielninski, and Tom Reid are Directors. Kathy Andrews is employed by
29 HOAMCO, Respondent's property manager. John Allan is a member of Respondent
30 who was trying to sell his lot in June 2017.

12. Petitioner pointed out that the email was sent to a quorum of the Board.
Petitioner argued that the Board was required to make a motion and arrive at a formal

² Respondent's Exhibit A; Petitioner's Exhibit 1. The emails are in reverse chronological order, with the most recent emails first.

1 decision if it decided it was not going to take action against her husband, Wayne
2 Coates, over the June 2017 incident.

3 13. Petitioner testified that, despite numerous requests, she never received
4 such an email. She also never received a document showing that he Board ever
5 addressed the incident in an executive session or at an open meeting. She also never
6 received the map referenced in the real estate agent's email to the potential purchasers
7 dated June 20, 2017, at 8:41 a.m.

8 14. Petitioner testified that because the Board had made a resolution to
9 electronically store documents evidencing Respondent's business,³ it must possess but
10 refused to produce the documents that she sought.

11 15. Petitioner played onto the record a video of a conversation between Joe
12 Zielninski and an YCSO's deputy. Mr. Zielninski described a letter that would be sent to
13 Santa Cruz about the incident. Petitioner testified that she never received such a letter
14 from Respondent.

15 16. Petitioner acknowledged that she never asked Mr. Zielninski for a copy of
16 the letter. Petitioner also acknowledged that she never contacted individual Board
17 members about any private communications that they may have had that concerned
18 herself and/or her husband.

19 17. Respondent never took any action against Petitioner or her husband
20 Wayne Coates as a result of the June 19, 2017 incident. The Board never voted on a
21 Go Pro camera and Respondent never purchased a camera for its compliance officer to
22 use to document violations. Wayne Coates was never criminally charged as a result of
23 the June 2017 incident.

24 18. Mike Olson testified that he received a copy of the email that Gregg Arthur
25 sent to the Board, with copies of the real estate agent's email about the June 2017
26 incident to John Allan. Only Gregg Arthur and Joe Zielninski responded to the email.
27 There was never any discussion about the Board acting on the issue or voting on taking
28 any action as a result of the incident.
29

30

³ See Petitioner's Exhibit 4.

1 19. Although Mr. Olson did not clearly remember an incident that had happened
2 more than a year earlier, he did not recall ever seeing a map. Mr. Olson testified that
3 the Board never discussed the incident in an executive session. He never met the
4 potential purchasers, but remembers calling them after he learned of the incident to
5 assure them that their names would not be given to Mr. Coates and Petitioner. Mr.
6 Olson testified that the names of the potential purchasers and real estate agent were
7 redacted because Mr. Coates had a history of bullying and intimidating people.
8 Otherwise, Respondent had produced to Complainant the private communications that
9 discussed the incident. Mr. Olson testified that the Board had never addressed the
10 June 19, 2017 incident formally or in its official capacity.

11 20. Mr. Arthur testified that he learned of the June 2017 incident from a phone
12 call from Mr. Allan. Mr. Arthur explained that he is a realtor and had sold the property to
13 Mr. Allan. Because the real estate market was in decline at the time, it was difficult for
14 property owners to sell their property. Mr. Arthur testified that no one wants to buy land
15 next to someone who acts like Mr. Coates, but that Mr. Allan eventually sold his lot to
16 someone else. .

17 21. Mr. Arthur testified that he did not receive any communications about the
18 incident other than Mr. Allan's phone call and the private emails that Respondent
19 voluntarily produced to Petitioner. The Board never discussed the incident at an
20 executive meeting or at a general membership meeting and did not take any action as a
21 result of the incident.

22 22. Ms. Andrews testified that she keeps records of Respondent's Board's
23 agendas, resolutions, minutes, expenditures, receipts, contracts, financials, and other
24 documents evidencing Respondent's or the Board's official actions or records. Ms.
25 Andrews testified that because the Board never voted to purchase a Go Pro camera for
26 the compliance officer, there are no other documents relating to it. However, the
27 records include the compliance reports that compliance officers write after their
28 inspections. Ms. Andrews testified that Respondent's records do not include any
29 documents that pertain to the June 19, 2017 incident.

30 **CONCLUSIONS OF LAW**

1 1. A.R.S. § 32-2199(B) permits an owner or a planned community organization
2 to file a petition with the Department for a hearing concerning violations of Title 33,
3 Chapter 16. This matter lies with the Department's jurisdiction.

4 2. Petitioner bears the burden of proof to establish that Respondent violated
5 A.R.S. § 33-1805 by a preponderance of the evidence.⁴ Respondent bears the burden to
6 establish affirmative defenses by the same evidentiary standard.⁵

7 3. "A preponderance of the evidence is such proof as convinces the trier of fact
8 that the contention is more probably true than not."⁶ A preponderance of the evidence is
9 "[t]he greater weight of the evidence, not necessarily established by the greater number of
10 witnesses testifying to a fact but by evidence that has the most convincing force; superior
11 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
12 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
13 than the other."⁷

14 4. A.R.S. § 33-1805(A) provides as follows:

15 Except as provided in subsection B of this section, all
16 **financial and other records of the association** shall be
17 made reasonably available for examination by any member
18 or any person designated by the member in writing as the
19 member's representative . . .

20 (Emphasis added.) A.R.S. § 33-1804(E)(4) provides that "[a]ny quorum of the board of
21 directors that meets informally to discuss **association business**, including workshops,
22 shall comply with the open meeting and notice provisions of this section without regard
23 to whether the board votes or takes any action on any matter at that informal meeting."

24 (Emphasis added.)

25 5. Petitioner did not establish that the Board ever took any action regarding her
26 husband Wayne Coates' June 19, 2017 interaction with the potential purchasers of John
27 Allan's land and their real estate agent. Although the Board members informally
28 discussed the event in private emails, which were provided to Appellant, the mere fact

29 ⁴ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
30 Ariz. 369, 372, 249 P.2d 837 (1952).

⁵ See A.A.C. R2-19-119(B)(2).

⁶ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁷ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 that a quorum of Board members may discuss a topic does not make it official Board
2 business, especially if they do not end up taking any action to make a matter board
3 business. Any other result would impose an unnecessary and burdensome requirement
4 on volunteers who are not compensated for their time who are may be neighbors and
5 who may also be friends, in addition to being Board members. If Petitioner felt that the
6 June 19, 2017 incident should be Board business, she could have brought it up at a
7 general membership meeting.

8 6. Because Petitioner did not establish that any official documents exist
9 regarding the June 19, 2017 incident that Respondent failed to produce to her, her
10 petition must be dismissed.

11 **ORDER**

12 IT IS ORDERED that Petitioners' petition is denied because she has not
13 established that Respondent violated A.R.S. § 33-1805(A) by or failing to produce to her
14 any documents that it possessed concerning the June 19, 2017 incident.

15 **NOTICE**

16 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
17 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S.**
18 **§ 41-1092.09, a request for rehearing in this matter must be filed with the**
19 **Commissioner of the Department of Real Estate within 30 days of the service of**
20 **this Order upon the parties.**

21 Done this day, January 22, 2019.

22 /s/ Diane Mihalsky
23 Administrative Law Judge

24 Transmitted electronically to:

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