

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Sandra Swanson & Robert Barnes,
4 Petitioners,

No. 21F-H2120020-REL-RHG

5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Circle G Ranches 4 Homeowners
7 Association,
8 Respondent.

9 **HEARING:** January 13, 2022 at 1:30 PM.

10 **APPEARANCES:** Kristin Roebuck Bethell, Esq. appeared on behalf of Sandra
11 Swanson & Robert Barnes ("Petitioners"). Samantha Cote, Esq. appeared on behalf of
12 Circle G Ranches 4 Homeowners Association ("Association" and "Respondent").
13 Petitioners observed.

14 **ADMINISTRATIVE LAW JUDGE:** Jenna Clark.

15
16 After review of the hearing record in this matter, the undersigned Administrative
17 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
18 FINAL ORDER to the Commissioner of the Arizona Department of Real Estate
19 ("Department").

20 **FINDINGS OF FACT**

21 **BACKGROUND AND PROCEDURE**

22 1. The Department is authorized by statute to receive and to decide petitions
23 for hearings from members of homeowners' associations and homeowners' associations
24 in the State of Arizona.

25 2. On or about September 22, 2020, Petitioners filed a single issue petition
26 with the Department which alleged that the Association failed to comply with a January 16,
27 2020, voting records request pursuant to Arizona Revised Statutes ("ARIZ. REV. STAT.") §
28 33-1805.¹

29 ¹ See Department's electronic file at HO21-20020_HOA_Petition.pdf; see *also* Department's electronic file
30 at HO21-20020_Payment.pdf.

1 3. On or about October 12, 2020, Respondent returned its ANSWER to the
2 Department whereby it denied Petitioners' claim.²

3 4. On October 27, 2020, the Department referred this matter to the Office of
4 Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing
5 on December 22, 2020,³ to determine whether a violation of ARIZ. REV. STAT. § 33-1805
6 occurred.

7 5. On May 17, 2021, the undersigned Administrative Law Judge issued an
8 ADMINISTRATIVE LAW JUDGE DECISION ("DECISION") to the Commissioner of the
9 Department.

10 6. On June 22, 2021, the Department received a DISPUTE REHEARING REQUEST
11 from Petitioners on the grounds that "[t]he findings of fact or decision is arbitrary,
12 capricious, or an abuse of discretion."⁴

13 7. On July 15, 2021, Petitioners' rehearing request was granted by the
14 Commissioner of the Department.⁵

15 8. On July 16, 2021, the Department received a Request for Reconsideration
16 from Respondent with attachments marked A and B.⁶ On July 19, 2021, the Department
17 notified Respondent that the statutes for homeowner's association dispute processes did
18 not specifically include procedures to address its request.⁷

19 9. On July 30, 2021, the Department issued a NOTICE OF REHEARING, and
20 referred this matter back to OAH for an evidentiary hearing schedule for September 07,
21 2021, regarding the same issue(s) as the previous hearing.⁸

22 ² See Department's electronic file at HO21-20020_Response_Petition.pdf.

23 ³ On November 23, 2020, the matter was continued and reset for February 02, 2021. However, because the
24 parties were unable to complete their presentation of evidence, the matter was continued to April 05, 2021.

25 ⁴ See HO21_20020_RHG_Request.pdf.

26 ⁵ See HO21_20020_RHG_Order_GranteeingRHG.pdf.

27 ⁶ See HO21_20020_RHG_Resp.RequestForReconsideration.pdf.

28 ⁷ See HO21_20020_RHG_Letter_RE_RequestForReconsideration.pdf.

29 ⁸ See HO21_20020_RHG_Notice_RHG.pdf. Additional notable administrative instances are as follows: On
30 August 05, 2021, Petitioners submitted a MOTION TO CONTINUE to OAH. On August 06, 2021, OAH issued a
MINUTE ENTRY – GRANTING CONTINUANCE which reset the matter to October 28, 2021, per Petitioners'
request. On August 10, 2021, OAH issued a PREHEARING CONFERENCE ORDER to the parties for a
conference on August 20, 2021. On August 17, 2021, Petitioners submitted a MOTION TO CONTINUE to OAH.
On August 17, 2021, OAH issued a PREHEARING CONFERENCE ORDER to the parties for a conference on
October 04, 2021. On October 04, 2021, OAH issued a MINUTE ENTRY regarding a prehearing conference
held that same date in Respondent's absence, which provided procedural information to the parties;

THE PARTIES AND GOVERNING DOCUMENTS

10. Respondent is a homeowners' association whose members own properties in the Circle G Ranches 4 residential real estate development located in Chandler, Arizona. Membership for the Association is comprised of Circle G Ranches 4 homeowners. The Association is governed by its Covenants, Conditions, and Restrictions ("CC&Rs")⁹, and overseen by a Board of Directors ("the Board"). The Association is also regulated by Title 33, Chapter 16, Article 1 of the ARIZ. REV. STAT.

a. Respondent is managed by Vision Community Management, LLC ("Vision").

11. Petitioners are Circle G Ranches 4 subdivision property owners and member of the Association.

ADDITIONAL EVIDENCE

12. On October 04, 2017, the Board approved and adopted the Rule Requiring Secret Ballots which obligated Members to vote on special assessments via secret ballot.¹⁰

1. On January 06, 2020, Petitioners submitted a letter to Vision's attorney, Clint Goodman, regarding a verbal request they had submitted to Vision on January 02, 2020.¹¹ Specifically, Petitioners asked to "view the votes" for proposed Declaration amendment 6.4 regarding cumulative voting.

2. On January 13, 2020, the Board held a meeting, in part, to address Petitioners' request. Meeting Minutes note that the "CC&R amendment to prohibit cumulative voting received 118 consent signatures."¹² Because the Board was concerned regarding Member's expectation of privacy regarding non-public information, the Board voted 8:1 to require Petitioners to sign a nondisclosure agreement ("NDA") prior to being permitted to view the ballots.¹³ Petitioners declined.

including all pertinent deadline dates. On October 11, 2021, Respondent submitted a MOTION TO CONTINUE to OAH. On October 18, 2021, OAH issued a MINUTE ENTRY – GRANTING CONTINUANCE which reset the matter to January 13, 2022, per Respondent's request.

⁹ See Petitioners Exhibit 1.

¹⁰ See Petitioners' Exhibit 3.

¹¹ See Petitioners' Exhibit 9.

¹² See Petitioners' Exhibit 11.

¹³ See Petitioners' Exhibits 8 and 11.

- a. No Member had given Vision consent to release their voting information.
- b. While it has never been Petitioners' intention to harass other Members of the Association, many homeowners have complained to Vision regarding behaviors they have labeled "harassing" by Petitioners.

3. On January 16, 2020, counsel for Petitioners wrote Respondent a letter requesting, in pertinent parts, "All of the ballots and other related documents ... from the vote that occurred on or about October 28, 2019, regarding the increase in dues."¹⁴ The letter also requested all "notice of written consent for CC&R Amendment & written consent forms/ballots for the Proposed Declaration Amendment regarding cumulative voting which occurred in December 2019."¹⁵

4. On January 30, 2020, Mr. Goodman issued a letter to Petitioners which noted in pertinent part, "The Association's position is that it has to balance your clients' requests against the privacy and safety of all Owners within the Association. The Board is concerned with the personal information contained on the written consent forms or other documents and fears that individual members will be retaliated against or harassed based on a member's decision to support, or not support, the matters up for a decision. This concern is not specific to your clients but is a general concern for anyone viewing records of the Association that contain specific information about the members in the Association."¹⁶ Petitioners were further advised that "[T]he Association will make the records identified in your letter available for your clients' inspection at a mutually acceptable time."¹⁷

5. On February 07, 2020, Petitioners went to Mr. Goodman's office to review the requested documentation. Petitioners only reviewed the cumulative voting records, totaling about 122pgs, for approximately 3.5hrs, during which time they took note of how Members voted.¹⁸ Petitioners did not review the documentation related to the assessment.

¹⁴ See Petitioners' Exhibit 12.

¹⁵ *Id.*

¹⁶ See Petitioners' Exhibit 13.

¹⁷ *Id.*

¹⁸ See Petitioners' Exhibits 6-7.

- 1 a. Secret ballots had been mailed to Members with preaddressed return
2 envelopes. Upon receipt, Vision opened each envelope and removed the
3 ballot to protect the identity of the voting Member. Only Vision staff was privy
4 to the contents of the ballot envelopes.
- 5 b. Petitioners were provided with 2 stacks of documents: redacted ballots and
6 unredacted envelopes. Although Petitioners were given all of the
7 information they sought, they were unable to discern which ballots went with
8 which envelopes as said information was provided separately.

9 6. On August 05, 2020, Petitioners, through their attorney, issued a letter to
10 Respondent alleging that “For both these votes the secrecy of the ballots were optional or
11 the vote could be returned to individual Board members by way of email” and demanded
12 “unredacted ballots for the vote to increase assessments, along with all envelopes
13 including those which contain the names, addresses and voter signatures, and all other
14 related documents in addition to the sign-in sheet, which took place on Monday, October
15 29, 2019.”¹⁹ Petitioners further specified that their request was made for a 10:00 a.m. in-
16 person inspection at Vision’s offices on August 11, 2020, August 12, 2020, or August 17,
17 2020.

- 18 a. No additional documentation was provided by Respondent to Petitioners.

19 REHEARING EVIDENCE

20 7. The Department’s electronic rehearing file for 21F-H2120020-REL was
21 admitted into the record; including Petitioners’ Exhibits 1-9 & 11-16, Respondent’s
22 Exhibits 1, 3-4 & 8-9, Petitioners’ Pretrial Memo, Respondent’s Pretrial Memo, Petitioners’
23 Motion in Limine, and Respondent’s Response. The Department’s electronic rehearing
24 file for 21F-H2120020-REL-RHG was also admitted into the record; including Petitioners’
25 rehearing petition and the Notice of Hearing.

26 8. Neither party offered new evidence or witness testimony. Instead, each
27 party offered the following oral arguments –
28

29 ¹⁹ See Petitioners’ Exhibit 16.

- 1 a. Petitioners beseeched the Tribunal to overturn its prior decision and issue a
2 decision in favor of Petitioners. Petitioners argued that ARIZ. REV. STAT. §
3 33-1805 required unredacted copies of requested documents, and that in
4 failing to provide original copies of documents Respondent had acted in
5 violation of the statute. Specifically, Petitioners argued that methodology
6 was not denoted in the statute; that the statute delineated what records
7 were to be produced, not how those records should be produced.
8 Petitioners contend that the Association may withhold some documents, but
9 said documents must related to an enumerated exception. Because
10 Respondent's proposed NDA was not supported by the statute as being an
11 enumerated exception, Petitioners argued that Respondent had no right to
12 withhold the requested documents predicated on Petitioners agreement or
13 adherence to signing the NDA. Thus, by providing redacted copies of
14 documents, Respondent had not made the documents "reasonably
15 available" to Petitioners as required by statute, and had instead erected an
16 unlawful barrier. Per Petitioners, the sets of ballots and envelopes
17 Respondent provided did not satisfy their request, because they were
18 unable to cross reference (i.e. match) the votes with the purported voters.
19 To that end, Petitioners further argued that the ballots at issue in their
20 request were not "secret ballots" because homeowners names appeared on
21 them and/or some homeowner's signed them. Petitioners opined that voters
22 could not have reasonably held an expectation of privacy.
- 23 b. Respondent beseeched the Tribunal to affirm its prior decision in
24 Respondent's favor. Respondent argued that it was not in violation of ARIZ.
25 REV. STAT. § 33-1805 because the statute did not state how requested
26 records were to be made available, and Respondent had timely provided
27 the totality of records Petitioners had requested. Respondent argued that all
28 of the information and documentation Petitioners requested had been timely
29 provided to them. Respondent argued that ARIZ. REV. STAT. § 33-1805 did
30 not require Respondent to fulfill Petitioners' documentation request in a

1 manner dictated by Petitioners, and that Respondent; who was responsible
2 for protecting its members as well as adhering to its duty to comply with
3 pertinent laws, devised a means to satisfy all of its duties and obligations by
4 supplying Petitioners with 2 sets of redacted records, that amounted to 1 set
5 of unredacted records, so Petitioners could cross reference and discern the
6 information they sought. Respondent opined that its proposed NDA was
7 irrelevant, because the request was timely filled in spite of the fact that
8 Petitioners declined to sign it, but argued that it was reasonably and
9 necessary to protect members' expectation of privacy regarding their secret
10 ballot votes.

11 **CONCLUSIONS OF LAW**

12 1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV.
13 STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a
14 planned community association. The owner or association may petition the department
15 for a hearing concerning violations of community documents or violations of the statutes
16 that regulate planned communities as long as the petitioner has filed a petition with the
17 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

18 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
19 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested
20 case at bar. OAH has the authority to interpret the contract between the parties.²⁰

21 3. In this proceeding, Petitioner bears the burden of proving by a
22 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1805.²¹
23 Respondent bears the burden of establishing any affirmative defenses by the same
24 evidentiary burden.²²

25 4. "A preponderance of the evidence is such proof as convinces the trier of fact
26 that the contention is more probably true than not."²³ A preponderance of the evidence is
27 "[t]he greater weight of the evidence, not necessarily established by the greater number of

28 ²⁰ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ²¹ See Arizona Administrative Code ("ARIZ. ADMIN. CODE") R2-19-119.

30 ²² *Id.*

²³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 witnesses testifying to a fact but by evidence that has the most convincing force; superior
2 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
3 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
4 the other.”²⁴

5 5. In Arizona, when construing statutes, we look first to a statute's language as
6 the best and most reliable index of its meaning. If the statute's language is clear and
7 unambiguous, we give effect to that language and apply it without using other means of
8 statutory construction, unless applying the literal language would lead to an absurd result.
9 Words should be given “their natural, obvious, and ordinary meaning.”²⁵

10 6. Statutes should be interpreted to provide a fair and sensible result.
11 *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,
12 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and unreasonable
13 construction on statutes.”).

14 7. When the legislature uses a word or words in one section of a statute, but
15 not another, the tribunal may not read those words into the section where the legislature
16 did not include them.²⁶ Unless defined by the legislature, words in statutes are given their
17 ordinary meanings.²⁷

18 8. Each word, phrase, clause, and sentence of a statute or rule must be given
19 meaning so that no part will be void, inert, redundant, or trivial.²⁸

20 9. ARIZ. REV. STAT. § 33-1805 provides, in relevant parts, as follows:

21 A. Except as provided in subsection B of this section, ***all financial and***
22 ***other records of the association shall be made reasonably available***
23 ***for examination by any member*** or any person designated by the member
24 in writing as the member's representative. The association shall not charge
25 a member or any person designated by the member in writing for making
26 material available for review. ***The association shall have ten business***
27 ***days to fulfill a request for examination.*** On request for purchase of
28 copies of records by any member or any person designated by the member
29 in writing as the member's representative, ***the association shall have ten***
30

24 BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

25 *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

26 See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

27 *Id.*

28 See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 ***business days to provide copies of the requested records.*** An
2 association may charge a fee for making copies of not more than fifteen
3 cents per page.

4 (*Emphasis added.*)

5 10. Unfortunately, because Petitioners spliced the issue into 3 subparts, the
6 question of whether a violation of ARIZ. REV. STAT. § 33-1805 took place in the underlying
7 matter was skewed, as Petitioners only paid to have one issue adjudicated. This
8 conundrum was solved, overall, based on the substantive evidence of record.

9 11. Per the credible and relevant evidence of record, the Tribunal holds as
10 follows:

- 11 a. Respondent's request that Petitioners sign an NDA does not constitute a
12 violation of made ARIZ. REV. STAT. § 33-1805.
- 13 b. Petitioners submitted two separate records requests to Respondent; on
14 January 06, 2020, regarding the October 2019 cumulative voting, and again
15 on January 16, 2020, regarding the December 2019 assessment. Respondent was required to comply with Petitioners' first request by
16 January 21, 2020, and was also required to comply with Petitioners' second
17 request by January 31, 2020.²⁹ Mr. Goodman's response to Petitioners'
18 records requests was issued on January 30, 2020. Petitioners chose to
19 examine the documents in question on February 07, 2020. Because
20 Petitioners did not establish that said documents were available for review
21 prior to February 07, 2020, Respondent cannot be held in violation of ARIZ.
22 REV. STAT. § 33-1805.
- 23 c. Notwithstanding Respondent's legitimate interests in protecting the privacy
24 of its Members, ARIZ. REV. STAT. § 33-1805's 10-day copy provision is
25 inapplicable in this matter.
- 26 d. The manner in which Respondent provided the documents in question to
27 Petitioners do not violate ARIZ. REV. STAT. § 33-1805, as the record reflects

28
29 ²⁹ January 20, 2020, was a state and federally recognized holiday, which is not included in the 10-day
30 calculation under ARIZ. REV. STAT. § 33-1805.

1 that Petitioners timely received the totality of the documents from their
2 records request(s). Moreover, because there is no evidence in the record to
3 suggest Respondent did not make the documents at issue “reasonably
4 available” for Petitioners’ review between January 21, 2020, and January
5 31, 2020, it cannot be concluded that a violation of ARIZ. REV. STAT. § 33-
6 1805 exists.

7 12. While Respondent’s methodology of document delivery to Petitioners may
8 have not been ideal, under the totality of underlying circumstances the decision
9 reasonable and within the requirements of the applicable statute(s).

10 13. Therefore, the undersigned Administrative Law Judge must again conclude
11 that because Petitioners did not sustain their burden of proof that the Association
12 committed a violation of ARIZ. REV. STAT. § 33-1805, their petition must be denied.

13 **FINAL ORDER**

14 Based on the foregoing,

15 **IT IS ORDERED** that Petitioners’ petition is denied.

16 **NOTICE**

17 **This ADMINISTRATIVE LAW JUDGE ORDER (“ORDER”), having been issued as a**
18 **result of a rehearing, is binding on the parties.³⁰ A party wishing to appeal this order**
19 **must seek judicial review as prescribed by ARIZ. REV. STAT. § 41-1092.08(H) and Title**
20 **12, Chapter 7, Article 6. Any such appeal must be filed with the Superior Court**
21 **within thirty-five (35) days from the date when a copy of this ORDER was served**
22 **upon the parties.³¹**

23 Done this day, February 02, 2022.

24 **Office of Administrative Hearings**

25
26 /s/ Jenna Clark
27 Administrative Law Judge

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29 ³⁰ See ARIZ. REV. STAT. § 32-2199.02(B).

30 ³¹ See ARIZ. REV. STAT. § 12-904(A).

Transmitted electronically to:

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