

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Roberta J Stevenson-McDermott

No. 22F-H2222033-REL

4 Petitioner

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 vs.

6
7 Four Palms Homeowners

8 Respondent

9
10 **HEARING:** June 27, 2022

11 **APPEARANCES:** Petitioner Roberta J. Stevenson-McDermott appeared on her
12 own behalf. Respondent Four Palms Homeowners was represented by Araceli
13 Rodriguez, Esq. appearing via Google Meet.

14 **ADMINISTRATIVE LAW JUDGE:** Adam D. Stone

15
16 **FINDINGS OF FACT**

17 1. Four Palms Homeowners (Respondent) is an association of 74
18 condominium unit owners located in Yuma, Arizona.

19 2. On or about February 4, 2022, Roberta J. Stevenson-McDermott
20 (Petitioner) filed a petition with the Arizona Department of Real Estate (Department),
21 alleging that Respondent had violated the provisions of A.R.S. 33-2199 and A.R.S. § 33-
22 1258. Petitioner indicated they were claiming one issues in the Petition and paid the
23 required \$500.00 filing fee.

24 3. The Notice of Hearing in this matter set forth the issues to be determined as
25 follows:

26 The dispute between Petitioner and Respondent arises from A.R.S. § 33-
27 1258. The Petitioner states in the petition, "The 4 Palms Homeowners
Association has abdicated their duties as of November 2019"

28 4. At hearing, Petitioner testified on her own behalf and six exhibits were
29 admitted.
30

5. Petitioner testified that over time, she had requested yearly audit reports, budget information, 1099's, information regarding attorney's fees, financial reports and tax returns. She testified that since 2019, she has failed to receive the same.

6. In addition, Petitioner testified that she had never received notification that the documents were available to her, and was never allowed to review official records. She testified further that the Treasurer at the time would make excuses as to why she would be unable to view the records.

7. Petitioner argued that she was entitled to purchase the requested documents and that the bank statements should be provided to her.

8. Respondent offered the testimony of Faye Burson, Mario Salinas and eight exhibits were entered into evidence.

9. Ms. Burson was the current Vice President of the Board. She testified that she never personally received a request for information from Petitioner.

10. Mr. Salinas currently served as the Treasurer of the Board. Mr. Salinas testified that he received a request for records from Petitioner and that he uploaded the same to “Buildium” (software used by the Board and the residents). Mr. Salinas also testified that copies of the yearly financial statements were handed out to those in attendance at the annual meeting as well as attached to the minutes from the meeting.

11. Mr. Salinas testified that he did not supply the bank statements to Petitioner as she did not request the same. Mr. Salinas testified that he was concerned that if the bank statements were disclosed, there was the possibility of using the same to harass other owners who were delinquent with their monthly dues.

12. Finally, the attorney for Respondent argued that it had provided the financial records via Buildium, and offered that Petitioner may review the same in person, however, Petitioner never followed through with the offer. Lastly, Petitioner had not made a written request for the records.

CONCLUSIONS OF LAW

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

1 2. In this proceeding, Petitioner bears the burden of proving by a
2 preponderance of the evidence that Respondent violated A.R.S. § 33-1258. A.A.C. R2-
3 19-119.

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

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

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

22 B. Books and records kept by or on behalf of the association
23 and the board may be withheld from disclosure to the extent that the
24 portion withheld relates to any of the following:

25 1. Privileged communication between an attorney for the
26 association and the association.

27 2. Pending litigation.

28 3. Meeting minutes or other records of a session of a board
29 meeting that is not required to be open to all members pursuant to
30 section 33-1248.

 4. Personal, health or financial records of an individual
member of the association, an individual employee of the association
or an individual employee of a contractor for the association,
including records of the association directly related to the personal,
health or financial information about an individual member of the
association, an individual employee of the association or an
individual employee of a contractor for the association.

 5. Records relating to the job performance of, compensation
of, health records of or specific complaints against an individual

employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

5. When construing a statute, the primary goal is to ascertain the legislature's intent. *State ex rel. Thomas v. Contes*, 216 Ariz. 525, 527, 169 P.3d 115, 117 (App. 2007). This is accomplished by first looking to the text of the statute. *Id.* If the language is clear, its plain meaning is ascribed, unless it would lead to absurd results. *Id.*; *Marsoner v. Pima County*, 166 Ariz. 486, 488, 803 P.2d 897, 899 (1991). If ambiguity exists, secondary principles of statutory construction are used to determine the intent. *Contes*, 216 Ariz. at 527.

6. A.R.S. § 33-1258 requires that association documents, with certain identified exceptions, "shall be made reasonably available for examination by any member...in writing". Nothing in the statute however, grants a condominium unit owner the right to peruse all of the association's documents at will as some documents may properly be withheld.

7. Petitioner testified that she had not requested any financial records since 2019. Further, the preponderance of the evidence showed that she has failed to make any such request in writing as the statute requires.

8. Therefore, *at this time*, Petitioner failed to establish that she was denied access to the financial records. If Petitioner were to make a proper written request for documents, the Tribunal expects Respondent to comply with A.R.S. § 33-1258. If at that time Respondent fails to comply with Petitioner's request, Petitioner is free to file another Petition with the Department.

ORDER

IT IS ORDERED that Petitioner's petition denied.

IT IS FURTHER ORDERED Respondent is directed to comply with the requirements of A.R.S. § 33-1258 going forward upon a proper written request from Petitioner.

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.

Done this day, July 8, 2022.

/s/ Adam D. Stone
Administrative Law Judge

Transmitted electronically and sent via mail on July 8th, 2022 to:

Louis Dettorre, Commissioner
Arizona Department of Real Estate
100 N. 15th Avenue, Suite 201
Phoenix, Arizona 85007

Roberta J Stevenson-McDemott
1423 W 17th St.
Yuma, AZ 85364

Araceli Rodriguez
682 S 4th Ave
Yuma, AZ 85364

Four Palms Homeowners
2490 W Yowell Court, #75
Yuma, 85364

By Miranda Alvarez
Legal Secretary