

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of

No. 22F-H2222046-REL

4 Katherine Belinsky

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 Petitioner

6
7 vs

8 Del Cerro Condos

9 Respondent

10
11 **HEARING:** July 1, 2022

12 **APPEARANCES:** Petitioner Katherine Belinsky appeared on her own behalf.
13 Alessandra Wisniewski appeared via Google Meet on behalf of Respondent Del Cerro
14 Condos.

15 **ADMINISTRATIVE LAW JUDGE:** Adam D. Stone
16

17 **FINDINGS OF FACT**

18 1. Del Cerro Condos (Respondent) is an association of 14 condominium unit
19 owners located in Lake Havasu, Arizona.

20 2. On or about April 18, 2022, Katherine Belinsky (Petitioner) filed a petition
21 with the Arizona Department of Real Estate (Department), alleging that Respondent had
22 violated the provisions of A.R.S. 33-1805. Petitioner indicated it was claiming one issue in
23 the Petition and paid the 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 Petitioner, in her Homeowners Association (HOA) Dispute Process
27 Petitioner (Petition) against the Respondent is alleging failure to provide
28 books, records and accounts in violation of A.R.S. § 33-1805(A). Petitioner
29 is requesting '[Respondent] to abide by Arizona statute specified...'
30

1 4. At hearing before the Office of Administrative Hearings, an independent
2 State agency, Petitioner testified on her own behalf.

3 5. Petitioner testified that over the past three to four years, there had been no
4 responses to her records requests by Respondent. Specifically, Petitioner testified that
5 her last records request was in March 2022, but has been frustrated as the property
6 manager changes frequently, and there are many different addresses as to where to send
7 the monthly dues.

8 6. On the monthly dues issue, Petitioner testified that she does not know which
9 bank Respondent uses, and was unsure as to how the money was spent.

10 7. Finally, Petitioner testified that none of the items she asked for she was
11 given, and if there was a disclosure, it had been doctored.

12 8. Respondent offered the testimony of Alessandra Wisniewski and Amanda
13 Butcher. In addition, twenty-four exhibits were entered into evidence.

14 9. Ms. Wisniewski was the current Vice President of the Board. She testified
15 when she first purchased her unit in March 2021, she was approached to become a
16 member of the Board. She quickly discovered that there were numerous issues with the
17 units as they had been built in 1969, and had not had much upkeep. In addition, there was
18 only \$1,000.00 in the reserve bank account.

19 10. Next, Ms. Wisniewski testified that the Londonderry management company,
20 notified the Board in August of 2021 that they no longer wished to be the property
21 manager, so she removed them from the bank account. Thus, for the next two months
22 she and Amanda Butcher ran the HOA, until a new property manager, (PMI), took over
23 towards the end of September 2021.

24 11. Ms. Wisniewski then testified that due to the condition of the property, the
25 Board had decided to issue a special assessment of \$5,000.00 to the unit owners. After
26 the unit owners were notified by mail, Petitioner then contacted PMI in February 1, 2022,
27 stating that she would not be paying the special assessment.

28 12. Ms. Wisniewski testified further that on March 9, 2022, Petitioner e-mailed
29
30

1 correspondence to PMI indicating that she had never been sent bank statements.¹ Later
2 that day, PMI responded that this was the first time she requested the documents, and
3 attached financial statements dating back to September 2021. Further, Petitioner was
4 informed that if she wanted any earlier statements, she would have to set up an
5 appointment to pick up the documents because PMI did not have the same on hand.² Ms.
6 Wisniewski testified that Petitioner never followed through with this request.

7 13. Ms. Wisniewski testified that also on March 9, 2022, Petitioner sent her an
8 e-mail requesting the same documentation.³ Ms. Wisniewski testified that she replied that
9 same day and reminded Petitioner that some documents had already been produced to
10 her at the Board meeting, and they were working on compiling the rest of the documents.⁴

11 14. Ms. Wisniewski testified that on March 23, 2022 she sent an e-mail to
12 Petitioner reminding her to set up an appointment with PMI to review the records she
13 requested.⁵ Ms. Wisniewski continued that on March 25, 2022, Petitioner again e-mailed
14 PMI requesting the information as well as the community governing documents.⁶ Ms.
15 Wisniewski testified that PMI responded to Petitioner on March 28, 2022, and attached
16 the documents it had in its possession, and reminded Petitioner that she received some
17 information already and that other information would be made available at the office for
18 her review if she made an appointment.⁷

19 15. Ms. Wisniewski testified that PMI resigned from its role as property manager
20 in April 20, 2022, and a new property manager was hired, namely Community Financials.
21 Ms. Wisniewski testified that on May 17, 2022, Petitioner informed Community Financials
22 of her previous records request, and gave them 10 days to comply with the same.⁸

23 16. Next, Respondent presented the testimony of Amanda Butcher. Ms.
24 Butcher currently served as the President of the Board. She testified that the Board and
25 the management companies very promptly responded to Petitioner's requests and she

26 ¹ See Respondent's Exhibit 3.

27 ² See Exhibit 3-A.

28 ³ See Exhibit 4.

29 ⁴ See Exhibit 4-A.

30 ⁵ See Exhibit 4-B.

⁶ See Exhibit 5.

⁷ See Exhibit 5-A

⁸ See Exhibit 7.

1 personally sent the bank statements to Petitioner on March 4, 2022.⁹ Ms. Butcher testified
2 further that the association still uses Glacier/Foothills Bank and that she provided the
3 most recent statements to Petitioner the day before the hearing.

4 **CONCLUSIONS OF LAW**

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

7 2. In this proceeding, Petitioner bears the burden of proving by a
8 preponderance of the evidence that Respondent violated A.R.S. § 33-1805. A.A.C. R2-
9 19-119.

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

14 4. A.R.S. § 33-1805 provides, in relevant part, as follows:

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

28 5. When construing a statute, the primary goal is to ascertain the legislature's
29 intent. *State ex rel. Thomas v. Contes*, 216 Ariz. 525, 527, 169 P.3d 115, 117 (App.
30 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,

⁹ See Exhibit 8.

1 secondary principles of statutory construction are used to determine the intent. *Contes*,
2 216 Ariz. at 527.

3 6. A.R.S. § 33-1805 requires that association documents, with certain
4 identified exceptions, “shall be made reasonably available for examination by any
5 member...in writing”. Nothing in the statute however, grants a condominium unit owner
6 the right to peruse all of the association’s documents at will as some documents may
7 properly be withheld.

8 7. In this case, Petitioner clearly made her requests in writing, however,
9 Petitioner failed to establish that she was denied access to the financial records. Multiple
10 exhibits demonstrated the Board and property manager responding to her requests timely
11 and with some documents attached. Further, the preponderance of the evidence
12 demonstrates that Petitioner was always granted an opportunity to make an appointment
13 to review the other records and she failed to do so. Further there was no evidence
14 presents that her requests for appointments were denied.

15 **ORDER**

16 **IT IS ORDERED** that Petitioner’s petition denied.

17 **NOTICE**

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

23 Done this day, July 14, 2022.

24 /s/ Adam D. Stone
25 Administrative Law Judge
26

27 Transmitted electronically to:
28

29 Louis Dettorre
30

Commissioner
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By: Miranda Alvarez
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