

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 In the Matter of:

No. 26F-H049-REL

3
4 Brandon Rush,

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 **Petitioner,**

6 v.

Stone Butte Homeowners Association,

7 **Respondent.**

8
9 **HEARING:** July 10, 2026 at 1:00pm

10 **APPEARANCES:** Petitioner Brandon Rush appeared on his own behalf.

11 Thomas Emele appeared on behalf of Respondent Stone Butte Homeowners
12 Association with witnesses Jeffrey Gates, Michael Levenbaum, and Abby Mendez.

13 **ADMINISTRATIVE LAW JUDGE:** Nicole Robinson

14 **EXHIBITS ADMITTED INTO EVIDENCE:** Arizona Department of Real Estate
15 Packet ("Packet"), Petitioner's Hearing Brief and Exhibits A through K. Respondent
16 Exhibits 1 through 5.

17 **FINDINGS OF FACT**

18 **BACKGROUND AND PROCEDURE**

19 1. The Arizona Department of Real Estate ("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. On or about February 14, 2026, Brandon Rush ("Petitioner") filed a one-
23 issue petition with the Department which alleged that Stone Butte Homeowners
24 Association ("Respondent" or "Association") violated its Covenants, Conditions, and
25 Restrictions ("CC&Rs") Article 4, Section 4.9.¹

26 3. The relief requested by Petitioner, other than ordering Respondent to pay
27 to Petitioner the filing fee required by ARIZ. REV. STAT. § 32-2199.01 if Petitioner
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29
30 ¹ See Packet at ADRE Petition and Supporting Docs.

1 prevailed, included to Order Respondent to abide by the section of the planned
2 community document specified.²

3 4. On March 30, 2026, the Department sent a Homeowner's Association
4 ("HOA") Notice of Petition to Respondent which informed Respondent of the petition
5 initiated against it.³ In addition, the petition informed Respondent to send a timely
6 response to the Department and to Petitioner no later than April 19, 2026.⁴

7 5. On or about April 17, 2026, Respondent returned its ANSWER to the
8 Department whereby it denied Petitioner's claims.⁵

9 6. On or about May 13, 2026, the Department referred this matter to the
10 Office of Administrative Hearings ("OAH"), an independent state agency, for an
11 evidentiary hearing to address the issues set forth as follows:

12 The Petitioner's allegation within the petition states, "The Association has
13 breached its fiduciary duty by arbitrarily refusing to enforce CC&R Article
14 4, Section 4.9 (Nuisance); despite 14 months of documented violations
15 and objective 'duration-proof' video evidence (12/2024-02/2026), the
16 Board issued a final refusal on 02/12/2026 based on a single 15-minute
17 anecdotal observation, and Petitioner now seeks an order for enforcement
18 and reimbursement of the \$500 filing fee."⁶

19 **THE PARTIES AND GOVERNING DOCUMENTS**

20 7. Respondent is a planned community association whose members own
21 properties in the North View at Stone Butte residential real estate development located
22 in Phoenix, Maricopa County, Arizona.⁷ The community is currently managed by
23 Associated Property Management ("APM") since November 2024.

24 8. Petitioner purchased his home around December 2022 and is a property
25 owner and a member of the Association. Petitioner lives in the home with his wife, child
26 and a Jack Russell terrier/Corgi mix dog. Petitioner has neighbors to the left and right
27 of his house.

28 ² *Id.*

29 ³ See Packet at Notice of Petition.

30 ⁴ *Id.*

⁵ See Packet at Respondent NOP Response.

⁶ See Packet at ADRE Petition and Supporting Docs.

⁷ *Id.*

1 9. In this matter, the governing documents include the Association CC&Rs
2 which provides, in pertinent part, this section:

3 **CC&R Article 4, Section 4.9 - Animals**

4 No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot,
5 except that a reasonable number of dogs, cats, household birds or other
6 generally recognized house pets may be kept on a Lot if they are kept,
7 bred or raised thereon solely as domestic pets and not for commercial
8 purposes. The Board shall have the authority to determine what is a
9 reasonable number of dogs, cats, household birds or other generally
10 recognized house pets for any particular Lot, and the Board's
11 determination shall be final. All dogs, cats and other pets permitted to
12 leave an Owner's Lot if such dog is at all times kept on a leash not to
13 exceed six feet in length and is not permitted to enter upon any other Lot.
14 Any individual bringing a dog onto the Common Area shall immediately
15 remove any feces deposited on the Common Area by the dog. The Board
16 may restrict portions of the Common Area on which dogs are permitted.

17 No bird, fowl, poultry, livestock or other animal shall be allowed to make
18 an unreasonable amount of noise or to become a nuisance...If the Board
19 elects to do so, the Board may conclusively determine, in its sole and
20 absolute discretion, whether, for the purposes of this Section, a particular
21 bird, fowl, poultry, livestock or other animal is a nuisance of making an
22 unreasonable amount of noise. Any decision rendered by the Board shall
23 be enforceable in the same manner as other restrictions set forth in the
24 Declaration.⁸

25 **HEARING EVIDENCE**

26 10. Petitioner testified on his own behalf. Respondent presented the
27 testimony of Abby Mendez, Jeffrey Gates, Thomas Emele, and Michael Levenbaum.
28 Administrative notice was taken of the Department's electronic file and NOTICE OF
29 HEARING. The substantive evidence of record is as follows:

- 30 a. On December 24, 2024, Petitioner emailed the Association requesting a
complaint form and informing the Association of the barking dog(s),
owned by Abby Mendez, his neighbor, located approximately two doors
down.⁹ The Association advised Petitioner to fill out the attached form
and stated, "I will cite the owners."¹⁰

⁸ See Packet at ADRE Petition and Supporting Docs, pdf page 213.

⁹ *Id.* at pdf page 6.

¹⁰ *Id.*

- 1 b. On December 27, 2024, Petitioner informed the Association that he has
2 videos of the dog(s) barking, the “ongoing problems.”¹¹ The Association
3 replied and informed Petitioner that Ms. Mendez was sent a notice and
4 to continue to document the matter.¹²
5 c. On February 12, 2025, Petitioner informed the Association that there
6 were still issues with the “barking dogs” and that he would start a City of
7 Phoenix barking dog petition with neighbors.¹³
8 d. On February 13, 2025, the Association informed Petitioner to fill out
9 another complaint form and they would cite the owner again.¹⁴
10 e. On March 23, 2025, Petitioner emailed the Association and attached
11 another complaint form stating that he wanted to have a discussion
12 about “the owners need for them to remove their dog.”¹⁵
13 f. On March 24, 2025, the Association informed the Petitioner that they
14 will cite the owner again.¹⁶
15 g. On October 15, 2025, Petitioner emailed the Association, informing
16 them that the dog was barking throughout the evening and asked if he
17 needed to fill out another complaint form.¹⁷ The Association responded,
18 “Yes, That is the only way I can cite them.”¹⁸
19 h. On November 4, 2025, Petitioner emailed the Association about the
20 continued activity of the dog barking “outside for hours on end,” and
21 asked what steps need to be taken to invoke CC&Rs Section 4.9.¹⁹ The
22 Association asked Petitioner to fill out a form, and they would send out
23 another violation letter.²⁰
24 i. On December 10, 2025, Petitioner complained of dogs and the
25 Association told him to fill out another form and they would “continue
26 escalating violations to fines.”²¹
27 j. On December 17, 2025, Petitioner sent in another complaint form to the
28 Association and asked if the HOA can step in further due to the
29 “constant nuisance.”²²
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¹¹ *Id.* at pdf page 8.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 14.

¹⁹ *Id.* at 15.

²⁰ *Id.*

²¹ *Id.* at 18.

²² *Id.* at 21.

- 1 k. On December 18, 2025, the Association informed Petitioner that the
2 matter would be put on the closed session agenda for discussion and
3 they would continue to cite the owner.²³
4 l. On December 20, 2025, Petitioner sent in another complaint form.²⁴
5 m. On December 29, 2025, Petitioner sent in another complaint form.²⁵
6 The Board informed Petitioner that the matter will be on the next board
7 agenda.²⁶
8 n. On January 2, 2026, Petitioner sent in another complaint form, alleging
9 in particular, “the dog has been outside most of the morning barking
10 incessantly.”²⁷ The Association informed Petitioner, “Per statute I have
11 to wait at least 10 days. Since I just sent one, I will have to wait a few
12 days. I will use this complaint when I send the next violation.”²⁸
13 o. On January 10, 2026, Petitioner sent in another complaint form.²⁹
14 p. On January 27, 2026, Petitioner sent in another complaint form and
15 inquired about any “developments during the recent meeting.”³⁰
16 q. On January 30, 2026, Thomas Emele, APM's Director of Operations,
17 informed Petitioner that he consulted with the Board and that Ms.
18 Mendez said that her dog does not bark more than any other dog in the
19 neighborhood.³¹ Mr. Emele told Petitioner that “there is not much more
20 the Association can do,” and that they recommend “contacting Phoenix
21 PD or expanding your complaint to litigation if the situation worsens.”
22 r. Shortly thereafter, Petitioner responded by email, in pertinent part, as
23 follows:
24 i. “[w]hile a resident’s denial is a statement, it does not
25 invalidate objective evidence...Per Article 4, Section 4.9 of
26 the CC&Rs, the Board has the authority to address
27 nuisances. While I recognize the “sole and absolute
28 discretion” clause in that section, Arizona reasonably, in
29 good faith, and not in an arbitrary or capricious manner.
30 Refusing to even review or acknowledge objective evidence
31 of a recurring nuisance constitutes an arbitrary abdication of
the Board’s fiduciary duty to enforce the community’s

²³ *Id.* at 21-22.

²⁴ *Id.* at 31.

²⁵ *Id.* at 42.

²⁶ *Id.* at 43.

²⁷ *Id.* at 56.

²⁸ *Id.* at 59-60.

²⁹ *Id.* at 61-62.

³⁰ *Id.* at 78.

³¹ *Id.* at 81.

governing documents. If the Association chooses to stop enforcing the CC&Rs in this matter, please provide that decision in writing so that I have a complete record for my next steps.”³²

- s. On February 2, 2026, Mr. Emele informed Petitioner that he would need to discuss the matter with the Board during the upcoming closed session meeting on February 10, 2026. Also, Mr. Emele requested Petitioner not to file a complaint with the Arizona Department of Real Estate until after the Board has conferred.³³ Petitioner responded that he would wait to file a complaint until February 11, 2026.³⁴
- t. On February 10, 2026, the Board held an executive session where the barking dog matter was discussed.
- u. On February 12, 2026, Mr. Emele informed Petitioner that the Board took his matter under advisement and determined that the dog was not causing a nuisance.³⁵ The Association had Michael Levenbaum, a Board Member and dog training expert, went to Ms. Mendez’s home and met with the homeowners and their dog.³⁶ Mr. Levenbaum informed the Board that there are several owners near Petitioner’s home with barking dogs.³⁷ In addition, Mr. Levenbaum went to Petitioner’s home right after his meeting with Ms. Mendez to assess the barking, however, no one opened the door but he noticed Petitioner’s dog barking.³⁸ The Board informed Petitioner that the nuisance case was now closed and if he wished to submit a complaint against other neighboring property owners then he would fill out a complaint as he had done in the past.³⁹
- v. Petitioner responded to the Association that he was “disappointed, but not surprised,” and that the Board ignored “extensive, objective video evidence,” and that he would move forward with his formal complaints to the Arizona Department of Real Estate and to the City of Phoenix.⁴⁰
- w. On March 10, 2026, the Board held an executive session where they decided to take one more step and take a poll of five neighboring

³² *Id.* at 100.

³³ *Id.* at 102-103.

³⁴ *Id.* at 123.

³⁵ *Id.* at 168.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 188.

homes of Ms. Mendez.⁴¹ The five neighbors that were polled, three reported there was no nuisance, and the other two neighbors failed to respond.

ARGUMENTS

Petitioner's argument

11. Petitioner argued that per the applicable CC&R that the Board failed to use its sole and absolute discretion to determine whether the dog was a nuisance. Petitioner contended that due to the Board's failure to make a determination if the dog was a nuisance and/or if the dog made an unreasonable amount of noise then the Association violated its CC&Rs. Petitioner further argued that polling the neighbors should not establish whether or not the dog presented a nuisance. Petitioner requested that the Association enforce CC&R Section 4.9, a civil penalty, and reimburse the filing fee.

Respondent's argument

12. Respondent asserted that the Association received Petitioner's complaint about the dog, immediately sent a violation notice to the homeowner, and fined the homeowner. Respondent explained that the homeowner was sent a \$50 fine not because the Association deemed the dog a nuisance but because Petitioner deemed it a nuisance, and the homeowner never responded to the earlier notices. Respondent argued that when the homeowner finally responded in January 2026, then the situation changed because the Association received conflicting stories about the dog's behavior. Respondent argued that CC&R Section 4.9 gives the Association the sole discretion of whether the dog was a nuisance and on two separate occasions the Board deliberated and voted twice that the dog was not an unreasonable noise or nuisance. Respondent further argued that the Board went further and had Mr. Levenbaum visit homeowner and evaluated the dog and determined that it was not a nuisance. Finally, the Association argued that they went another step further and surveyed Ms. Mendez's nearest five neighbors and three of the homeowners informed the Association that the dog was not a nuisance. In addition, the Association stated that another factor, which they just

⁴¹ See Packet at Respondent Response – DRE Response Letter.

1 discovered in this Tribunal, was Petitioner called the police and the police did not deem
2 the dog a nuisance. Respondent made the determination that the dog was not a
3 nuisance and that the Association fulfilled its obligation per CC&Rs and requested that
4 Petitioner's appeal be denied.

5 **CONCLUSIONS OF LAW**

6 1. The Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and
7 32-2199 *et seq.*, regarding a dispute between an owner and a planned community
8 association. The owner or association may petition the department for a hearing
9 concerning violations of community documents or violations of the statutes that
10 regulate planned communities as long as the petitioner has filed a petition with the
11 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

12 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-
13 2199.01(D), 32-2199.02, and 41-1092 *et seq.*, OAH has the authority to hear and
14 decide the contested case at bar. OAH has the authority to interpret the contract
15 between the parties.⁴²

16 3. In this proceeding, Petitioner bears the burden of proving by a
17 preponderance of the evidence that Respondent violated the aforementioned CC&Rs.⁴³

18 4. A preponderance of the evidence means "proof which leads the [trier of
19 fact] to find that the existence of the contested fact is more probable than its
20 nonexistence."⁴⁴

21 5. In this case, Petitioner did everything he could to address what he
22 believed to be Ms. Mendez's barking dog with the Association. However, the
23 Association also did what they needed to address the issue by communicating with
24 Petitioner for over a year, noticing Ms. Mendez, and eventually fining her. In addition,
25 per the Association CC&Rs Section 4.9, clearly states "If the Board elects to do so," the
26 Board did not have to make a nuisance determination, however, they did so in its own
27 sole discretion, on two separate occasions. The Board listened to Petitioner's videos

28 ⁴² See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ⁴³ See ARIZ. ADMIN. CODE R2-19-119.

30 ⁴⁴ *In re William L.*, 211 Ariz. 236, 238 (App. 2005) (quoting *Matter of Appeal in Maricopa Juv. Action No. J-84984*. 138 Ariz. 282, 283 (1983)).

1 of barking dog(s), took a survey of neighboring neighbors, consulted with Mr.
2 Levenbaum, and ultimately determined that Ms. Mendez's dog was not a nuisance nor
3 was it making an unreasonable amount of noise.

4 6. As such, the undersigned Administrative Law Judge concludes that,
5 because Petitioner failed to meet his burden of proof that Respondent committed the
6 alleged violation, his petition must be denied.

7 **ORDER**

8 Based on the foregoing,

9 **IT IS ORDERED** that Petitioner's petition be **DENIED**.

10 **IT IS FURTHER ORDERED** pursuant to ARIZ. REV. STAT. § 32-2199.02(A),
11 Respondent shall not reimburse Petitioner's filing fee as required by ARIZ. REV. STAT. §
12 32-199.01.

13 **NOTICE**

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

20 Done this day, August 6, 2026.

21 /s/ Nicole Robinson
22 Administrative Law Judge
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Transmitted by either mail, e-mail, or facsimile August 6, 2026 to:

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