IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of: Regina Plaza Petitioner, v. Scottsdale Mountain Community Association Respondent.	**No. 26F-H187-REL** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: October 2, 2026

APPEARANCES: Elliot C. Stratton, Esq. appeared on behalf of Regina Plaza (Ms. Plaza). Chuck Oldham, Esq. appeared on behalf of Scottsdale Mountain Community Association (SMCA).

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

EXHIBITS ADMITTED INTO EVIDENCE: Ms. Plaza's Exhibits P-1 through P-4. Administrative Notice was taken of the Hearing File filed by the Arizona Department of Real Estate.

FINDINGS OF FACT

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

2. SMCA is a homeowners' association whose members own lots in the Scottsdale Mountain property in Scottsdale, Arizona.

3. Regina Plaza Smith owns a lot in Scottsdale Mountain and is a member of SMCA.

4. Scottsdale Mountain property has three entry gates. One of the gates is for both residents and visitors, (hereinafter "main gate") and the other two gates are for residents only (hereinafter "resident gates"). The resident gates are activated by remote

control or “transponder”. A resident who enters through a main gate may require waiting in line for entry into Scottsdale Mountain if the resident does not have a transponder.

5. In June of 2026, Ms. Plaza filed a single-issue petition with the Department that provided as follows, “On May 14, 2026, [SMCA] violated A.R.S. § 33-1803(C) by summarily deactivating [Ms. Plaza’s] community gate access transmitters concurrently with a first Notice of Non Compliance thereby denying the Petitioner her statutory 21 day notice and dispute period prior to the imposition of a sanction.”

6. Ms. Plaza paid a filing fee of $500.00 for the petition.

7. The Department referred the petition to the Office of Administrative Hearings.

8. A hearing was held on October 2, 2026. At hearing, Ms. Plaza testified on her own behalf. Rachel Rich (Ms. Rich), the Vice President of Management services for Brown Management Services, testified on behalf of SMCA. Brown Management Services manages SMCA.

9. On May 14, 2026, SMCA notified Ms. Plaza that individuals from her property, “knowingly aided unauthorized individuals (private process servers) into the community.” Exhibit P-1 The notice also included the following language, “Please ensure all members of your home are following the community guidelines. Gate stickers are deactivated for violations of the community rules and may be reactivated after thirty (30) days once the reactivation $250 is paid for each sticker, per the communities governing documents. During the 30-day deactivation period, you must enter through the main gate visitor’s lane.” Id. The second page of the notice cited the community rules that Ms. Plaza violated and outlined her right to appeal.[1] The notice advised Ms. Plaza to submit her appeal within 21 days by certified or by filing a petition directly with the Commission. The notice provided Ms. Plaza with instructions on where to send her appeal.[2]

10. SMCA deactivated three of the transponders held by Ms. Plaza while it issued the May 14, 2026 notice, according to its policy.

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[1] *See* Ms. Rich’s testimony on the hearing audio record at 46:00 to 49:00 minutes.

[2]

11. At hearing, Ms. Plaza's counsel stated that Ms. Plaza was alleging that SMCA also violated A.R.S. § 33-1803(B) and (D).

12. SMCA's counsel contended that those alleged violations consisted of separate issues and Ms. Plaza would be required to file an additional filing fee for those issues.

13. The Administrative Law Judge determined that an additional filing fee would not be required to hear an alleged violation that SMCA also violated A.R.S. § 33-1803(B) and (D) when it deactivated the transponder and notified Ms. Plaza on May 14, 2026.

14. SMCA's counsel contended at hearing that SMCA did not impose a monetary penalty on Ms. Plaza, because she was not required to reactivate her transponder. SMCA did not impose a fine based upon Ms. Plaza's violation. Ms. Rich confirmed through her testimony that SMCA had not imposed a fine based upon Ms. Plaza's violation, nor had it posted a reactivation fee to her account.

15. Ms. Plaza's counsel contended that SMCA imposed a monetary penalty because she would be required to pay a total of $750 dollars to reactivate all three transponders. There was no evidence submitted at hearing that Ms. Plaza has ever been mistreated or harassed at the main gate.

16. When Ms. Plaza was asked on cross-examination, "...As you sit here today, you don't deny that the association provided you with the route that you needed to follow in order to contest the violation, correct?", Ms. Plaza did not respond to the question directly but stated, "They gave you the option to appeal from what I recall."[3] Ms. Plaza also admitted that SMCA informed her that she could attend a meeting on June 29, 2026 to contest the appeal. Ms. Plaza stated that at that time she had filed a petition with the Department, and she did not want to be a part of a partial committee.[4]

17. SMCA's counsel contended at hearing that SMCA has not imposed nor issued a notice to Ms. Plaza regarding a monetary penalty. The evidence presented at hearing shows that SMCA has never invoiced Ms. Plaza for a monetary penalty.[5] In

[3] *See* the hearing audio record at 31:00 to 33:00 minutes.
[4] *See* id.
[5] *See* the hearing audio record at 47:00 to 39:00.

addition, SMCA has never posted a reactivation fee to her account, there is no ledger posted to the account, there is no collection on the account, and Ms. Plaza does not owe SMCA.[6]

CONCLUSIONS OF LAW

1. A.R.S. § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents under the authority Title 33, Chapter 16.[7] Such petitions will be heard before the Office of Administrative Hearings, an independent state agency,

2. Ms. Plaza bears the burden of proof to establish that SMCA violated A.R.S. § 33-1803(B)(C) and (D).[8] Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.[9]

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

4. A.R.S. § 33-1803 provides:

> .....
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> B. After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Notwithstanding any provision in the community documents, **the board of directors shall not impose a charge for a late payment of a penalty** that

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[6] *See* id.
[7] *See* A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development's CC&Rs.
[8] *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 Ariz. 369, 372, 249 P.2d 837 (1952).
[9] *See* A.A.C. R2-19-119(B)(2).
[10] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).
[11] BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

exceeds the greater of fifteen dollars or ten percent of the amount of the unpaid penalty. **A payment is deemed late** if it is unpaid fifteen or more days after its due date, unless the declaration, bylaws or rules of the association provide for a longer period. **Any monies paid by a member for an unpaid penalty shall be applied first to the principal amount unpaid and then to the interest accrued.** Notice pursuant to this subsection shall include information pertaining to the manner in which the penalty shall be enforced.

C. A member who receives a written notice that the condition of the property owned by the member is in violation of the community documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within twenty-one calendar days after the date of the notice. The response shall be sent to the address identified in the notice.

D. **Within ten business days after receipt of the certified mail containing the response from the member**, the association shall respond to the member with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the community documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the member must follow to contest the notice.

E. **Unless the information required in subsection D, paragraph 4 of this section is provided in the notice of violation**, the association shall not proceed with any action to enforce the community documents, including the collection of attorney fees, before or during the time prescribed by subsection D of this section regarding the exchange of information between the association and the member and shall give the member written notice of the member's option to petition for an administrative hearing on the matter in the state

> real estate department pursuant to section 32-2199.01. At any time before or after completion of the exchange of information pursuant to this section, the member may petition for a hearing pursuant to section 32-2199.01 if the dispute is within the jurisdiction of the state real estate department as prescribed in section 32-2199.01.

Emphasis Added.

5. Upon consideration of the written evidence and testimony provided at hearing, the Administrative Law Judge concludes that Ms. Plaza failed to establish by a preponderance of the evidence that SMCA violated A.R.S. § 33-1803(B). A.R.S. § 33-1803 (B) gives SMCA's Board the authority to impose reasonable monetary penalties after notice and an opportunity to be heard. In this case, the Board did not impose a monetary penalty on Ms. Plaza. Except for the first sentence of A.R.S. § 33-1803 (B), the remainder of A.R.S.§ 33-1803 (B) applies to late fees and how fee payments should be applied.

6. Ms. Plaza failed to establish by a preponderance of the evidence that SMCA violated A.R.S. § 33-1803(C) because it does not apply to this case. A.R.S. § 33-1803(C) applies when a member responds to a notice of a violation by certified mail within 21 days of receipt. Ms. Plaza did not even contend that she submitted a response regarding the May 14, 2026 notice by certified mail. Moreover, A.R.S. § 33-1803(C) applies to notices about the condition of a member's property. SMCA did not notify Ms. Plaza of an alleged violation regarding the condition of her lot or property.

7. Ms. Plaza failed to establish by a preponderance of the evidence that SMCA violated A.R.S. § 33-1803(D) because it only applies after the association receives a response by certified mail which was not provided in this case. Furthermore, SMCA did not violate A.R.S. § 33-1803(E) because the preponderance of the evidence shows that SMCA informed Ms. Plaza of the process that she was required to follow to contest the notice.

8. Because Ms. Plaza failed to establish by a preponderance of the evidence that SMCA violated A.R.S. § 33-1803(B), (C), and (D), the petition must be dismissed.

RECOMMENDED ORDER

IT IS ORDERED that Regina Plaza's petition against SMCA is dismissed.

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, October 22, 2026.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile October 22, 2026 to:

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