

- 1 4. Sec. 4.13 of the By-Laws requires the Respondent to maintain “books with
2 detailed accounts affecting the administration of the Common Areas” including
3 replacement and other expenses. The greater weight of evidence proved that
4 while this record-keeping was not performed as completely as called for by the
5 By-Laws prior to February, 2007, since that date the books have been kept in
6 accordance with Sec. 4.13 of the By-Laws. The By-Laws further provide that if
7 at any time at least 25% of the members consider the bookkeeping
8 inadequately performed, they can petition Respondent for an audit. If
9 Petitioners continue feel the books are inadequately kept, such would be their
10 proper avenue to remedy.
- 11 5. The next complaint (#11) is that Respondent has withheld and refused
12 inspection of Association documents. By-Law 4.13, cited by Petitioners as
13 authority, requires the Respondent to make available to members for
14 inspection “the books and vouchers” “at convenient hours on working days.”
- 15 6. The evidence proved that Petitioners had requested to inspect voluminous of
16 Association documents possessed by the Directors. At the time of the request
17 and for some time afterwards, the Association had no physical offices, so the
18 documents were maintained by Directors in their homes. The evidence proved
19 that the Directors made available to Petitioners for inspection banker’s boxes
20 full of documents beginning on the one Friday morning in the living room of the
21 then-President Mr. Vic Williams. Petitioners brought with them their own
22 personal copying machine. Petitioners were allowed to inspect and copy
23 documents over the course of that entire day. At the end of the day, the
24 Petitioners still not having seen all the documents they wished to see, they and
25 Mr. Williams agreed that Petitioners could continue to inspect documents
26 commencing the following morning, a Saturday. However, the next day Mr.
27 Williams’s five-year-old son was with him, and he considered it undesirable for
28 the inspection to take place in the living room, so the garage was offered and
29 used. After approximately an hour or so, the Petitioners were uncomfortably
30 warm and closed the garage door without giving prior notice to Mr. Williams,

1 who then raised it again. This happened twice and contributed to a growing
2 distrust between the parties. Petitioners testified that also on that morning
3 other younger men (Petitioners both being over 65-years-old) came to the
4 garage area and intimidated them, but Respondent's evidence was that they
5 were just curious to see what was happening in the Williams garage.

- 6 7. Subsequently the Respondent entrusted its records to a professional
7 management company. Respondent is willing to allow Petitioners to further
8 inspect any of the records (other than those that would improperly divulge
9 personal information of other members or which is protected by professional
10 confidentiality) during normal business hours at the management company
11 offices, upon reasonable notice.
- 12 8. Hence, there does not appear to have been any impermissible withholding of
13 documents. Indeed, an inspection on a Saturday was allowed, which seems
14 to go above and beyond the requirement that inspection be available on
15 "working days." Also, there appears to be a reasonable approach for the
16 parties to pursue in the future.
- 17 9. The last issue or complaint item (#12) is an allegation of selective enforcement
18 of the rules by Respondent. As it developed at the hearing this allegation
19 proved to be the issue of Petitioners' common wall, which involves issues
20 beyond the scope of this hearing and OAH's authority to adjudicate. Therefore
21 it was not heard (See: Second Pre-Hearing Conference Order, February 28th,
22 2007).

23 **CONCLUSIONS OF LAW**

- 24 1. This administrative hearing was held under the authority of and pursuant to
25 A.R.S. 41-2198.01 and A.R.S. 41-1092.
- 26 2. Petitioners have the burden of proof by a preponderance of the evidence.
27 A.A.C. R2-19-119. The Petitioners have failed to carry the required burden of
28 proof. It appeared from the record as a whole that the documents were
29 made, and continue to be made, reasonably available for inspection, and the
30

1 books of account are being properly kept, and if Petitioners continue to think
2 them not to be, a proper remedy is provided in the By-Laws.

3
4 **ORDER**

5 Based on the above, the Petitions are dismissed.

6 Done this day, April 30th, 2007.

7
8 _____
9 Grant Winston
10 Administrative Law Judge

11 Original transmitted by mail this
12 ____ day of _____, 2007, to:

13 Department of Fire Building and Life Safety - H/C
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19 c/o Elizabeth Lightfoot
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By _____

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