

1 **Final agency action regarding decision below:**

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3 **ALJFIN ALJ Decision final by statute**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 BONNIE CHANCELLOR

8 Petitioner,

9 vs.

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11 CARRIAGE PARC HOMEOWNERS
12 ASSOCIATION,

13 Respondent.

No. 08F-H088009-BFS

**ADMINISTRATIVE LAW JUDGE
DECISION**

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17 Dennis Chancellor and Bonnie Chancellor (“Petitioner”) filed a Petition against
18 Carriage Parc Homeowners Association (“Respondent”) with the Department of Fire,
19 Building and Life Safety (“Department”).

20 The Department forwarded the Petition to the Office of Administrative Hearings
21 for an evidentiary hearing and decision.

22 By Order dated April 29, 2008, the tribunal ordered that the Petition be amended
23 by deleting Dennis Chancellor as a party since he is not a member of Respondent, and,
24 therefore, lacks standing in this matter. The Order stated that Mr. Chancellor could not
25 represent Bonnie Chancellor.

26 The Order further provided that the parties were to “submit in writing the names
27 of their witnesses who will testify at the hearing, together with a short statement of each
28 witness’ anticipated testimony, to the Office of Administrative Hearings no later than
29 May 16, 2008.” The parties were also advised to comply with A.A.C. R2-19-108(E),
30 which requires that a party filing a document with the Office of Administrative Hearings
send a copy of the document to the opposing party.

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

Neither party timely complied with the April 29, 2008 Order to submit the names of their witnesses and summaries of their anticipated testimonies no later than May 16, 2008.

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1 The records of the Office of Administrative Hearings reflect that on May 19, 2008,
2 Dennis Chancellor telephoned to inquire about the April 29, 2008 Order. Later on May
3 19, 2008, a letter dated May 16, 2008 was filed by Dennis and Bonnie Chancellor listing
4 witnesses, but not giving a summary of their anticipated testimonies. The document also
5 does not appear to have been sent to the opposing party. A copy of it is attached.

6 As a result of the parties' failure to timely comply with the April 29, 2008, IT IS
7 ORDERED that the parties be precluded from presenting any witnesses in this matter.
8 Therefore, IT IS FURTHER ORDERED that the hearing in this matter scheduled for
9 June 4, 2008 be vacated from the calendar of the Office of Administrative Hearings, and
10 that this matter be decided based upon the pleadings, which are the Petition and
11 Respondent's Answer.

12 Bonnie Chancellor's Petition alleges the following:

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14 On or about 19 December 2007 (specify date), the
15 Respondent committed the following act, or specifically failed
16 to act in the following manner, or caused the following
17 condition to occur:

18 Failure to count all ballots at a Board Recall Meeting. We
19 want our vote counted and added to the Ballot tally, in
20 violation of the following provisions of the condominium or
21 planned community documents and/or A.R.S. § Title 33,
22 Chapter 9 (condominium) or A.R.S. Title 33, Chapter 16
23 (planned community). Please specify the subsection: 33-
24 1812(A).

25 Respondent's Answer states that it sent notice to all members that recall ballots
26 had to be received for the election by the meeting on December 19, 2008. Ballots could
27 be mailed or delivered by that date and time. The meeting was conducted and
28 concluded. Ballots were then counted. Dennis Chancellor, a non-member appeared
29 after the conclusion of the hearing and attempted to deliver a ballot for Bonnie
30 Chancellor, a member. Ms. Chancellor's ballot was not accepted for two reasons: it was
untimely submitted; and, it was an unpermitted proxy.

It is determined that Mr. Chancellor's belated delivery of Ms. Chancellor's ballot
did not constitute a proxy from her to him. It is no different than if Ms. Chancellor had

1 selected another form of delivery, such as U.S. mail. However, Ms. Chancellor was
2 required to timely submit her ballot for it to be counted.

3 It is further determined that Ms. Chancellor's ballot was not submitted by the
4 required deadline date and time. Therefore, Respondent acted appropriately by not
5 accepting and counting the late ballot.

6 In view of the foregoing, IT IS ORDERED that the Petition in this matter be
7 dismissed. Respondent is the prevailing party in this matter. Therefore, Bonnie
8 Chancellor is not entitled to an award of her \$550.00 filing fee. A.R.S. § 41-2198.02.

9 Pursuant to A.R.S. § 41.2198.04(A), this Order is the final administrative
10 decision and it is not subject to a request for rehearing. This Order is enforceable
11 through contempt of court proceedings, pursuant to A.R.S. § 41.2198.02(B).
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15 Done this day, May 19, 2008

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18 Brian Brendan Tully
19 Administrative Law Judge
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1 Original transmitted by mail this
2 ____ day of _____, 2008, to:

3
4 Robert Barger, Director
5 Department of Fire Building and Life Safety - H/C
6 ATTN: Debra Blake
7 1110 W. Washington, Suite 100
8 Phoenix, AZ 85007

9 Bonnie Chancellor
10 2627 E. Encinas Street
11 Gilbert, AZ 85234

12 Joseph T. Tadano, Esq.
13 Burrell & Seletos
14 P.O. Box 41880
15 Phoenix, AZ 85080

16 By _____
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