

1 receive copies of the Secretary's shorthand notes from the March 18, 2017 meeting by
2 email ("Issue 5"), and that Desert Ranch denied a July 11, 2017 request for a written
3 record of all actions taken by the EDC after July 2016, including correspondence ("Issue
4 7").

5 4. The original hearing on Mr. Barrs's petition was conducted on December
6 1, 2017. After the Administrative Law Judge issued his decision, Mr. Barrs requested a
7 rehearing, which led to this matter being conducted.

8 5. At this hearing, Mr. Barrs presented his own testimony and the testimony
9 of Abraham Barrs and Stephen Barrs. Desert Ranch presented the testimony of
10 Catherine Overby and Brian Schoeffler.

11 Issue 1

12 6. On May 19, 2017, Mr. Barrs requested to view documents related to the
13 April 29, 2017 Board election. On June 3, 2017, the Board allowed Mr. Barrs to view
14 the documents. Catherine Overby, the President of Desert Ranch's board, informed Mr.
15 Barrs that Board member Patrick Rice possessed one late ballot from the April 29, 2017
16 board election. However, the Board did not allow Mr. Barrs to view the late ballot and
17 did not provide a copy of the late ballot until a few months after Mr. Barrs's May 19,
18 2017 request. There was no evidence presented at hearing that there were ballots
19 which were returned as undeliverable.

20 Issue 2

21 7. On April 18, 2017, Mr. Barrs requested to view documents related to the
22 March 18, 2017 Board election. On April 19, 2017, Kate Merolo provided documents
23 regarding the election to Mr. Barrs, with the exception of two ballots.

24 Issues 3, 5, and 7

25 8. On July 11, 2017, Mr. Barrs requested that the Desert Ranch Board
26 provide copies of Desert Ranch's insurance policies, the Desert Ranch secretary's short
27 hand notes from the March 18, 2017 meeting, and a written record of all actions taken
28 by the EDC after July 2016. Mr. Barrs submitted the request by email to Desert Ranch
29 board members, but Mr. Barrs did not include Brian Schoeffler in the email.

30 9. On July 11, 2017, Board President Catherine Overby informed Mr. Barrs
that she would forward the request to Mr. Schoeffler.

1 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
2 than the other.”⁵

3 4. ARIZ. REV. STAT. section 33-1805 provides as follows:

4 A. Except as provided in subsection B of this section, all financial
5 and other records of the association shall be made reasonably
6 available for examination by any member or any person
7 designated by the member in writing as the member's
8 representative. The association shall not charge a member or any
9 person designated by the member in writing for making material
10 available for review. The association shall have ten business days
11 to fulfill a request for examination. On request for purchase of
12 copies of records by any member or any person designated by the
13 member in writing as the member's representative, the association
14 shall have ten business days to provide copies of the requested
15 records. An association may charge a fee for making copies of not
16 more than fifteen cents per page.

17 B. Books and records kept by or on behalf of the association and
18 the board may be withheld from disclosure to the extent that the
19 portion withheld relates to any of the following:

20 1. Privileged communication between an attorney for the
21 association and the association.

22 2. Pending litigation.

23 3. Meeting minutes or other records of a session of a board
24 meeting that is not required to be open to all members pursuant to
25 section 33-1804.

26 4. Personal, health or financial records of an individual member of
27 the association, an individual employee of the association or an
28 individual employee of a contractor for the association, including
29 records of the association directly related to the personal, health
30 or financial information about an individual member of the
association, an individual employee of the association or an
individual employee of a contractor for the association.

5. Records relating to the job performance of, compensation of,
health records of or specific complaints against an individual
employee of the association or an individual employee of a
contractor of the association who works under the direction of the
association.

⁵ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 C. The association shall not be required to disclose financial and
2 other records of the association if disclosure would violate any
3 state or federal law.

4 5. Mr. Barrs established by a preponderance of the evidence that Desert Ranch
5 failed to allow him to view all of the documents related to the April 29, 2017 Board
6 election. The preponderance of the evidence showed that Desert Ranch did not fulfill
7 Mr. Barrs's request within 10 business days of his request.

8 6. The preponderance of the evidence shows that Desert Ranch did not fulfill
9 Mr. Barrs's request to view documents related to the March 18, 2017 election within ten
10 business days of his request. Although Kate Merolo provided most documents related
11 to the March 18, 2017 Board election on April 19, 2017, there were two ballots which
12 were not provided until several months after Mr. Barr's April 18, 2017 request.

13 7. Mr. Barrs has not established by a preponderance of the evidence that Desert
14 Ranch violated Ariz. Rev. Stat. section 33-1805 by failing to email records to him
15 because Mr. Barrs refused to contact and receive communication from Mr. Schoeffler.
16 Although Desert Ranch offered to meet with Mr. Barrs, Mr. Barrs declined.

17 8. This Tribunal concludes that Desert Ranch violated the charged provision of
18 ARIZ. REV. STAT. section 33-1805.

19 **ORDER**

20 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing
21 party in this matter.

22 It is further ORDERED that Desert Ranch comply with the applicable provisions
23 of ARIZ. REV. STAT. section 33-1805 regarding Petitioner's request of Desert Ranch's
24 records within 10 days of the Order entered in this matter.

25 It is further ORDERED that Desert Ranch pay Petitioner his filing fee of \$500.00,
26 to be paid directly to Petitioner within thirty (30) days of this Order.

27 No Civil Penalty is found to be appropriate in this matter.
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NOTICE

This administrative law judge order, having been issued as a result of a rehearing, is binding on the parties. ARIZ. REV. STAT. section 32-2199.02(B). A party wishing to appeal this order must seek judicial review as prescribed by ARIZ. REV. STAT. section and title 12, chapter 7, article 6. Any such appeal must be filed with the superior court within thirty-five days from the date when a copy of this order was served upon the parties. ARIZ. REV. STAT. section 12-904(A).

Done this day, July 2, 2018

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted electronically to:

Judy Lowe, Commissioner
Arizona Department of Real Estate

Transmitted U.S. Mail to:

Thomas Barrs
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Scottsdale, Arizona 85267

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