

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

2
3 **ALJFIN ALJ Decision final by statute**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 Sandra Swanson & Robert Barnes,
8 Petitioners,

No. 21F-H2120020-REL

9 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

10 Circle G Ranches 4 Homeowners
11 Association.
12 Respondent.

13 **HEARING:** February 02, 2021 and April 05, 2021.¹

14 **APPEARANCES:** Kristin Roebuck, Esq. appeared on behalf of Sandra Swanson &
15 Robert Barnes (“Petitioners”) with Petitioners as witnesses. Jeremy Johnson, Esq., and
16 Sam Cote, Esq. appeared on behalf of Circle G Ranches 4 Homeowners Association with
17 Patricia Ahler, Amanda Stewart, Jennifer Amundson, and Regis Salazar as witnesses.

18 **ADMINISTRATIVE LAW JUDGE:** Jenna Clark.

19
20 After review of the hearing record in this matter, the undersigned Administrative
21 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
22 ORDER to the Commissioner of the Arizona Department of Real Estate (“Department”).

23 **FINDINGS OF FACT**

24 **THE PARTIES AND GOVERNING DOCUMENTS**

25 1. Respondent is a homeowners’ association whose members own properties
26 in the Circle G Ranches 4 residential real estate development located in Chandler,
27 Arizona. Membership for the Association is comprised of Circle G Ranches 4
28 homeowners. The Association is governed by its Covenants, Conditions, and Restrictions

29 ¹ The record in this matter was held open until April 27, 2021, for the receipt of the parties’ closing
30 arguments, which were timely received.

1 (“CC&Rs”)², and overseen by a Board of Directors (“the Board”). The Association is also
2 regulated by Title 33, Chapter 16, Article 1 of the ARIZ. REV. STAT.

3 a. Respondent is managed by Vision Community Management, LLC
4 (“Vision”).

5 2. Petitioners are Circle G Ranches 4 subdivision property owners and
6 member of the Association.

7 **BACKGROUND AND PROCEDURE**

8 3. The Department is authorized by statute to receive and to decide petitions
9 for hearings from members of homeowners’ associations and from homeowners’
10 associations in Arizona.

11 4. On or about September 22, 2020, Petitioners filed a single issue petition
12 with the Department which alleged that the Association failed to comply with a January 16,
13 2020, voting records request pursuant to Arizona Revised Statutes (“ARIZ. REV. STAT.”) §
14 33-1805.³

15 5. On or about October 12, 2020, Respondent returned its ANSWER to the
16 Department whereby it denied Petitioners’ claim.⁴

17 6. On October 27, 2020, the Department referred this matter to the Office of
18 Administrative Hearings (“OAH”), an independent state agency, for an evidentiary hearing
19 on December 22, 2020,⁵ to determine whether a violation of ARIZ. REV. STAT. § 33-1805
20 occurred.

21 **HEARING EVIDENCE**

22 7. Petitioners testified on their own behalf and submitted exhibits 1-9 & 11-16.
23 Respondent called Patricia Ahler, Amanda Stewart, Jennifer Amundson, and Regis
24 Salazar as witnesses and submitted exhibits 1, 3-4 & 8-9. The Department’s electronic
25 file, Petitioners’ Pretrial Memo, Respondent’s Pretrial Memo, Petitioners’ Motion in

26 _____
27 ² See Petitioners Exhibit 1.

28 ³ See Department’s electronic file at HO21-20020_HOA_Petition.pdf; see *also* Department’s electronic file
29 at HO21-20020_Payment.pdf.

30 ⁴ See Department’s electronic file at HO21-20020_Response_Petition.pdf.

⁵ On November 23, 2020, the matter was continued and reset for February 02, 2021. However, because the
parties were unable to complete their presentation of evidence, the matter was continued to April 05, 2021.

1 Limine, and Respondent's Response were all admitted into the record as their own
2 exhibits. The substantive evidence of record is as follows:

- 3 a. On October 04, 2017, the Board approved and adopted the Rule Requiring
4 Secret Ballots which obligated Members to vote on special assessments via
5 secret ballot.⁶
- 6 b. On January 06, 2020, Petitioners submitted a letter to Vision's attorney,
7 Clint Goodman, regarding a verbal request they had submitted to Vision on
8 January 02, 2020.⁷ Specifically, Petitioners asked to "view the votes" for
9 proposed Declaration amendment 6.4 regarding cumulative voting.
- 10 c. On January 13, 2020, the Board held a meeting, in part, to address
11 Petitioners' request. Meeting Minutes note that the "CC&R amendment to
12 prohibit cumulative voting received 118 consent signatures."⁸ Because the
13 Board was concerned regarding Member's expectation of privacy regarding
14 non-public information, the Board voted 8:1 to require Petitioners to sign a
15 nondisclosure agreement ("NDA") prior to being permitted to view the
16 ballots.⁹ Petitioners declined.
- 17 i. No Member had given Vision consent to release their voting
18 information.
- 19 ii. While it has never been Petitioners' intention to harass other
20 Members of the Association, many homeowners have complained to
21 Vision regarding behaviors they have labeled "harassing" by
22 Petitioners.
- 23 d. On January 16, 2020, counsel for Petitioners wrote Respondent a letter
24 requesting, in pertinent parts, "All of the ballots and other related documents
25 ... from the vote that occurred on or about October 28, 2019, regarding the
26 increase in dues."¹⁰ The letter also requested all "notice of written consent

27 ⁶ See Petitioners' Exhibit 3.

28 ⁷ See Petitioners' Exhibit 9.

29 ⁸ See Petitioners' Exhibit 11.

30 ⁹ See Petitioners' Exhibits 8 and 11.

¹⁰ See Petitioners' Exhibit 12.

1 for CC&R Amendment & written consent forms/ballots for the Proposed
2 Declaration Amendment regarding cumulative voting which occurred in
3 December 2019.”¹¹

4 e. On January 30, 2020, Mr. Goodman issued a letter to Petitioners which
5 noted in pertinent part, “The Association’s position is that it has to balance
6 your clients’ requests against the privacy and safety of all Owners within the
7 Association. The Board is concerned with the personal information
8 contained on the written consent forms or other documents and fears that
9 individual members will be retaliated against or harassed based on a
10 member’s decision to support, or not support, the matters up for a decision.
11 This concern is not specific to your clients but is a general concern for
12 anyone viewing records of the Association that contain specific information
13 about the members in the Association.”¹² Petitioners were further advised
14 that “[T]he Association will make the records identified in your letter
15 available for your clients’ inspection at a mutually acceptable time.”¹³

16 f. On February 07, 2020, Petitioners went to Mr. Goodman’s office to review
17 the requested documentation. Petitioners only reviewed the cumulative
18 voting records, totaling about 122pgs, for approximately 3.5hrs, during
19 which time they took note of how Members voted.¹⁴ Petitioners did not
20 review the documentation related to the assessment.

21 i. Secret ballots had been mailed to Members with preaddressed
22 return envelopes. Upon receipt, Vision opened each envelope and
23 removed the ballot to protect the identity of the voting Member. Only
24 Vision staff was privy to the contents of the ballot envelopes.

25 ii. Petitioners were provided with 2 stacks of documents: redacted
26 ballots and unredacted envelopes. Although Petitioners were given
27 all of the information they sought, they were unable to discern which

28 ¹¹ *Id.*
29 ¹² See Petitioners’ Exhibit 13.
30 ¹³ *Id.*
¹⁴ See Petitioners’ Exhibits 6-7.

1 ballots went with which envelopes as said information was provided
2 separately.

3 g. On August 05, 2020, Petitioners, through their attorney, issued a letter to
4 Respondent alleging that “For both these votes the secrecy of the ballots
5 were optional or the vote could be returned to individual Board members by
6 way of email” and demanded “unredacted ballots for the vote to increase
7 assessments, along with all envelopes including those which contain the
8 names, addresses and voter signatures, and all other related documents in
9 addition to the sign-in sheet, which took place on Monday, October 29,
10 2019.”¹⁵ Petitioners further specified that their request was made for a 10:00
11 a.m. in-person inspection at Vision’s offices on August 11, 2020, August 12,
12 2020, or August 17, 2020.

13 i. No additional documentation was provided by Respondent to
14 Petitioners.

15 **CLOSING ARGUMENTS**

16 Petitioners’ closing argument

17 8. In closing, Petitioners argued that Respondent violated ARIZ. REV. STAT. §
18 33-1805 on 3 separate occasions: when Respondent asked Petitioners to sign an NDA,
19 when Respondent provided Petitioners redacted records, and because Respondent had
20 not provided Petitioners with copies of unredacted records. Petitioners deny that
21 requested records were ever made “reasonably available” to them for review per statute.
22 Petitioners also argue that none of the enumerated exceptions identified in ARIZ. REV.
23 STAT. § 33-1805 apply to this matter. Petitioners further argue that the printed language
24 on the ballots denotes permissiveness in that Members had a choice between voting
25 anonymously and non-anonymously. Thus, if Members wanted their votes to remain
26 anonymous, they could have or otherwise should have adhered to the instructions on their
27 ballot.

28 Respondent’s closing argument

29

¹⁵ See Petitioners’ Exhibit 16.

1 9. In closing, Respondent argued that ARIZ. REV. STAT. § 33-1805 required it to
2 make requested records “reasonably available” to Petitioners, which it did because
3 Petitioners spent 3.5hrs looking through records of their choosing on February 07, 2020.
4 By providing redacted documents to Petitioners, Respondent also argued, it balanced the
5 interests of protecting the privacy and safety of Members against Petitioners’ request to
6 examine various records. Respondent further argued that its NDA signature request did
7 not constitute a violation of ARIZ. REV. STAT. § 33-1805.

8 **CONCLUSIONS OF LAW**

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

15 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
16 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested
17 case at bar. OAH has the authority to interpret the contract between the parties.¹⁶

18 3. In this proceeding, Petitioner bears the burden of proving by a
19 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1805.¹⁷
20 Respondent bears the burden of establishing any affirmative defenses by the same
21 evidentiary burden.¹⁸

22 4. “A preponderance of the evidence is such proof as convinces the trier of fact
23 that the contention is more probably true than not.”¹⁹ A preponderance of the evidence is
24 “[t]he greater weight of the evidence, not necessarily established by the greater number of
25 witnesses testifying to a fact but by evidence that has the most convincing force; superior
26 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable

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28 ¹⁶ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ¹⁷ See Arizona Administrative Code (“ARIZ. ADMIN. CODE”) R2-19-119.

30 ¹⁸ *Id.*

¹⁹ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
2 the other.”²⁰

3 5. In Arizona, when construing statutes, we look first to a statute's language as
4 the best and most reliable index of its meaning. If the statute's language is clear and
5 unambiguous, we give effect to that language and apply it without using other means of
6 statutory construction, unless applying the literal language would lead to an absurd result.
7 Words should be given “their natural, obvious, and ordinary meaning.”²¹

8 6. Statutes should be interpreted to provide a fair and sensible result.
9 *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,
10 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and unreasonable
11 construction on statutes.”).

12 7. When the legislature uses a word or words in one section of a statute, but
13 not another, the tribunal may not read those words into the section where the legislature
14 did not include them.²² Unless defined by the legislature, words in statutes are given their
15 ordinary meanings.²³

16 8. Each word, phrase, clause, and sentence of a statute or rule must be given
17 meaning so that no part will be void, inert, redundant, or trivial.²⁴

18 9. ARIZ. REV. STAT. § 33-1805 provides, in relevant parts, as follows:

19 A. Except as provided in subsection B of this section, ***all financial and***
20 ***other records of the association shall be made reasonably available***
21 ***for examination by any member*** or any person designated by the member
22 in writing as the member's representative. The association shall not charge
23 a member or any person designated by the member in writing for making
24 material available for review. ***The association shall have ten business***
25 ***days to fulfill a request for examination. On request for purchase of***
26 ***copies of records by any member*** or any person designated by the
27 member in writing as the member's representative, ***the association shall***
28 ***have ten business days to provide copies of the requested records.***

29 ²⁰ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

30 ²¹ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

²² See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

²³ *Id.*

²⁴ See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 ***An association may charge a fee for making copies of not more than***
2 ***fifteen cents per page.***

3 *(Emphasis added.)*

4 10. Unfortunately, because Petitioners have spliced the issue into 3 subparts,
5 the question of whether a violation of ARIZ. REV. STAT. § 33-1805 took place in this matter
6 is skewed, as Petitioners only paid to have 1 issue adjudicated. This conundrum is solved,
7 in large part, based on the substantive evidence of record.

8 11. Based upon a review of the credible and relevant evidence in this matter,
9 the Tribunal finds as follows:

- 10 a. Respondent's request that Petitioners sign an NDA does not constitute a
11 violation of ARIZ. REV. STAT. § 33-1805.
- 12 b. Petitioners made 2 separate records requests – on January 06, 2020,
13 regarding the October 2019 cumulative voting, and again on January 16,
14 2020, regarding the December 2019 assessment. Respondent was
15 required to comply with Petitioners' first request by January 21, 2020, and
16 was also required to comply with Petitioners' second request by January 31,
17 2020.²⁵ Mr. Goodman's response to Petitioners' records requests was not
18 issued until January 30, 2020. Petitioners chose to examine the documents
19 in question on February 07, 2020. Because it is unclear whether said
20 documents were available for review prior to February 07, 2020, it cannot be
21 held that a violation of ARIZ. REV. STAT. § 33-1805 was committed.
- 22 c. Petitioners neither paid nor requested to pay for unredacted voting records.
23 Notwithstanding Respondent's legitimate interests in protecting the privacy
24 of its Members, ARIZ. REV. STAT. § 33-1805's 10-day copy provision is
25 inapplicable in this matter. Because Petitioners did not present the Tribunal
26
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²⁵ January 20, 2020, was a state and federally recognized holiday, which is not included in the 10-day
30 calculation under ARIZ. REV. STAT. § 33-1805.

1 with binding authority regarding a homeowners' associations duty to make
2 confidential unredacted voting records available to the public, and because
3 Petitioners did not argue that Respondent failed to make unredacted copies
4 "reasonably available" for review, it cannot be concluded that a violation of
5 ARIZ. REV. STAT. § 33-1805 exists.

6 12. Because Petitioners did not sustain their burden of proof that Respondent
7 committed a violation of ARIZ. REV. STAT. § 33-1805, their petition must be denied.

8 **ORDER**

9 Based on the foregoing,

10 **IT IS ORDERED** that Petitioners' petition be denied.

11 *In the event of certification of the Administrative Law Judge Decision by the*
12 *Director of the Office of Administrative Hearings, the effective date of the ORDER will be*
13 *five days from the date of that certification.*

14 **NOTICE**

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

20
21 Done this day, May 17, 2021.

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23 **Office of Administrative Hearings**

24 */s/ Jenna Clark*
25 **Administrative Law Judge**

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27
28 Transmitted electronically to:
29
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