

24 JUN 20 PM 4:51

1 **TOM BARRS**  
PO BOX 14122  
2 SCOTTSDALE, AZ 85267  
TELEPHONE (602) 684-0544  
3 *Petitioner-Appellant, Pro Per*

4 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
5 **IN AND FOR THE COUNTY OF MARICOPA**

7 In the Matter of

8 TOM BARRS

Petitioner/Appellant,

9 vs.

10 DESERT RANCH HOMEOWNERS'  
11 ASSOCIATION,

12 Respondent/Appellee.

No. LC 2023-<sup>000179</sup>~~00179~~-001

**APPELLANT'S UPDATE  
MEMO**

OAH Nos. 22F-H2222050-REL  
22F-H2222054-REL

Agency Case Nos. HO22-22050  
HO22-22054

13  
14 Appellee informed the HOA membership that an "Amended Response" had been filed  
15 with the court on 6/17/2024. Barrs has yet to receive either an emailed or mailed copy  
16 of the Amended Filing from Appellee. In order to provide a timely notice of a recently  
17 discovered error in Appellee's May 22, 2024 filing, Barrs provides the following.  
18

19 **REFERENCED MATERIALS MISSING FROM APPELLEE'S MAY 22, 2024**  
20 **FILING:**

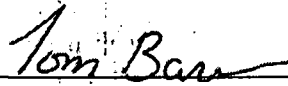
21 Upon review, it appears one set of emails was excluded from Appellee's original May  
22 22, 2024 Filing in error. Appellee referenced this email thread on Page 8 of their May  
23 22, 2024 filing as "10-11-23 Re Additional settlement ideas.pdf" which should include  
24 emails from 10-11-2023 relating to the subject "Additional settlement ideas." The full  
25 set of that email exchange has been included with this update filing.<sup>1</sup> Again, these  
26 emails are only a small subset of the discussions that went into attempts at resolving the  
27

28 <sup>1</sup> See Attachment A – October 11, 2023 email thread

1 matter. Nevertheless, this specific email exchange does show Barrs' attempt to find  
2 solutions that would cost the Association as little as possible while seeking to find  
3 common ground on a solution that would address his concern that the February 2023  
4 OAH ruling was erroneous and lead to the Association's continued misperception of  
5 State Law and potential misuse for withholding records.

6  
7 Additionally, the email shows that some board members not only believed Barrs'  
8 proposal was "fair and should be accepted,"<sup>2</sup> but also believed that their own position  
9 was lacking from Nan Wickman's 10/5/2023 email response and that their objections  
10 needed to be placed "[on] the record." Unfortunately, special interests of some board  
11 members<sup>3</sup> made the process more difficult.

12  
13 Dated this 19th day of June, 2024

14 

15 **Tom Barrs**  
16 PO Box 14122  
17 Scottsdale, AZ 85267

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25 <sup>2</sup> See Attachment A – October 11, 2023 email thread

26 <sup>3</sup> Nan Wickman had apprehensions in regards to the case being remanded to the ADRE  
27 since she felt it might impact her Real Estate license in some way.  
28

1 ORIGINAL of the foregoing  
2 filed this 20th day of June, 2024:  
3 Clerk of the Court  
4 Attn: LC Specialty Desk  
5 MARICOPA COUNTY SUPERIOR COURT  
6 201 W Jefferson  
7 Phoenix, Arizona 85003

8 COPY of the foregoing emailed/mailed this  
9 Same date to:

10 LOWER COURT AND ADMINISTRATIVE APPEALS  
11 Attention: HON. JOSEPH MIKITISH  
12 201 W. Jefferson St.  
13 4th Floor  
14 Phoenix, AZ 85003

15  
16 DESERT RANCH HOMEOWNERS ASSOCIATION  
17 PO Box 3081  
18 Carefree, AZ 85377-3081  
19 *Respondent*

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By: /s/ Tom Barrs

**Attachment A**

OCTOBER 11, 2023 EMAIL THREAD

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**From:** SUSAN KLINEFELTER <suezek@me.com>  
**Sent:** Wednesday, October 11, 2023 5:18 PM  
**To:** Tom Barrs  
**Cc:** Nan Wickman; Cynthia Dryden; David Hughes; Michael Olley  
**Subject:** Re: Additional settlement ideas

I did not vote to reject your offer. Specifically I voiced my option that your offer was fair and should be accepted. For the record.

Susan

On Oct 11, 2023, at 4:49 PM, Tom Barrs <tbarrs360@gmail.com> wrote:

Unfortunately I think any option we choose at this point will involve the court. If we choose to withdraw the case, it will involve the court; if we choose to correct the errors, it will involve the court; if we ask to have the case remanded to the OAH for a second review, it will involve the court. The time for removing the court ended when certain past board members decided to hire an attorney to mislead the ALJ instead of simply providing the Association records that I requested. They hired the attorney even when the membership said no. As we all now know, all the records that the previous board and management company said did not exist turned out to exist. But they spent \$30,000 to hide records that should have been provided.

To me, in my non-lawyer opinion, we are at that same point right now. We could either go through the costly appeals process (which I would rather avoid), or take the simplest most cost effective solution for everyone that I can think of which would be to work together in getting the errors corrected, agree to provide the current membership lists as we have for decades, be done with everything, and move forward. So far that I am aware, that would cost the Association minimal if not zero.

When this new board was elected, the majority of the new board members said they were interested in getting the errors in the ruling corrected. That seemed like a simple goal that would have benefited everyone. Unfortunately, one of the board members who has a conflict of interest seems to have convinced the rest to avoid that simple path?

There would be no reason to set aside the ruling if it was correct. If it is in error, why wouldn't we want to correct it? As far as I am aware, there is not a way to set aside the ruling without giving a reason for the errors to be corrected. In other words, agree to correct such and such on the ruling, provide it to the appeals Judge, and be done with it. If you think there is better wording than what I proposed, I would love to hear it.

Best Regards,  
Tom

PS. Regarding funds to engage a lawyer, as you know, the HOA could have recovered \$12,000 worth of funds that appear to have been improperly withdrawn by the former board days before their exit earlier this year. That would certainly have offered sufficient funding. Nevertheless, I would guess there is also the option of using insurance to cover necessary advice. I cannot force you to seek counsel if you don't want it, but there are options.

On Thu, Oct 5, 2023 at 4:26 PM Nan Wickman <[drhoanan@gmail.com](mailto:drhoanan@gmail.com)> wrote:

Tom, all five Board members were in attendance during the exec meeting, so all five had the opportunity to weigh in on your proposal below. The overall opinion was that while we greatly appreciate that you are considering alternatives to your current court appeal process, your suggestion below is yet another legal process. If there was a way to instead strike or remove the records altogether, that would be great, but we have no idea how or if that is possible. I'm no lawyer, and as you know the HOA does not have funds to engage a lawyer, but I do not think the expungement process would be applicable in this scenario...do you have any insight on that or similar process?

Are there other scenarios altogether that could bring this to a conclusion without courts or lawyers that we should consider?

My Best,  
Nan

On Oct 3, 2023, at 11:59 PM, Tom Barrs <[tbarrs360@gmail.com](mailto:tbarrs360@gmail.com)> wrote:

I understand that there was an executive meeting on 9/27/23 to discuss this offer. What was the consensus? Do you think this will work or have any other ideas?

Regards,  
Tom

On Thu, Sep 21, 2023 at 9:54 PM Tom Barrs <[tbarrs360@gmail.com](mailto:tbarrs360@gmail.com)> wrote:  
Desert Ranch Board,

I thought of one more option to settle that might work. Would you be willing to do a joint stipulation to remand the case to the OAH for a rehearing? That way the board doesn't have to make any determinations on their own which I think was a concern by some. The board would not need to show up for the hearing. General terms would be as follows:

- 1) No admission of guilt by either party
- 2) Joint stipulation to remand case to OAH for rehearing
- 3) No monetary ADRE/OAH civil penalties requested if Desert Ranch agrees to NOT contest the matter at the OAH rehearing
- 4) Leave the reimbursement of filing fees up to the ALJ to determine. (Petitioner may consider donating some or all of the filing fees back to Association depending on how much is required for rehearing)
- 5) Desert Ranch to reimburse Tom for paying the \$245 Maricopa Superior Court appearance fee owed by Desert Ranch (paid on or before February 1, 2024)

I am hopeful this can work and be mutually agreeable!

Regards,  
Tom

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**From:** Tom Barrs <tbarrs360@gmail.com>  
**Sent:** Wednesday, October 11, 2023 4:50 PM  
**To:** Nan Wickman  
**Cc:** Cynthia Dryden; David Hughes; Susan Klinefelter; Michael Olley  
**Subject:** Re: Additional settlement ideas

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