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

**AZNH REVOCABLE TRUST,
by and through
JOHN and SUSAN SULLIVAN,
TRUSTEES, REAL PARTIES IN
INTEREST**

Plaintiff/Appellant

v.

**ARIZONA DEPARTMENT OF REAL
ESTATE,**

Defendant/Appellee

**SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,**

Defendant/Appellee

No. LC2025-000025 - 001

**PLAINTIFF/APPELLANT'S
MEMORANDUM IN SUPPORT OF
MOTION TO
ENFORCE JUDGMENT
AND FOR
ORDER TO SHOW CAUSE**

(Unclassified Civil)

**Assigned to
Hon. Joseph Mikitish**

1 **Introduction**

2 The Arizona Department of Real Estate (“Department”), the Commissioner of the
3 Department (“Commissioner”) and the Commissioner’s designated Administrative Law Judge
4 (“ALJ”) have failed to comply with the Court’s April 17, 2025, Judgment requiring the
5 Department to conduct an Evidentiary Hearing. In addition, the ALJ (Kay A. Abramsohn) has
6 acted to obstruct the Court’s Judgment and has refused to conduct an Evidentiary Hearing. As
7 more fully explained herein-below, the above-described conduct obstructs the Court’s
8 administration of justice and constitutes contempt.

9 **An Enforceable Judgment**

10 Under the Rules of Civil Procedure for the Superior Courts, “Judgment” includes a decree
11 and any order from which an appeal lies. Ariz. R. Civ. P. 54. The Court’s Minute Entry of
12 April 17, 2025, states, in part:

13 “No matters remain pending in connection with this appeal. This is a final order.
14 See Rules 12(c), 12(d), 14(b), Sup. Ct. R. App. P. – Civil and Rule 54(c), Ariz. R.
15 Civ. P.”

16 A judgment is final and appealable when it recites that no further matters remain pending and
17 that the judgment is entered under Rule 54(c). See Ariz.R.Civ.P. 54(c) and A.R.S. § 12-2101
18 (Judgments & Orders That May Be Appealed). Thus, the Court’s April 17th Minute Entry is a
19 Judgment.

20 “The superior court has inherent power to enforce its own judgments by subsequent orders
21 when asked to do so.” *Daley v. Earven*, 166 Ariz. 461, 463 (Div. 2, 1990). In *Daley*, the
22 Appeals Court affirmed the trial court’s jurisdiction to issue post-judgment Orders in exercise of
23 its “inherent power and duty to enforce its own judgment.” *Id.* at 461. The *Daley* Court cited
24 *Am.Jur.2d Judgments* § 898 at 1032 (2nd ed. 1969) which states, in part:

25 Courts have inherent power to enforce their own judgments and should see to it
26 that such judgments are enforced when they are called upon to do so.

27 * * *

1 The court has authority to inquire whether its judgment has been executed, and
2 will remove obstructions to the enforcement thereof. Such authority extends ... to
3 such orders and such writs as may be necessary to carry the judgment into effect
4 and render it binding and operative,.... [Footnotes omitted].

5 *Id.*

6
7 **Refusal to Conduct an Evidentiary Hearing**

8 Counsel's accompanying affidavit shows that the Director's designated ALJ (Kay A.
9 Abramsohn) was fully aware of, and directly quoted, the Court's Judgment requiring an
10 evidentiary hearing. See Affidavit p.4, lines 2-30

11 On August 15, 2025, the ALJ issued an Order which refused to conduct an Evidentiary
12 Hearing and refused to issue subpoenas because: "The Department's Notice of Hearing and
13 Order does not address the remand issue." **Aff. Exhibit 7**, lines 22-23. (Refusal to issue
14 subpoenas is further discussed herein-below.)

15 It should be noted, that the Commissioner is on the distribution list for the ALJ's Order
16 (along with other Department personnel) and, as of this writing, the Department has not
17 remedied the circumstances. (The Director's hearing notice [**Aff. Exhibit 2**] instructed AZNH
18 to direct any and all communications to the Office of Administrative Hearings, and not the
19 Department.)

20
21 **Conducting a Hearing Includes Adherence to Procedural Rules**

22 In the instant matter, the essential requirement of the Court's Judgment is that the Department
23 conduct an Evidentiary Hearing to address the additional evidence proposed by AZNH. It is
24 implicit in that Order that the "conduct" of a hearing includes adherence to the established rules
25 and procedures for such hearing, including the rules for issuance of subpoenas to compel the
26 attendance of witnesses and production of documents. If it were otherwise, AZNH would be
27 deprived of a meaningful evidentiary hearing; that is certainly not what the Court intended.

1 **Refusal to Issue Subpoena**

2 The parties to an HOA dispute [A.R.S. § 32-2199, et seq.] have the “right” to submit
3 evidence and to cross-examine witnesses. A.R.S. § 41-1092.07(B). “All parties shall have the
4 opportunity to respond and present evidence and argument on all relevant issues.” A.R.S. § 41-
5 1092.07(D). “The administrative law judge may issue subpoenas to compel the attendance of
6 witnesses and the production of documents.” A.R.S. § 41-1092.07(C).

7 That’s not to say that any or all requests for subpoenas must be allowed. It is equally implicit
8 that such requests lead to relevant evidence. When a subpoena is requested, “An Administrative
9 Law Judge may require a brief statement of the relevance of testimony or documents.” Ariz.
10 Admin. Code R2-19-113.

11 Relevant evidence is evidence which has any tendency to make the existence or non-
12 existence of some fact of consequence to the controversy more or less probable than it would be
13 without the evidence. See Ariz.R.Evid. 401.

14 When requesting the subpoena duces tecum in this matter, AZNH stated:
15

16 NOW COMES THE PETITIONER in the above-captioned matter and requests
17 the accompanying Subpoena Duces Tecum be issued to Ruth Ingoldsby (Director
18 of Operations and Business Development, Vote HOA Now). The subpoena seeks
19 the electronic ballot which the Respondent has failed (and refused) to produce.

20 As reasons therefore:

21 The Petition alleges that the HOA refused or failed to produce election ballots for
22 inspection as required by A.R.S. 33-1812, A, 7.

23 In writings prior to the original hearing, and at the original hearing, Respondent
24 represented to the tribunal that it had produced all election-related materials for the
25 2024 HOA election. Furthermore, a witness for the HOA testified that she (the
26 witness) had not seen the electronic ballot used by the HOA in their 2024,
27 election.

1 A subsequent investigation discovered HOA documents and records which show,
2 unequivocally, that the aforesaid witness did, in fact, see and approve the
3 electronic ballot used by the HOA in its 2024, election. In addition, Petitioner's
4 counsel obtained the approved, electronic ballot via an electronic link within the
5 HOA's email communications with Vote HOA Now.

6 On June 22, 2025, Petitioner's counsel sent a letter to Respondent's counsel
7 which contained the following requests:

8 Please provide me with a copy of the electronic ballot (or "Election Ballot
9 Proof") which Ms. Fowers approved for use by VoteHOANow in the 2024
10 election.

11 Alternatively, you can simply stipulate that the electronic ballot which I
12 produced to you and to the Superior Court was approved by Ms. Fowers for
13 use by VoteHOANow in the 2024 election.

14 On July 3rd, Atty. Gallacher (for the HOA) replied, in part:

15 The Ballots and the record of the vote from the 2024 annual meeting have all
16 been provided to you. The Association is not required to keep VoteHOANow
17 records and it does not do so. The act of Ms. Fowers following a link to
18 another company's website does not make the screen she sees an Association
19 record. . . . [T]he Association will not stipulate to your document.

20 Wherefore, Petitioner respectfully requests that the accompanying Subpoena
21 Duces Tecum be issued pursuant to A.R.S. § 41-1092.07, C, so that Vote HOA
22 Now may produce the 2024, electronic ballot, and so that Ms. Ingoldsby may
23 testify on relevant matters.

24 **See Aff. Exhibit 4.**

25
26 AZNH believes the above information was sufficient to establish relevancy. But, the ALJ
27 responded with an Order which expressly recited the Court's remand for an Evidentiary Hearing
28 and the ALJ Ordered AZNH to produce the evidence it had submitted to the Court. **Aff. Exhibit**

1 5. The ALJ also Ordered AZNH to explain “who the requested witness is” (even though the
2 witness had already been identified) and to explain “the nature of the testimony anticipated by
3 the witness.” **Aff. Exhibit 5.**

4 AZNH fully complied with the ALJ Order in the manner described in the affidavit
5 accompanying this memorandum. While the original subpoena request contained sufficient
6 information to show relevancy, when the additional information provided to the ALJ is
7 considered [**Aff. Exhibit 6**], it is unquestionable that the witness’s testimony and the requested
8 documents are relevant and necessary to the evidentiary hearing. AZNH has a right to present
9 that evidence. See A.R.S. § 41-1092.07(B&D).

10 Upon receipt of the ALJ’s Order [**Aff. Exhibit 5**], counsel for AZNH formed an opinion that
11 the ALJ may be unaware of the Commissioner’s rehearing Order. As stated in counsel’s
12 affidavit, the Commissioner’s entire Notice of Hearing and Order, and the entire Dispute
13 Rehearing Petition were included in the response to the ALJ to ensure the ALJ had complete
14 information to evaluate relevancy.

15 By this point in time [Aug. 13th], it was obvious that the ALJ knew the Court had remanded
16 the matter for an evidentiary hearing and the ALJ was preparing for such hearing. See, e.g., the
17 ALJ Order [**Aff. Exhibit 3**] dated July 18, 2025, wherein the ALJ Orders: “The parties shall file
18 and exchange witness lists and proposed Aff. Exhibits/lists no later than September 12, 2025.”

19 But, two days later (Aug. 15th), the ALJ issued the Order refusing to conduct an evidentiary
20 hearing and refusing to issue the requested subpoena duces tecum. **Aff. Exhibit 7.** And, as
21 stated in counsel’s affidavit, two other witness subpoenas were requested and the ALJ has not
22 responded as of this writing.

23 There is no apparent and legitimate justification for denying the subpoena duces tecum, or
24 ignoring additional subpoena requests. The unjustified refusal to issue the subpoena (and failure
25 to issue two additional subpoenas) denies AZNH the procedural rights associated with the
26 conduct of an evidentiary hearing and directly obstructs the Court’s administration of justice.
27 The established rules and procedures for a hearing are an integral and indispensable component

1 of conducting a hearing and, therefore, refusal to issue the subpoenas constitutes a failure to
2 comply the Court's Judgment.

3
4 **Enforcing the Judgment is Necessary**

5 The Court has inherent power to enforce its Judgments. *Daley*, supra. Unless the Court
6 intervenes, AZNH shall be denied the evidentiary hearing which this court has ordered.

7 AZNH believes that, in addition to the Court's inherent powers, Ariz.R.Civ.P. 70 applies, and
8 the circumstances justify appointment of an arbitrator from the Rule 73 list to conduct the entire
9 evidentiary hearing and the substantive rehearing in this matter.

10 Rule 70(a) states, in relevant part:

11 If a judgment requires a party to . . . , or to perform any other specific act and the
12 party fails to comply within the time specified, the court may order the act to be
13 done--at the disobedient party's expense--by another person appointed by the
14 court. When done, the act has the same effect as if done by the party.

15 AZNH recognizes that the Court's Judgment did not specify a specific time and date for the
16 required evidentiary hearing, but such specificity is not necessary for the rule to apply in this
17 matter. As stated herein-above, the procedural rules (particularly procuring subpoenas) are an
18 implicit part of conducting an evidentiary hearing.

19 The time for performance began (no later than) when AZNH requested the subpoena duces
20 tecum. Subpoenas must be issued and served well in advance of any hearing to ensure that:
21 witnesses and parties have an opportunity to prepare to attend; counsel have time to prepare for
22 direct and cross-examination; opposing counsel can marshal controverting evidence or
23 witnesses; and, there is adequate time for either a party or the summoned witness to object to the
24 subpoena (see Ariz. Admin. Code R2-19-113). Thus, the Department, the Commissioner and
25 the ALJ have failed to perform a specific act in the conduct of the evidentiary hearing within the
26 time required to do so.

1 But, even if the Court does not believe Rule 70 directly applies, the Court has inherent power
2 to appointment someone in place of the Department or the ALJ to remove the obstructions to the
3 operative effect of the Court's Judgment.

4 Moreover, AZNH has additional requests related to the evidentiary hearing and it is clearly
5 apparent that the ALJ shall not consider them. Under the current circumstances of this matter,
6 there may not be sufficient time to complete all procedural steps associated with a hearing
7 (especially the Sept. 12th witness list and Exhibit disclosure) without continuing the evidentiary
8 hearing well into the future.

9 10 **Contempt**

11 Contempt consists of verbal or non-verbal acts which:

- 12 1. embarrass or obstruct the court in its administration of justice or derogate from its
13 authority or dignity;
- 14 2. bring the administration of justice into disrepute; or
- 15 3. constitute disobedience of a court order or judgment.

16 *Hirschfeld v. Superior Ct. In & For Cnty. of Maricopa*, 184 Ariz. 208, 214 (Div. 1, 1995).

17 18 **The Contemptuous Conduct**

19 The Commissioner (acting through a Deputy) issued a Notice of Hearing on June 27, 2025,
20 and the distribution list for that notice included: "ALJ Kay Abramsohn, Office of Administrative
21 Hearings." **Aff. Exhibit 2.** The Notice included a statement that the Superior Court had denied
22 a Motion to conduct an evidentiary hearing and remanding the matter to the Department.

23 That caption on the Notice identified the venue as "Before the Office of Administrative
24 Hearings," and showed the Docket # 24F-H047-REL-RMD; the original hearing docket number
25 was 24F-H047-REL and "RMD" stands for Remand. The caption also stated: "(Assigned to
26 ALJ Kay Abramsohn)."

1 In mid-July, 2025, the ALJ issued an Order granting a Motion by Sunland Springs
2 (Defendant/Appellee) to reset the matter to Sept. 26, 2025. **Aff. Exhibit 3.** The ALJ also
3 Ordered: “The parties shall file and exchange witness lists and proposed exhibits/lists no later
4 than September 12, 2025.”

5 On August 13, 2025, AZNH submitted a Motion for Subpoena Duces Tecum (discussed
6 *supra*). In response, the ALJ issued an Order which stated, in part, that the Superior Court had
7 “remanded the matter to the Arizona Department of Real Estate to conduct an Evidentiary
8 Hearing ‘to address the *additional evidence proposed by AZNH.*’ [Italics in original.] The
9 specificity of the Court’s Ruling gives rise to this Order.” **Aff. Exhibit 5.** The ALJ also quoted
10 other passages from the Court Judgment.

11 Thus, the above facts show that no later than August 13, 2025: (1) the ALJ was fully aware of
12 the Court’s Judgment remanding the matter for an Evidentiary Hearing; (2) the matter was
13 docketed as a remand hearing; and, (3) the ALJ was preparing for an evidentiary hearing by
14 requiring parties to exchange witness lists and proposed exhibits.

15 The next day (Aug. 14th), AZNH responded and complied with the ALJ Order. **Aff. Exhibit**
16 **6.** The response included a complete copy of the Commissioner’s Notice of Hearing and
17 AZNH’s Petition for Rehearing which fully explained the reasons for rehearing. The Petition
18 contains concise references to the record and a lengthy, critical analysis of the ALJ’s
19 mishandling of the matter. The Director stated that the rehearing was granted, “for the reason(s)
20 outlined in the Rehearing Petition.”

21 The following day (Aug. 15th) the ALJ: refused to hold an evidentiary hearing; refused to
22 issue the requested subpoena duces tecum; and, changed the Docket number to designate the
23 matter as a rehearing rather than a remand. **Aff. Exhibit 7.**

24 The ALJ reasoned that:

25 Petitioner’s Dispute Rehearing Petition did not allege, as grounds for rehearing,
26 “Newly discovered material evidence that could not with reasonable diligence had
27 been discovered and produced at the original hearing.

1 The Department's Notice of Hearing and Order does not address the remand
2 issue."

3 **Aff. Exhibit 7.**

4 The ALJ subsequently ignored an additional request for two witness subpoenas.

5 The ALJ's reasoning is a pretextual contrivance intended to retaliate for the justified
6 criticisms of the ALJ which appear in the Petition for Rehearing. But, even if the Court
7 disagrees that the ALJ retaliated, the ALJ's Order is calculated to hinder or obstruct the Court-
8 Ordered Evidentiary Hearing. Such act is contempt. See *Ong Hing v. Thurston*, 101 Ariz. 92,
9 98 (1966) (any act which is calculated to hinder or obstruct a court in the administration of
10 justice, or which lessens the authority of a court is contempt).

11 If, on the other hand, the Court believes the ALJ needed more specific instructions from the
12 Department or the Commissioner, and those instructions were lacking, then it is the Department
13 or the Commissioner (or both) who have engaged in contemptuous conduct by not instructing
14 the ALJ to conduct an evidentiary hearing.

15
16 **Conclusion**

17 AZNH respectfully requests the relief requested by Motion, including:

- 18 1. The Court exercise its inherent powers to enforce the Court's Judgment in a manner
19 deemed appropriate by the Court;
- 20 2. Find contemptuous parties in contempt and impose sanctions;
- 21 3. Issue the proposed Orders to Show Cause to: the Arizona Department of Real Estate; the
22 Commissioner of the Department of Real Estate; and, Administrative Law Judge, Kay A.
23 Abramsohn; and,
- 24 4. Such other and further Orders as justice requires.

August 22, 2025

Plaintiff/Appellant, AZNH Revocable Trust

By:

/s/ John F. Sullivan

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CERTIFICATE OF SERVICE

A copy hereof shall be sent this date to:

Clerk of the Superior Court, 201 W. Jefferson St., Phoenix, AZ. 85003 via U.S. Mail

Atty. Chad Gallacher and Atty. B. Austin Baillio (counsel for Sunland Springs Village Homeowners Assoc.) at their email address: cgallacher@hoalaw.biz and abailio@hoalaw.biz.

Asst. Atty. General Lynette Evans (counsel for Az. Dept. of Real Estate) at her email address Lynette.Evans@azag.gov

Judge Mikitish's Judicial Assistant at joel.grajeda@jbazmc.maricopa.gov.

/s/ John F. Sullivan

Attorney for Plaintiff/Appellant