

1 4. On or about March 31, 2025, Mr. Whittaker filed a petition with the
2 Department that alleged that Val Vista Lakes had violated A.R.S. §33-1811 and paid a
3 filing fee of \$500.00.

4 5. The hearing occurred on November 18, 2025.

5 6. Mr. Whittaker represented himself and called Mark Thompson, Sharon
6 Maiden, Brodie Hurtado, Bill Suttell, and Diana Ebersthauser as witnesses.

7 Respondent did not call any witnesses.

8 7. In opening arguments, Mr. Whittaker argued that any contract entered into
9 by Val Vista Lakes with CHDB Law, was void as two Board of Directors (“Board”)
10 members had a conflict of interest and failed to disclose the same in open meetings.

11 8. Mr. Baillio argued that there was no duty to disclose any potential conflict
12 as there was no financial benefit derived from the engagement of CHDB Law.

13 9. Mr. Thompson served on the Board with Ms. Ebertshsuser and Mr.
14 Hurtado, and testified that they had never disclosed that Jonathan Ebertshauser was
15 their son and husband, respectively. Further, Mr. Thompson testified that during his
16 tenure on the Board, CHDB Law handled nearly all of the community legal issues.

17 10. Ms. Maiden testified that she served on the Board from November 2020
18 until November 2024 and that with Ms. Ebertshsuser and Mr. Hurtado never disclosed
19 the potential conflict of interest in retaining CHDB Law. Ms. Maiden testified further
20 that when Val Vista Lakes was engaged in the “Brown” lawsuit, CHDB Law initially was
21 retained to handle the same, however, the Board decided to use its insurance policy to
22 defend the same. Based upon this, the insurance company then hired CHDB Law for
23 representation of Val Vista Lakes.

24 11. Mr. Hurtado testified that his husband, Jonathan Ebertshauser is a partner
25 at CHDB Law, but was not a shareholder. He testified that Mr. Ebersthauser does not
26 directly represent Val Vista Lakes, and only receives a salary based upon his billable
27 hours for his clients. Further, Mr. Hurtado testified that while he did not believe that he
28 had a conflict of interest, he nonetheless disclosed the same multiple times.

29 12. Mr. Suttell served on the Board from November 2008 until November
30 2022. He testified that while he was on the Board, the predecessor firm to CHDB Law

1 was general counsel, however, the Board then switched several times to other law firms
2 for that work, and that once that occurred, CHDB Law's contract with Val Vista Lakes
3 was superseded. Further, Mr. Suttell testified that he believed that under the statute the
4 "benefit" did not have to be purely financial, it could also include a benefit to the firm's
5 reputation.

6 13. Ms. Ebertshauser testified that her son is Jonathan Ebertshauser. She
7 testified that she disclosed any potential conflicts in an open board meetings, but could
8 not recall the specific meetings. Ms. Ebertshauser also testified that there was no
9 question in the community who her son was. In addition, Ms. Ebertshauser testified that
10 she did not disclose a potential conflict when she applied for the Board, as Val Vista
11 Lakes was represented by a different law firm at the time.

12 **CONCLUSIONS OF LAW**

13 1. A.R.S. § 32-2199(B) permits an owner or a planned community
14 organization to file a petition with the Department for a hearing concerning violations of
15 planned community documents under the authority Title 33, Chapter 16. Such petitions
16 will be heard before the Office of Administrative Hearings, an independent state agency.

17 2. Petitioner bears the burden of proof to establish that Respondent violated
18 A.R.S. § 33-1811 by a preponderance of the evidence.¹ Respondent bears the burden
19 to establish affirmative defenses by the same evidentiary standard.²

20 3. "A preponderance of the evidence is such proof as convinces the trier of
21 fact that the contention is more probably true than not."³ A preponderance of the
22 evidence is "[t]he greater weight of the evidence, not necessarily established by the
23 greater number of witnesses testifying to a fact but by evidence that has the most
24 convincing force; superior evidentiary weight that, though not sufficient to free the mind
25 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to
26 one side of the issue rather than the other."⁴

27 ¹ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74
28 Ariz. 369, 372, 249 P.2d 837 (1952).

29 ² See A.A.C. R2-19-119(B)(2).

30 ³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁴ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 4. A.R.S. § 33-1811 states:

2 If any contract, decision or other action for compensation taken by or on
3 behalf of the board of directors would benefit any member of the board of
4 directors or any person who is a parent, grandparent, spouse, child or
5 sibling of a member of the board of directors or a parent or spouse of any of
6 those persons, that member of the board of directors shall declare a conflict
7 of interest for that issue. The member shall declare the conflict in an open
meeting of the board before the board discusses or takes action on that
issue and that member may then vote on that issue. Any contract entered
into in violation of this section is void and unenforceable.

8 5. Mr. Whittaker would like this Tribunal to believe that “contract” in the statute does
9 not have to involve compensation. The Tribunal respectfully disagrees. Perhaps if the
10 statute were written, “if any contact, decision, or action for compensation...”, Mr.
11 Whittaker may be correct. However, the word “other” would indicate that the contract or
12 decision would involve compensation. Mr. Whittaker did not present any evidence that
13 Mr. Ebertshauser received any additional compensation such as a raise, a bonus or
14 other incentive from CHDB Law once they were hired by Val Vista Lakes. Further, the
15 fact that a law firm pays for malpractice insurance, or an office space, is not
16 compensation, rather it is a benefit. If Mr. Ebertshauser was a sole practitioner and/or a
17 true shareholder with profit sharing, there would absolutely be a conflict of interest
18 which would need to be disclosed by Ms. Ebertshauser and Mr. Hurtado. However,
19 there was no persuasive evidence presented indicating the same. Admittedly, the best
20 practice of a Board member would be to abstain from voting, however, the statute does
21 not require the same. Therefore, the Tribunal finds that Mr. Whittaker has not sustained
22 his burden in demonstrating that Val Vista Lakes violated A.R.S. § 33-1811.

23 **ORDER**

24 IT IS ORDERED that Petitioners’ petition is denied as to a violation of A.R.S. 33-
25 1811, and Petitioner is not entitled to his filing fee of \$500.00. Finally, the Tribunal
26 declines to award a civil penalty in this matter.

NOTICE

Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter must be filed with the Commissioner of the Department of Real Estate within 30 days of the service of this Order upon the parties.

Done this day, December 2, 2025.

/s/ Adam D. Stone
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile December 2, 2025 to:

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