

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 CHARLES M. STARR and
8 DONALD NEVINS,
9 Petitioners,

10 vs.
11 MARAVILLA
12 NEIGHBORHOOD ASSOCIATION, INC.,
13 Respondent.

Docket Nos. **07F-H067012-BFS**
07F-H067013-BFS

ADMINISTRATIVE
LAW JUDGE DECISION

14 **HEARING:** April 23rd, 2007; 9:00 a.m.

15 **APPEARANCES:** Petitioner Mr. Charles M. Starr appeared *pro per*
16 telephonically for the first half of the hearing. Petitioner Mr. Donald Nevins appeared
17 *pro per*. Respondent, Maravilla Neighborhood Association, Inc., appeared through
18 counsel, Mr. David L. Curl, Attorney-at-Law.

19 **ADMINISTRATIVE LAW JUDGE:** Grant Winston

20
21 The administrative hearing of this matter was held in the Office of Administrative
22 Hearings. Tucson. Testimony was heard and other evidence admitted to the record,
23 and, based on the entire record, the following Findings of Fact, Conclusions of Law and
24 Order are made.

25 **FINDINGS OF FACT**

- 26 1. Petitioners, Mrs. Charles M. Starr and Donald Nevins, are residents and
27 members of the Respondent Maravilla Neighborhood Association, Inc., a
28 planned community governing body operating in Tucson, Arizona.
29 2. This administrative hearing concerns four separate complaint allegations or
30 charges brought by Petitioners against Respondent.

- 1 3. The first two allegations (#5 and #6) are that Respondent failed to record on its
2 books of account certain mandatory restricted reserves as required by the
3 Respondent's By-Law Sec. 4.13 and CC&Rs Sec. 7.02, cited by Petitioners as
4 authority.
- 5 4. Sec. 4.13 of the By-Laws requires the Respondent to maintain "books with
6 detailed accounts affecting the administration of the Common Areas" including
7 replacement and other expenses. The greater weight of evidence proved that
8 while this record-keeping was not performed as completely as called for by the
9 By-Laws prior to February, 2007, since that date the books have been kept in
10 accordance with Sec. 4.13 of the By-Laws. The By-Laws further provide that if
11 at any time at least 25% of the members consider the bookkeeping
12 inadequately performed, they can petition Respondent for an audit. If
13 Petitioners continue feel the books are inadequately kept, such would be their
14 proper avenue to remedy.
- 15 5. The next complaint (#11) is that Respondent has withheld and refused
16 inspection of Association documents. By-Law 4.13, cited by Petitioners as
17 authority, requires the Respondent to make available to members for
18 inspection "the books and vouchers" "at convenient hours on working days."
- 19 6. The evidence proved that Petitioners had requested to inspect voluminous of
20 Association documents possessed by the Directors. At the time of the request
21 and for some time afterwards, the Association had no physical offices, so the
22 documents were maintained by Directors in their homes. The evidence proved
23 that the Directors made available to Petitioners for inspection banker's boxes
24 full of documents beginning on the one Friday morning in the living room of the
25 then-President Mr. Vic Williams. Petitioners brought with them their own
26 personal copying machine. Petitioners were allowed to inspect and copy
27 documents over the course of that entire day. At the end of the day, the
28 Petitioners still not having seen all the documents they wished to see, they and
29 Mr. Williams agreed that Petitioners could continue to inspect documents
30 commencing the following morning, a Saturday. However, the next day Mr.

1 Williams's five-year-old son was with him, and he considered it undesirable for
2 the inspection to take place in the living room, so the garage was offered and
3 used. After approximately an hour or so, the Petitioners were uncomfortably
4 warm and closed the garage door without giving prior notice to Mr. Williams,
5 who then raised it again. This happened twice and contributed to a growing
6 distrust between the parties. Petitioners testified that also on that morning
7 other younger men (Petitioners both being over 65-years-old) came to the
8 garage area and intimidated them, but Respondent's evidence was that they
9 were just curious to see what was happening in the Williams garage.

- 10 7. Subsequently the Respondent entrusted its records to a professional
11 management company. Respondent is willing to allow Petitioners to further
12 inspect any of the records (other than those that would improperly divulge
13 personal information of other members or which is protected by professional
14 confidentiality) during normal business hours at the management company
15 offices, upon reasonable notice.
- 16 8. Hence, there does not appear to have been any impermissible withholding of
17 documents. Indeed, an inspection on a Saturday was allowed, which seems
18 to go above and beyond the requirement that inspection be available on
19 "working days." Also, there appears to be a reasonable approach for the
20 parties to pursue in the future.
- 21 9. The last issue or complaint item (#12) is an allegation of selective enforcement
22 of the rules by Respondent. As it developed at the hearing this allegation
23 proved to be the issue of Petitioners' common wall, which involves issues
24 beyond the scope of this hearing and OAH's authority to adjudicate. Therefore
25 it was not heard (See: Second Pre-Hearing Conference Order, February 28th,
26 2007).

27 **CONCLUSIONS OF LAW**

- 28 1. This administrative hearing was held under the authority of and pursuant to
29 A.R.S. 41-2198.01 and A.R.S. 41-1092.
30

1 2. Petitioners have the burden of proof by a preponderance of the evidence.
2 A.A.C. R2-19-119. The Petitioners have failed to carry the required burden of
3 proof. It appeared from the record as a whole that the documents were
4 made, and continue to be made, reasonably available for inspection, and the
5 books of account are being properly kept, and if Petitioners continue to think
6 them not to be, a proper remedy is provided in the By-Laws.

7
8 **ORDER**

9 Based on the above, the Petitions are dismissed.

10 Done this day, April 30th, 2007.

11
12 _____
13 Grant Winston
14 Administrative Law Judge

15 Original transmitted by mail this
16 _____ day of _____, 2007, to:

17 Department of Fire Building and Life Safety - H/C
18 Robert Barger
19 ATTN: Joyce Kesterman
20 1110 W. Washington, Suite 100
21 Phoenix, AZ 85007

22 Maravilla Neighborhood Association, Inc.
23 c/o Elizabeth Lightfoot
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By _____