

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 HORACE E. COON

8 Petitioner,

9  
10 vs.

11 INDIAN HILLS AIRPARK ASSOCIATION,

12 Respondent.

**No. 08F-H089002-BFS**

**ADMINISTRATIVE LAW JUDGE**

**DECISION AND ORDER**

13  
14  
15  
16 **HEARING:** November 4, 2008.

17 **APPEARANCES:** Horace E. Coon appeared personally. Indian Hills Airpark  
18 Association was represented by its attorney, Jonathan Olcott, Esq.

19 **ADMINISTRATIVE LAW JUDGE:** Brian Brendan Tully

20  
21 Based upon the evidence of record, the Administrative Law Judge makes the  
22 following Findings of Fact, Conclusions of Law and Order:

23  
24 **FINDINGS OF FACT**

- 25 1. Pursuant to A.R.S. § 4102198.01(B), the Arizona Department of Fire, Building  
26 and Life Safety (“Department”) is authorized to receive Petitions in disputes  
27 between homeowner associations and their members.
- 28 2. Such Petitions received by the Department are forwarded to the Office of  
29 Administrative Hearings, an independent agency, for formal hearing.
- 30

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

- 3. On or about July 7, 2008, Horace E. Coon ("Petitioner") filed a single count Petition against Indian Hills Airpark Association ("Respondent"). Petitioner is a member of Respondent.
- 4. Petitioner's Petition alleged the following single count violation by Respondent:

1 On or about June 12, 2008 (specify date), the Respondent  
2 committed the specific following act, or specifically failed to act in  
3 the following manner, or caused the following condition to occur:  
4 To provide requested financial/acct. records, ignored repeated  
5 requests for asso. Documents, therefore these documents are  
6 unavailable to furnish with complaint, in violation of the following  
7 provisions of the condominium or planned community documents  
8 and/or A.R.S. § Title 33, Chapter 9 (condominium) or A.R.S. Title  
9 33, Chapter 16 (planned community). Please specify the  
10 subsection: 33-1805 and asso. By-laws, Article IX, Section 2.

- 8 5. On or about May 29, 2008, Petitioner made a written request for records  
9 maintained by Respondent.
- 10 6. Respondent maintains its records electronically on its treasurer's laptop  
11 computer, with the records backed up to a computer located in Respondent's  
12 office.
- 13 7. On or about June 12, 2008, Respondent's treasurer, David Paul Miller, put  
14 Petitioner's requested documentation on a computer disk. The computer disk  
15 was sent to Petitioner.
- 16 8. Upon receipt of the computer disk, Petitioner was unable to open it.
- 17 9. Petitioner later contacted Respondent concerning his inability to access the  
18 documentation he had requested. Mr. Miller was then residing at his Oregon  
19 home. Mr. Miller discovered that he had inadvertently used his personal  
20 password on the computer disk furnished to Petitioner. Rather than disclose his  
21 personal password, Mr. Miller created a new disk with a new generic password  
22 so that Petitioner could access the records.
- 23 10. Petitioner was able to access the computer disk, although he claims that he  
24 cannot access all data.
- 25 11. Respondent is found to have complied with Petitioner's request for documents.
- 26 12. Complainant's contention that he was entitled to paper copies of the requested  
27 documents rather than in an electronic format is not supported by the evidence or  
28 applicable statutes. Respondent's furnishing of the requested documentation in  
29 an electronic format was appropriate.
- 30

**CONCLUSIONS OF LAW**

1. In adjudicating petitions forwarded to the Office of Administrative Hearing by the Department, the jurisdiction of the Office of Administrative Hearings is limited to adjudicating complaints regarding and ensuring compliance with Title 33, Chapter 16 of the Arizona Revised Statutes, and the planned community documents of Respondent. This authority is granted by statute, specifically A.R.S. § 41-2198.
2. Pursuant to A.A.C. R2-19-119(B), Petitioner has the burden of proof in this matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).
3. Respondent complied with the requirements of A.R.S. § 33-1805 by providing Petitioner with an electronic copy of the requested documents. Pursuant to A.R.S. § 44-7007(A) and (C), the electronic record supplied by Respondent to Petitioner complies with the provisions of A.R.S. § 33-1805.
4. Since Petitioner is not the prevailing party in this matter, he is not entitled to payment of his filing fee from Respondent pursuant to A.R.S. § 41-2198.02(B).
5. Respondent's claim for attorney's fee must be denied because an administrative proceeding is not an "action" for which attorney's fees can be awarded. See *Semple v. Tri-City Drywall, Inc.*, 172 Ariz. 608, 838 P.2d 1369 (App. 1992).

**ORDER**

Petitioner's Petition is dismissed. Pursuant to A.R.S. § 41-2198.02(B), this Administrative Law Judge Decision and Order is the final administrative decision and is not subject to a request for rehearing. The Order issued in this matter is enforceable through contempt of court proceedings in the Superior Court.

Done this day, November 17, 2008

\_\_\_\_\_  
Brian Brendan Tully  
Administrative Law Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Original transmitted by mail this  
\_\_\_\_ day of \_\_\_\_\_, 2008, to:

Robert Barger, Director  
Department of Fire Building and Life Safety - H/C  
ATTN: Debra Blake  
1110 W. Washington, Suite 100  
Phoenix, AZ 85007

Horace E. Coon  
P.O.Box 970  
Salome, AZ 85348

Jonathan Olcott, Esq.  
The Brown Law Group  
5201 North 7th Ave.  
Phoenix, AZ 85013

By \_\_\_\_\_

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30