

1 **Final agency action regarding decision below:**

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3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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7 CAROL PORTONOVA,

8 Petitioner,

9 vs

10 TENTH AVENUE MISSIONS  
11 HOMEOWNERS ASSOCIATION, INC.,

12 Respondent.

**No. 12F-H1212013-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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16 **HEARING:** September 19, 2012

17 **APPEARANCES:** Carol Portonova on her own behalf; Michael Orcutt, Esq. on  
18 behalf of Tenth Avenue Missions Homeowner's Association, Inc.

19 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

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21 **RULING**

22 This hearing involved an allegation made by Carol Portonova ("Petitioner") that  
23 Tenth Avenue Missions Homeowners Association, Inc. ("Respondent"/"Association")  
24 violated A.R.S. § 33-1805(A) by not providing her with records pertaining to monies the  
25 Association received to satisfy a judgment it obtained against Petitioner. The  
26 Administrative Law Judge concludes that Petitioner failed to prove that Respondent  
27 violated A.R.S. § 33-1805(A).

28 **FINDINGS OF FACT**

29 1. At all times relevant to this matter, Petitioner resided in a planned community  
30 association known as Tenth Avenue Missions, located in Tempe, Arizona, that was  
overseen by Respondent and governed by a Board of Directors.

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2. It is undisputed that there are six units (patio homes) within Tenth Avenue Missions.

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3. Petitioner testified that the Respondent brought a lawsuit against her and her husband that resulted in a judgment. Ultimately, Respondent obtained a Satisfaction of Judgment against Petitioner. Petitioner expressed her concern about the Association's accounting of what happened to the monies that the Association received to satisfy the judgment, which included the Association's attorneys' fees. Petitioner asserted that the Association has not produced any records regarding the monies received and it is her belief that the Association has no records to account for the monies paid to satisfy the judgment.

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4. On June 4, 2012, Petitioner filed a Petition with the Arizona Department of Fire, Building and Life Safety regarding this matter and paid a filing fee of \$550.00.

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5. In the Petition, Petitioner alleged that Respondent's acts or inaction that constitutes a violation of law occurred in June 2011. In support of her assertion that Respondent violated A.R.S. § 33-1805(A), Petitioner presented into evidence a May 3, 2012 letter directed to certain officers of the Association, including Mario Capriotti, Jr. 6.

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Petitioner also implied during the cross-examination of Mr. Capriotti, Jr. that she requested Association records at a November 2011 Homeowners Association meeting. Although the evidentiary record reflects that at some point in time Petitioner received a copy of Respondent's 2012 budget, Petitioner could not state when she received it.

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7. Notwithstanding that the evidence presented by Petitioner did not address a June 2011 date, as referenced in the Petition, Mario Capriotti, Jr. testified that he did not receive the May 3, 2012 letter nor did he receive any request for Association records as set forth in that letter. Mario Capriotti, Jr. also testified that Petitioner did not make any request to examine or purchase copies of Association records at the November 2011 Homeowners Association meeting.

### 26 27 **CONCLUSIONS OF LAW**

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1. At this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated A.R.S. § 33-1805(A). See A.A.C. R2-19-119.

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2. A preponderance of the evidence is "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as

1 a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW  
2 DICTIONARY 1182 (6th ed. 1990).

3 3. A.R.S. § 33-1805(A), provides:

4 A. Except as provided in subsection B of this section, all  
5 financial and other records of the association shall be made  
6 reasonably available for examination by any member or any  
7 person designated by the member in writing as the member's  
8 representative. The association shall not charge a member or  
9 any person designated by the member in writing for making  
10 material available for review. The association shall have ten  
11 business days to fulfill a request for examination. On request  
12 for purchase of copies of records by any member or any person  
13 designated by the member in writing as the member's  
14 representative, the association shall have ten business days to  
15 provide copies of the requested records. An association may  
16 charge a fee for making copies of not more than fifteen cents  
17 per page.

14 4. Petitioner failed to establish by a preponderance of the evidence that she or a  
15 designated representative made a request to Respondent to examine or provide  
16 records relating to monies received to satisfy the above-mentioned judgment.  
17 Consequently, Petitioner failed to establish by a preponderance of the evidence that  
18 Respondent failed to provide her or a designated representative with an opportunity to  
19 examine such records or with copies of such records upon request.

20 5. Petitioner failed to prove by a preponderance of the evidence that Respondent  
21 violated A.R.S. § 33-1805(A).

22 **ORDER**

23 The Petition in this matter is dismissed and no action is required of Respondent.  
24 *In the event of certification of the Administrative Law Judge Decision by the*  
25 *Director of the Office of Administrative Hearings, the effective date of the Order will be*  
26 *five days from the date of that certification.*

27 Done this day, October 2, 2012.

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29 /s/ Lewis D. Kowal  
30 Administrative Law Judge

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Transmitted electronically to:  
Gene Palma, Director  
Department of Fire Building and Life Safety