

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

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3 **ALJCERT ALJ decision certified as final 11/14/12: Mailed to parties./rjr**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 WILLIAM M. BROWN

8 Petitioner,

9 vs.

10 TERRAVITA COMMUNITY ASSOCIATION,
11 INC.,

12 Respondent.

No. 12F-H1212014-BFS

**ADMINISTRATIVE LAW JUDGE
DECISION**

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16 William M. Brown ("Petitioner") filed a Petition with the Arizona Department of
17 Fire, Building and Life Safety ("Department") alleging that the Terravita Community
18 Association, Inc. ("Respondent") committed the following violation:

19 **Alleged Violation Description**

20
21 Following a May 25, 2012 records request pursuant to A.R.S.
22 § 33-1805(A), the association failed to provide the requested
23 records (hard copy or electronic mail) and failed to provide
the requested records for examination.

24 "By return electronic mail, please provide the following
25 association records:

- 26
27 1) Engagement letter and/or retainer agreement, legal
28 services agreement, professional services contract
29 with current fee schedule (programs/services) by and
30 between Terravita Community Association, Inc. and
Ekmark & Ekmark, L.L.C.

1 2) Minutes of the March 27, 2012 and April 24, 2012
2 executive session meetings of the board of directors.
3 ["]

4 The Department forwarded Petitioner's Petition to the Office of Administrative
5 Hearings, an independent agency, for an evidentiary hearing scheduled to convene on
6 October 9, 2012, at 8:00 a.m.

7 On September 21, 2012, Respondent filed Respondent's Motion for Summary
8 Judgment for Mootness ("Motion") claiming that two of the requested documents do not
9 exist and a third, the minutes of the Board's Executive Session on March 27, 2012
10 meeting, are not public documents "wholly protected from disclosure under the plain
11 language of A.R.S. § 33-1805(B)(3)."

12 On October 2, 2012, Petitioner filed a written response in opposition to
13 Respondent's Motion. On October 3, 2012, at 9:19 p.m., Petitioner electronically filed a
14 supplement to his written response. Petitioner contends that "Respondent's
15 understanding [of] the 'plain language' of A.R.S. § 33-1805(B)(3) is as mistaken as
16 Respondent's affirmation" that Respondent has fully complied with Petitioner's request.
17 However, Petitioner's response did not provide any legal authority for his position.

18 Upon review and consideration of Respondent's Motion and Petitioner's response
19 in opposition to it, the Administrative Law Judge concludes that the Motion should be
20 granted for the following reasons:

21 **Alleged Violation Description 1)**

22 In response to Petitioner's request to examine an engagement letter between
23 Respondent and its counsel, Ekmark & Ekmark, L.L.C., Respondent stated that there is
24 no such engagement letter in existence.

25 Even if an engagement letter did exist, the engagement letter would be protected
26 by attorney/client privilege that could not be disclosed to any third party, unless
27 Respondent waived that privilege, pursuant to A.R.S. § 33-1805(B). Petitioner would
28 not be entitled to view or possess any such engagement letter.

29 **Alleged Violation Description 2)**

30 A.R.S. § 33-1804(A) provides that a Board's executive session meetings are not
open to the public or non-Board members. Petitioner's response failed to state any legal

1 authority to support his contention that he has a right to minutes from Respondent's
2 executive session meetings. If Petitioner had been present when Respondent's Board
3 went into executive session, he, along with any non-Board members present, would
4 have been excluded from the meeting.

5 The minutes of Respondent's Board's executive session meeting on March 27,
6 2012, are not public minutes available to Petitioner or any other non-Board member,
7 pursuant to A.R.S. § 33-1805(B)(3).

8 Petitioner requested the minutes of a purported executive session meeting on
9 April 24, 2012. Respondent contends that there was no executive session meeting on
10 that date. Even if there were minutes of an executive session meeting by Respondent's
11 Board on April 24, 2012, Respondent would not be required to produce those minutes
12 to Petitioner, pursuant to A.R.S. § 33-1805(B)(3).

13 **Conclusion**

14 Petitioner is not entitled to receive or view the requested records, whether they
15 exist or not.

16 The Administrative Law Judge concludes that, based on the above, there are no
17 issues contained in the Petition that require an evidentiary hearing.

18 **THEREFORE,**

19 **IT IS ORDERED** granting Respondent Motion for Summary Judgment for
20 Mootness and vacating this matter from the calendar of the Office of Administrative
21 Hearings.¹

22 *In the event of certification of the Administrative Law Judge Decision by the*
23 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
24 *five (5) days from the date of that certification.*

25
26 Done this day, October 4, 2012.

27 /s/ Brian Brendan Tully
28 Administrative Law Judge

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¹ Therefore, Respondent's Motion to Continue Hearing and Compel Discovery filed on September 24,
2012, is moot.

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Copy mailed/e-mailed October 4, 2012, to:
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