

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

2  
3 **ALJCERT ALJ decision certified as final**

4  
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 ALEXANDER WINTER  
8 Petitioner,

**No. 13F-H1314001-BFS**

9 vs

**ADMINISTRATIVE LAW JUDGE**

10 CORTINA HOMEOWNERS  
11 ASSOCIATION,  
12 Respondent.

**DECISION**

13  
14 **HEARING:** November 22, 2013

15 **APPEARANCES:** Petitioner Alexander Winter appeared on his own behalf.  
16 Respondent Cortina Homeowners Association was represented by Augustus H. Shaw,  
17 IV.

18 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

19  
20 **RULING**

21 This hearing involved an allegation made by Petitioner Alexander Winter that  
22 Cortina Homeowners Association (Respondent) violated A.R.S. § 33-1805 by failing to  
23 provide him with the all the documents he requested on June 12, 2013. The  
24 Administrative Law Judge concludes that Petitioner established a violation by  
25 Respondent.

26 **FINDINGS OF FACT**

27 1. Respondent is an association of homeowners located in Queen  
28 Creek, Arizona.

29 2. On June 12, 2013, Petitioner submitted written requests to  
30 Respondent. The requests read as follows:

1 Documents I wish to inspect: (Please be specific) Requesting Copies for  
pick up.

2 Active Contracts for Clean Cuts

3 All invoices for Clean Cuts from Jan 2012 – Dec 2012

4 2012 and 2013 Budgets

5 . . . .

[Initialed] I understand that contracts will be viewable for inspection at  
the Association office only, no copies will be provided.

7 Documents I wish to inspect: (Please be specific) Requesting Copies for  
pick up.

8 2012 GL Detail Report including journal entries for both operating &  
reserves.

9 Active contracts for Renaissance Community Partners.

10 All invoices for Renaissance Community Partners from Jan 2012 – Dec  
2012.

11 . . . .

12 [Initialed] I understand that contracts will be viewable for inspection at  
the Association office only, no copies will be provided.

14 Exhibit B.<sup>1</sup>

15 3. On June 21, 2013, Kevin Bishop, the statutory agent for  
16 Respondent and Manager, replied to Petitioner's request via email.

17 a. Mr. Bishop warned Petitioner that copies of the Clean Cut invoices would  
18 be costly, but the information contained in them could be compiled into a  
19 report. Mr. Bishop indicated that if Petitioner still wanted copies of the  
20 invoices, those would be made when Petitioner came to pick up the  
21 information.

22 b. Mr. Bishop stated that Petitioner could review the contracts in the office  
23 when Mr. Bishop could be present. Mr. Bishop indicated he was on  
24 vacation and would return on July 7, 2013. Petitioner was advised to  
25 make an appointment after that date by replying to the email.

26 c. Mr. Bishop maintained the information contained in the Renaissance  
27 invoices was protected under A.R.S. § 33-1805 as they contained

28  
29 <sup>1</sup> The request was made over two pre-printed forms that were identical. Petitioner crossed out the word  
30 "inspect" and wrote in "Requesting Copies for pick up." Petitioner initialed the preprinted  
acknowledgement that contracts were viewable for inspection at the Association office only and copies  
would not be provided.

1 information relating to the financial records of individual members. Mr.  
2 Bishop went on to say that “[t]he numbers and amounts are all contained  
3 in the Income statement for the Association. Those will be provided  
4 pursuant to your request.”

5 d. Mr. Bishop concluded by stating that copies available for pick up included  
6 the GL Operating account history 2012, GL Reserve account history 2012,  
7 Clean Cut invoice and payment history, 2012 and 2013 budgets, and 2012  
8 Landscape expense detail.

9 4. Petitioner testified that at some point during the week of June  
10 24, 2013, he called the Renaissance Community Partners’ office to inquire about the  
11 status of his request. Petitioner stated that the female who answered the phone did not  
12 know anything about the request and stated Mr. Bishop was out of the office. Petitioner  
13 was unable to identify the specific time of the call or the name of the person he spoke to  
14 regarding his request.

15 5. On June 30, 2013, Petitioner replied to Mr. Bishop’s email and  
16 indicated he was planning on filing a complaint due to Mr. Bishop’s violation of the  
17 Arizona statute.

18 6. On July 3, 2013, Petitioner filed a Petition with the Department  
19 of Fire, Building and Life Safety (Department) alleging Respondent violated A.R.S. § 33-  
20 1805 by failing to provide him with the requested documents. Petitioner paid a \$550.00  
21 filing fee.

22 7. On July 29, 2013, Respondent filed an Answer with the  
23 Department denying the allegations set forth in the Petition.

24 8. On September 26, 2013, the Department issued a Notice of  
25 Hearing to the parties notifying them that a hearing on the Petition would be conducted  
26 by the Office of Administrative Hearings.

27 9. On November 22, 2013, a hearing was held on the Petition and  
28 the parties presented evidence and argument regarding the statute and the documents  
29 provided to Petitioner.  
30

1                   10.                   Mr. Bishop testified that it is Renaissance Community Partners'  
2 policy not to provide copies of contracts to homeowners, but to allow homeowners an  
3 opportunity to inspect the contracts. Mr. Bishop indicated many contracts contain "trade  
4 secrets" that the vendors would not want released to the general public as disclosure  
5 could harm their business in the future. Mr. Bishop specifically stated that the  
6 Renaissance Community Partners' contract was uniquely structured which gave it a  
7 marketing differential in the industry and disclosure of the contract to homeowners, and  
8 potential competitors, could harm their business.

9                   11.                   Petitioner owns a landscaping management company that  
10 provides landscaping services for homeowners associations. Petitioner's ex-wife owns  
11 a property management company that provides management services for homeowners  
12 associations. Petitioner provides assistance to his ex-wife with respect to the property  
13 management company.

14                   12.                   Petitioner argued Respondent violated A.R.S. § 33-1805 by  
15 failing to provide him with the records he requested within 10 business days. Petitioner  
16 alleged that as a homeowner, he was entitled to the information he requested so he  
17 would have a full understanding of the financial standing of the association.

- 18                   a. Petitioner argued that copies of the contracts were not provided and  
19 nothing in the statute provides an exemption to providing those  
20 documents. Further, Petitioner asserted that even if copies of the  
21 contracts were not required to be provided, he was not allowed to view the  
22 contracts within 10 business days of his request.
- 23                   b. Petitioner also alleged that the invoices from Renaissance Community  
24 Partners could have been redacted and he should have been provided a  
25 redacted copy.
- 26                   c. Finally, Petitioner argued he was not provided copies of the remaining  
27 documents based on his telephone conversation with the woman who  
28 denied any knowledge of his request.

29                   13.                   Respondent maintained that it complied with the statute.  
30

- 1 a. First, Respondent made copies of the 2012 and 2013 budgets, the GL  
2 Operating and Reserve account history for 2012, Clean Cut invoice and  
3 payment history, and 2012 landscape expense detail, but Petitioner failed  
4 to pick up those documents.
- 5 b. Next, Respondent argued that it was not required to disclose the  
6 Renaissance invoices because they included financial records and  
7 information of individual members of the association. The testimony  
8 indicated that the invoices were very detailed and included assessments,  
9 late fees, and other financial matters relating to the individual  
10 homeowners. Mr. Bishop testified that redacting the records would have  
11 resulted in a document that was largely redacted material with little  
12 material remaining.
- 13 c. Finally, Respondent asserted that it made the contracts available for  
14 Petitioner to review in accordance with its policy, Petitioner's  
15 acknowledgement that copies of contracts would not be provided, and the  
16 protection of "trade secrets" under the statute.

17 14.

18 **CONCLUSIONS OF LAW**

19 1. The Department has jurisdiction to hear disputes between a  
20 property owner and a planned community association. A.R.S. § 41-2198.01(B).

21 2. In this proceeding, Petitioner bears the burden of proving by a  
22 preponderance of the evidence that Respondent violated A.R.S. § 33-1805. A.A.C. R2-  
23 19-119.

24 3. A preponderance of the evidence is "[e]vidence which is of greater  
25 weight or more convincing than the evidence which is offered in opposition to it; that is,  
26 evidence which as a whole shows that the fact sought to be proved is more probable than  
27 not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

28 4. A.R.S. § 33-1805 provides, in pertinent part:

29 A. Except as provided in subsection B of this section, all financial and  
30 other records of the association shall be made reasonably available for  
examination by any member or any person designated by the member in

1 writing as the member's representative. The association shall not charge a  
2 member or any person designated by the member in writing for making  
3 material available for review. The association shall have ten business  
4 days to fulfill a request for examination. On request for purchase of copies  
5 of records by any member or any person designated by the member in  
6 writing as the member's representative, the association shall have ten  
7 business days to provide copies of the requested records. An association  
8 may charge a fee for making copies of not more than fifteen cents per  
9 page.

10 B. Books and records kept by or on behalf of the association and the  
11 board may be withheld from disclosure to the extent that the portion  
12 withheld relates to any of the following:

13 . . . .  
14 4. Personal, health or financial records of an individual member of the  
15 association . . . including records of the association directly related to the  
16 personal, health or financial information about an individual member of the  
17 association . . . .

18 . . . .  
19 C. The association shall not be required to disclose financial and other  
20 records of the association if disclosure would violate any state or federal  
21 law.

22 5. As to the documents other than the contracts and invoices, the  
23 credible testimony established that those documents were copied and available for  
24 Petitioner to pick up. Petitioner's failure to pick up the documents does not equate to a  
25 violation of A.R.S. § 33-1805 by Respondent.

26 6. As to the invoices from Renaissance Community Partners,  
27 Petitioner established that he was not provided a copy of those documents within 10  
28 business days of the request. However, the credible testimony established that the  
29 invoices contained financial records and information of individual members. Therefore,  
30 Respondent's records could be withheld from disclosure "to the extent that the portion  
withheld relates to" the financial records and information of individual members. A.R.S.  
§ 33-1805(B)(4). Accordingly, Respondent had a statutory obligation to provide  
redacted copies of those documents to Petitioner in accordance with his request and  
the failure to do so was a violation of the statute.

7. As to the contracts, Petitioner established that he was not  
provided a copy of or allowed to review those documents within 10 business days of the  
request. However, Respondent argued the contracts were protected under A.R.S. § 33-

1 1805(C) as the contracts contain trade secrets and that disclosure of those trade  
2 secrets would violate other state law.

- 3 8. Arizona statute defines a "trade secret" as  
4 information, including a formula, pattern, compilation, program, device,  
5 method, technique or process, that both:  
6 (a) Derives independent economic value, actual or potential, from not  
7 being generally known to, and not being readily ascertainable by proper  
8 means by, other persons who can obtain economic value from its  
9 disclosure or use.  
10 (b) Is the subject of efforts that are reasonable under the circumstances to  
11 maintain its secrecy.

12 A.R.S. § 44-401.

13 9. It is not necessary for the Administrative Law Judge to  
14 determine if the contracts at issue contain any trade secrets. While Respondent argued  
15 it could not disclose any trade secrets, it was willing to allow Petitioner to review the  
16 contracts in the presence of a Renaissance Community Partners employee and a  
17 representative from the vendor. In fact, the testimony established Petitioner had been  
18 allowed to review the contracts after the filing of the petition in this matter.

19 10. It is noted, however, that on the request Petitioner initialed the  
20 acknowledgement that copies of contracts were not provided, but could be reviewed at  
21 Respondent's office. Therefore, Petitioner's request, on its face does not request  
22 copies of the contracts.

23 11. Even though Petitioner's request may be interpreted to be  
24 seeking only an inspection of the contracts, Respondent failed to make those  
25 documents available for review within 10 business days of the request as evidenced by  
26 Mr. Bishop's email reply that he was on vacation and Petitioner could make an  
27 appointment after July 7, 2013, 18 business days after the request was made, which is  
28 a violation of A.R.S. § 33-1805(A).

29 12. Therefore, Petitioner established by a preponderance of the  
30 evidence that Respondent violated A.R.S. § 33-1805.

The Administrative Law Judge concludes that Petitioner's  
Petition should be granted.

**RECOMMENDED ORDER**

1 Respondent is ordered to comply with A.R.S. § 33-1805 and provide Petitioner  
2 with copies of all of the documents required under the statute within ten days of the  
3 Order entered in this matter. Those documents may be redacted as provided for in  
4 A.R.S. § 33-1805(B)(4).  
5

6 Respondent is further ordered to pay Petitioner her filing fee of \$550.00 within 30  
7 days of the effective date of the Order entered in this matter.

8 *In the event of certification of the Administrative Law Judge Decision by the*  
9 *Director of the Office of Administrative Hearings, the effective date of the Order will be*  
10 *five days from the date of that certification.*

11 Done this day, December 12, 2013.

12  
13 /s/ Tammy L. Eigenheer  
14 Administrative Law Judge

15  
16 Transmitted electronically to:

17 Gene Palma, Director  
18 Department of Fire Building and Life Safety  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30