

1 3. Ms. Saxton owns a residence in and is a member of the Lakes.

2 4. Ms. Saxton filed a petition with the Department alleging that the Lakes had violated
3 the provisions of A.R.S. § 33-1805. Ms. Saxton specifically alleged as follows:

4 Ms. Saxton delivered three separate demands to the HOA to
5 inspect its financial records pursuant to A.R.S. § 33-1805. After
6 much delay, she received heavily redacted and incomplete
7 documentation that precluded evaluation of the HOA's
8 expenditures. The HOA has refused to produce the documents
9 without the improper redactions.

10 5. The Lake's Answer to the Petition alleged, in relevant part, as follows:

11 [The Lakes], through counsel under signed, hereby submits this
12 Motion/Request for Dismissal of the above-referenced action for
13 the following reasons warranting dismissal:

14 1. The Department lacks jurisdiction to hear this matter pursuant
15 to the Bylaws governing the parties hereto;

16 2. [Ms. Saxton's] claim is barred by the applicable statute of
17 limitations;

18 3. The claim must be dismissed due to [the Lakes'] prior admitted
19 compliance with the records' request; and

20 4. The claim must be dismissed due to [the Lakes'] compliance
21 with the statute.

22 TESTIMONY

23 Testimony of Marsha Hill

24 6. Marsha Hill (hereinafter "Ms. Hill") testified that she has lived in the Lakes for
25 approximately thirty years. Ms. Hill stated that she is a CPA with her own accounting
26 business. Ms. Hill testified that she had previously been chairman of the budget and
27 finance committee for the Lakes.

28 7. Ms. Hill testified that she had reviewed some of the documents that Ms. Saxton
29 had obtained from the Lakes. Ms. Hill stated that she did not recall when she reviewed
30 the records. Ms. Hill testified that she had prepared the Budget & Finance Committee
Annual Report for 2012.¹

Testimony of Maureen Harrison

¹ See Exhibit 2 (Lakes Community Association Budget & Finance Committee Annual Report 2012).

1 8. Maureen Harrison (hereinafter “Ms. Harrison”) testified that she had been a
2 homeowner at the Lakes for thirty-six years. Ms. Harrison stated that she had served on
3 the Board of Directors for the Lakes (hereinafter “the Board”) from 1993 through 2000,
4 and from 2011 through 2012. Ms. Harrison testified that she was recalled from the
5 Board of Directors in February 2013.

6 9. Ms. Harrison testified that she was familiar with the Board’s Policy Memorandum
7 2008-2.² Ms. Harrison stated that it was still the current policy for obtaining information
8 from the Board. Ms. Harrison testified that she had reviewed some of the documents
9 that were provided to Ms. Saxton by the Lakes pursuant to Ms. Saxton’s November 5,
10 2012 request.

11 10. Ms. Harrison testified that she reviewed the documents sometime in 2013. Ms.
12 Harrison stated that she noticed redactions in the documents but did not recall when
13 she noticed the redactions in the documents.

14 **Testimony of Nancy Saxton**

15 11. Ms. Saxton testified that she owned two properties at the Lakes. Ms. Saxton
16 stated that she become concerned about the Lakes’ finances. Ms. Saxton testified that
17 she believed that the Board was not transparent.

18 12. Ms. Saxton testified that she wanted to find out where the Lakes’ money was
19 going. Ms. Saxton stated that she filed a written Request to Review Association
20 Records with the Lakes.³ Ms. Saxton testified that she received some of the records in
21 February of “the following year” in a big plastic tub and that she received two manila
22 envelopes with more records a few months later.

23 13. Ms. Saxton testified that she did not review the documents right away due to
24 problems with her health and the recall of Board members that occurred in the
25 community. Ms. Saxton stated that she reviewed the documents in the summer and
26 found that pages were missing from some records and some documents were so
27 redacted that she could not tell what it was supposed to be. Ms. Saxton reviewed a
28 portion of the documents that were produced and testified that the reductions were

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30 ² See Exhibit 3 (LCA Bard of Directors Policy Memorandum-2008-2).

³ See Exhibit 4 (Request to Review Association Records).

1 typical of the redactions that were made on all of the requested records. Ms. Saxton
2 stated that there was not enough information in the documents to determine if the
3 redactions were appropriate.⁴

4 14. Ms. Saxton testified she then caused her attorney to send a follow-up request for
5 additional records from the Lakes.⁵ Ms. Saxton stated that her attorney received a
6 written response from the Lakes' attorney.⁶ Ms. Saxton testified that her attorney then
7 filed a response to the Lakes' response.⁷ Ms. Saxton stated that the Lakes' attorney
8 then filed an email in response to her attorney's response to the Lakes' response to her
9 request.⁸

10 15. Ms. Saxton testified that she believed that she had reached an impasse with the
11 Lakes. Ms. Saxton stated that the Lakes refused to agree to provide her with un-
12 redacted documents. Ms. Saxton acknowledged that the Lakes offered to allow her to
13 review the un-redacted documents at the Lakes' attorney's office. Ms. Saxton testified
14 that she was "not keen" about going to the Lakes' attorney's office to identify
15 documents. Ms. Saxton stated that she had already specified the records that she
16 wanted to review and believed that a visit to the Lakes' attorney's office would be futile.

17 16. Ms. Saxton testified that she was still employed and worked approximately 30 to
18 40 hours per week. Ms. Saxton stated that she was present at the annual meeting that
19 occurred in 2013. Ms. Saxton testified that she did not remember whether she voted for
20 or against the Alternative Dispute Resolution amendment that was passed in the Lakes'
21 2013 annual meeting.⁹

22 17. Ms. Saxton testified that she filed a November 5, 2012 Demand to Inspect
23 Financial Records with the Lakes.¹⁰ Ms. Saxton acknowledged that the Board's
24 president filed a response to her Demand to Inspect on November 28, 2012.¹¹ Ms.
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26 ⁴ See Exhibits 5A and 5B (Check Registers and General Ledger 2011).

27 ⁵ See Exhibit 6 (9/12/13 Demand Letter).

28 ⁶ See Exhibit 7 (9/16/13 Letter).

29 ⁷ See Exhibit 8 (10/23/13 Letter).

30 ⁸ See Exhibit 9 (10/25/13 Email).

⁹ See Exhibit A (Article XV Alternative Dispute Resolution).

¹⁰ See Exhibit B (11/5/12 Demand to Inspect).

¹¹ See Exhibit C (11/28/12 Letter).

1 Saxton stated that on or about November 29, 2012, she sent the Lakes another Request
2 to Review Records.¹²

3 18. Ms. Saxton stated that she knew that there would be some redactions on the
4 records that she had requested. Ms. Saxton testified that she received the 2012
5 Reserve Study, the 2010 through 2012 Financials, the 2009 through 2011 Audits, and
6 the 2010, 2011, and 2012 American Express Credit Account Bills from the Lakes on or
7 about December 6, 2012.¹³ Ms. Saxton stated that she received additional records in
8 manila envelopes on December 14, 2012, and January 8, 2013. Ms. Saxton testified
9 that she “glanced through” the documents with a friend who was an accountant.

10 19. Ms. Saxton testified that she paid the Lakes for the 3700 pages of requested
11 documents that she received on or about February 19, 2013.¹⁴ Ms. Saxton stated that
12 she could not raise a redaction issue until she had time to review the records.

13 20. Ms. Saxton acknowledged that her previous attorney had issued a letter to the
14 Lakes on or about April 19, 2013, that did not mention or refer to Ms. Saxton’s
15 dissatisfaction with the redactions in the documents that had been delivered to her by
16 the Lakes.¹⁵

17 21. Ms. Saxton acknowledged that she received a September 27, 2013 letter from
18 the Lakes’ attorney offering to allow Ms. Saxton to inspect un-redacted documents in the
19 Lakes’ attorney’s office.

20 22. Ms. Saxton acknowledged that her attorney received an email from the Lakes’
21 attorney regarding the inspection of records at the Lakes’ attorney’s office.¹⁶ Ms. Saxton
22 stated that the email indicated that she would be able to examine un-redacted
23 documents and obtain copies at 15¢ per page. Ms. Saxton testified that she did not
24 want to go to the Lakes’ attorney’s office because she felt the records would be the
25 same documents that she already had. Ms. Saxton stated that she did not want to be
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28 ¹² See Exhibit D (11/29/12 Letter).

29 ¹³ See Exhibit E (12/6/12 Receipt for Documents).

30 ¹⁴ See Exhibit E (2/19/13 Receipt for Check).

¹⁵ See Exhibit G (4/19/13 Letter).

¹⁶ See Exhibit M (10/25/13 Email).

1 intimidated. Ms. Saxton testified that the Lakes' attorney did not specify that the records
2 that would be available in his office would be un-redacted.

3 23. Ms. Saxton acknowledged that the Lakes had provided her with approximately
4 3,700 pages of documents. Ms. Saxton testified that there were numerous redactions in
5 the documents that the Lakes provided to her. Ms. Saxton stated that the redactions in
6 the documents precluded a proper review of the documents.¹⁷

7 **Testimony of Christine Green Baldanza**

8 24. Christine Green Baldanza (hereinafter "Ms. Baldanza") testified that she is the
9 community manager for the Lakes. Ms. Baldanza stated that she was the community
10 manager in 2012. Ms. Baldanza testified that she was also the community manager for
11 January and February 2013, but not for the entire year of 2013.

12 25. Ms. Baldanza testified that she prepared the December 6, 2012 Receipt for
13 Documents.¹⁸ Ms. Baldanza stated that additional documents were delivered to Ms.
14 Saxton on December 14, 2012, and January 8, 2013. Ms. Baldanza testified that no
15 additional documents were provided to Ms. Saxton after January 8, 2013.

16 26. Ms. Baldanza testified that the general ledgers were provided to Ms. Saxton in a
17 plastic tub on January 8, 2013. Ms. Baldanza stated that the Lakes charged Ms. Saxton
18 10¢ per page rather than the 15¢ allowed by statute. Ms. Baldanza testified that the last
19 ledgers were delivered to Ms. Saxton on January 8, 2013.

20 27. Ms. Baldanza testified that the only redactions that were made were those
21 allowed by statute. Ms. Baldanza stated that private and personnel information was
22 partially redacted from the ledgers. Ms. Baldanza testified that she provided all the
23 ledgers to the Lakes' attorney's office. Ms. Baldanza stated that the general ledgers
24 contain payroll information that was redacted from the ledgers. Ms. Baldanza testified
25 that some private homeowner information was not redacted from the documents. Ms.
26 Baldanza stated that every financial transaction was included in the ledgers.

27 28. Ms. Baldanza acknowledged that homeowners who are members of the Lakes
28 are entitled to the Lakes' financial information. Ms. Baldanza testified that

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30 ¹⁷ See Exhibits 5A and 5B (Check Registers and General Ledger 2011).

¹⁸ See Exhibit E (12/6/12 Receipt for Documents).

1 homeowners' names were redacted from the documents provided to Ms. Saxton. Ms.
2 Baldanza reviewed the General Ledger for 2011 (Exhibit 5B). Ms. Baldanza stated that
3 there were numerous redactions in the General Ledger for 2011, because there were
4 numerous pages that contained private homeowner information. Ms. Baldanza testified
5 that she was asked to redact private information relating to employees and homeowners
6 by the Board.

7 29. Ms. Baldanza testified that pursuant to the Board's direction, all of the requested
8 documents were turned over to the Lakes' attorney and the attorney then determined
9 which redactions to make in accordance with applicable statute. Ms. Baldanza stated
10 that the documents provided to the Lakes' attorney were not redacted until the attorney
11 redacted them. Ms. Baldanza testified that Ms. Saxton did not object to the redactions
12 on the financial documents until she filed the petition at issue.

13 **PROVISIONS OF LAW REFERENCED AT HEARING**

14
15 1. A.R.S. § 12-501 provides as follows:

16 A written agreement to submit any existing controversy to
17 arbitration or a provision in a written contract to submit to
18 arbitration any controversy thereafter arising between the parties
19 is valid, enforceable and irrevocable, save upon such grounds as
exist at law or in equity for the revocation of any contract.

20 2. A.R.S. § 12-541(5) provides as follows:

21 There shall be commenced and prosecuted within one year after
22 the cause of action accrues, and not afterward, the following
23 actions:

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25 5. Upon a liability created by statute, other than a penalty or
26 forfeiture.

27 3. A.R.S. § 33-1805 provides as follows:

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

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

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

13 1. Privileged communication between an attorney for the
14 association and the association.

15 2. Pending litigation.

16 3. Meeting minutes or other records of a session of a board
17 meeting that is not required to be open to all members pursuant
18 to section 33-1804.

19 4. Personal, health or financial records of an individual member of
20 the association, an individual employee of the association or an
21 individual employee of a contractor for the association, including
22 records of the association directly related to the personal, health
23 or financial information about an individual member of the
24 association, an individual employee of the association or an
25 individual employee of a contractor for the association.

26 5. Records relating to the job performance of, compensation of,
27 health records of or specific complaints against an individual
28 employee of the association or an individual employee of a
29 contractor of the association who works under the direction of the
30 association.

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

BYLAWS

1. The amendment to the Lakes' Bylaws at Article XV Alternative Dispute Resolution provides, in relevant part, as follows:

Agreement to Avoid Litigation.

The Association, its Officers, Directors, Committee Members, Owners, members and all persons subject to the Bylaws (collectively the "Parties" and singularly "Party") agree to encourage the amicable resolution of disputes involving corporate governance, including but not limited to election disputes, without the need of litigation. Accordingly, each Party agrees to submit those claims, grievances or disputes relating to the governance of the Association, including meetings of the Members, Directors, and Officers, selection, nomination, eligibility, election, removal and replacement of Officers, Directors and Committee Members ("Claims") shall be subject to the provisions of Section 2 in lieu of filing suit in any court or filing any administrative action in an administrative agency. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be claims and shall not be subject to the provisions of Section 2:

- a) Any lawsuit by the Association against any Member to collect Assessments, fines, fees or other charges owed by the Association;
- b) Any dispute regarding the interpretation, application or enforcement of the Association's Declaration ("CC&Rs"), the Architectural Rules or any other related rule or guideline;
- c) Any lawsuit in which any indispensable party is not a Party; and
- d) Any lawsuit which otherwise would be barred by any applicable statute of limitations.

CONCLUSIONS OF LAW

1. A.R.S. § 41-2198.01 permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents or violations of statutes that regulate planned communities. That statute provides that such petitions will be heard before the Office of Administrative Hearings, an independent agency.

1 2. The burden of proof at an administrative hearing falls to the party asserting a
2 claim, right, or entitlement and the standard of proof on all issue in this matter is by a
3 preponderance of the evidence. See A.A.C. R2-19-119.

4 3. Proof by “preponderance of the evidence” means that it is sufficient to persuade
5 the finder of fact that the proposition is “more likely true than not.” *In re Arnold and*
6 *Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP (Ariz.) 1994).

7 4. The amendment to Article XV Alternative Dispute Resolution of the Lakes’
8 Bylaws provides that “each Party agrees to submit those claims, grievances or disputes
9 relating to the governance of the Association, including meetings of the Members,
10 Directors, and Officers, selection, nomination, eligibility, election, removal and
11 replacement of Officers, Directors and Committee Members (‘Claims’) shall be subject to
12 the provisions of Section 2 in lieu of filing suit in any court or filing any administrative
13 action in an administrative agency.”

14 5. Arbitration clauses should be construed liberally and any doubts as to whether
15 or not the matter in question is subject to arbitration should be resolved in favor of
16 arbitration.¹⁹ This Tribunal concludes that under the Lakes’ duly enacted bylaws and
17 the Arizona common-law, Ms. Saxton was required to submit her claims against the
18 Lakes to arbitration.

19 6. A.R.S. § 12-541(5) provides that “[t]here shall be commenced and prosecuted
20 within one year after the cause of action accrues, and not afterward, [certain] actions,”
21 including “a liability created by statute, other than a penalty or forfeiture.” A statute of
22 limitations starts running at the time a claim accrues. Ms. Saxton testified that she filed
23 a Demand to Inspect Financial Records with the Lakes on November 5, 2012.²⁰ Ms.
24 Saxton’s claim would have accrued no later than ten business days after Ms. Saxton
25 filed her demand, when the Lakes was required by A.R.S. § 33-1805(A) to provide the
26 requested records. The petition at issue was filed on or about November 25, 2013. The
27 credible evidence of record failed to support a finding that would toll or extend the

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29 ¹⁹ See *New Pueblo Constructors, Inc. v. Lake Patagonia Recreation Association, Inc.*, 12 Ariz. App. 13,
16, 467 P.2d 88, 91 (1970).

30 ²⁰ See Exhibit B ((11/5/12 Demand to Inspect).

1 applicable one-year statute of limitations. This Tribunal concludes that Ms. Saxton's
2 petition was not filed within the applicable one-year period of time allowed by A.R.S. §
3 12-541(5).

4 7. A.R.S. § 33-1805 provides, in part, that "all financial and other records of the
5 association shall be made reasonably available for examination by any member or any
6 person designated by the member in writing as the member's representative. The
7 association shall not charge a member or any person designated by the member in
8 writing for making material available for review. The association shall have ten business
9 days to fulfill a request for examination." The Lakes provided Ms. Saxton with
10 approximately 3,700 pages of documents per Ms. Saxton's request. When Ms. Saxton
11 complained about the redactions in the documents, the Lakes provided un-redacted
12 documents to the Lakes' attorney. The un-redacted documents were then redacted by
13 the Lakes' attorney and made available for review by Ms. Saxton at the attorney's office.
14 Ms. Saxon chose not to review the documents and, instead, asked for un-redacted
15 copies of the financial documents. This Tribunal concludes that the Lakes made the
16 requested financial records reasonably available for Ms. Saxon's review in accordance
17 with the applicable provisions of A.R.S. § 33-1805.

18 **RECOMMENDED ORDER**

19 In view of the foregoing, it is ORDERED that the Lakes Community Association
20 be deemed the prevailing party in this matter.

21 It is further ORDERED that this matter be dismissed.

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 this Order will*
24 *be five (5) days from the date of that certification.*

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26 Done this day, June 2, 2014.

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28 /s/ M. Douglas
29 Administrative Law Judge
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Transmitted electronically to:
Gene Palma, Director
Department of Fire Building and Life Safety