



1           7.     After Respondent received Mr. MacLeod's first request, Mr. Albright  
2 contacted Respondent's treasurer to determine what records were responsive to the  
3 request. Mr. Albright also contacted three banks in an effort to obtain records that might  
4 be responsive to Mr. MacLeod's first request.

5           8.     Two of the banks emailed information to Mr. Albright, but the third would  
6 not. Mr. Albright sent this information to Brian Dye, Community Manager with  
7 HOAMCO, Respondent's management company.

8           9.     By email on April 22, 2019, Mr. Dye sent to Mr. MacLeod the newly  
9 acquired records and the records that Respondent already had in its possession.

10          10.    On April 22, 2019, Mr. MacLeod emailed Mr. Dye stating that Respondent  
11 had not complied with his request because he wanted the "history trail" for the CDs. Mr.  
12 Dye responded, informing Mr. MacLeod that neither HOAMCO nor Respondent had  
13 2017's records in hardcopy or electric format and that there were no records to fulfil his  
14 request. Mr. Dye suggested that Mr. MacLeod contact the banks directly.

15          11.    Mr. MacLeod responded asserting that the records must be ready for  
16 review by the following Friday, and that it was the Respondent's responsibility to get the  
17 records from the banks.

18          12.    The parties were working cooperatively with Respondent trying to obtain  
19 for Mr. MacLeod records that were responsive to his requests and continued to do so  
20 while the matter was pending at the Office of Administrative Hearings.

21          13.    Mr. MacLeod filed the petition at issue on June 12, 2019.

22          14.    In June 2019 Mr. Albright accompanied Mr. MacLeod to several banks and  
23 had records produced for Mr. MacLeod.

24          15.    Although Mr. Albright was confused on the first day of hearing, on the  
25 second day he gave credible testimony that on April 22, 2019 Respondent provided Mr.  
26 MacLeod with all the records it had that were responsive to his first request.

27          16.    Mr. Albright's confusion related to Respondent's Exhibit 11, which is the  
28 documents that Mr. Dye emailed to Mr. MacLeod on April 22nd. Those records included  
29 the documents that Respondent had in its possession when Mr. MacLeod made his first  
30 request and the documents that Mr. Albright solicited from Respondent's banks in April  
2019.

1           17. On the first day, Mr. Albright did not recall that he had received records  
2 from the banks in April and he thought those documents had been obtained in June  
3 when he and Mr. MacLeod went to the banks.

4           18. Mr. MacLeod had entered into evidence Respondent's records retention  
5 policy and he testified as to his opinion that the "core" issue in this matter is whether  
6 "other records" as used in ARIZ. REV. STAT. section 33-1805(A) includes all records  
7 listed in that retention policy regardless of whether Respondent actually has those  
8 records.

9           19. Mr. MacLeod argues that ARIZ. REV. STAT. section 33-1805(A) requires  
10 Respondent to obtain records that it does not have, for example, the bank records that  
11 Respondent obtained for Mr. MacLeod in June, if a member requests copies of those  
12 records.

13           20. Mr. MacLeod acknowledged that he could not identify any records that  
14 were responsive to his requests that were in the possession of Respondent when he  
15 made those requests. Mr. MacLeod argued to the effect that the records he was  
16 requesting would be required for a proper audit to be conducted.

### CONCLUSIONS OF LAW

17           1. The Department of Real Estate has authority over this matter. ARIZ. REV.  
18 STAT. Title 32, Ch. 20, Art. 11.

19           2. Mr. MacLeod bears the burden of proof and the standard of proof on all  
20 issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-  
21 19-119.

22           3. A preponderance of the evidence is:

23           The greater weight of the evidence, not necessarily established  
24 by the greater number of witnesses testifying to a fact but by  
25 evidence that has the most convincing force; superior  
26 evidentiary weight that, though not sufficient to free the mind  
27 wholly from all reasonable doubt, is still sufficient to incline a fair  
28 and impartial mind to one side of the issue rather than the other.  
29 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

30           4. Statutes should be interpreted to provide a fair and sensible result.  
*Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,

1 238, 439 P.2d 805, 809 (1968) ("Courts will not place an absurd and unreasonable  
2 construction on statutes.").

3 5. The tribunal may not expand or extend a statute to include that which is  
4 not within its provisions. *State ex rel. Morrison v. Anway*, 87 Ariz. 206, 349 P.2d 774  
5 (1960).

6 6. "Substantial evidence is evidence which would permit a reasonable person  
7 to" conclude that the proposed finding should be substantiated. See *Sierra Club –*  
8 *Grand Canyon Chapter v. Ariz. Corp. Comm'n*, 237 Ariz. 568, ¶ 22, 354 P.3d 1127  
9 (2015 App.)(citing *In re Estate of Pouser*, 193 Ariz. 574, 579, ¶ 13, 975 P.2d 704 (1999)).

10 7. Ariz. Rev. Stat. section 33-1805(A) provides that:

11 Except as provided in subsection B of this section, all financial  
12 and other records of the association shall be made reasonably  
13 available for examination.... The association shall have ten  
14 business days to fulfill a request for examination. On request  
15 for purchase of copies of records ..., the association shall  
16 have ten business days to provide copies of the requested  
17 records.

18 8. The preponderance of the evidence shows that Respondent provided Mr.  
19 MacLeod with copies of all records it had that were responsive to his first request. Mr.  
20 MacLeod did not present substantial evidence to show that Respondent failed to comply  
21 with his second request.

22 9. Mr. MacLeod's assertion that Respondent was required to obtain and  
23 produce records that it does not have is not a fair and sensible reading of ARIZ. REV.  
24 STAT. section 33-1805(A), and it would require the tribunal to expand the statute to  
25 include a requirement that is not within its expressed provisions.

26 10. Consequently, Mr. MacLeod has not met his burden to show that the  
27 Association violated ARIZ. REV. STAT. section 33-1805(A), and his petition should be  
28 dismissed.

29 **ORDER**

30 **IT IS ORDERED** that Petitioner Mangus L.D. MacLeod Granter and Trustee's  
petition is dismissed.

**NOTICE**

**Pursuant to ARIZ. REV. STAT. section 32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. section 32-2199.04. Pursuant to ARIZ. REV. STAT. section 41-1092.09, a request for rehearing in this matter must be filed with the Commissioner of the Department of Real Estate within 30 days of the service of this Order upon the parties.**

Done this day, December 2, 2019.

/s/ Thomas Shedden  
Thomas Shedden  
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile December 2, 2019 to:

Judy Lowe, Commissioner  
Arizona Department of Real Estate  
100 N. 15th Avenue, Suite 201  
Phoenix, Arizona 85007

Mangus (AKA Gary) L.D. MacLeod  
Grantor and Trustee  
2796 Cougar LN  
PO Box 673  
Overgaard, AZ 85933

Gregory A Stein  
Carpenter, Hazlewood, Delgado & Bolen LLP  
1400 E Southern Ave., Suite 400  
Tempe, AZ 85282-5691

By Felicia Del Sol