

1 (Petition) from Petitioner alleging that Respondent failed to hold annual meetings
2 pursuant to A.R.S. § 33-1804 and to timely respond to his records requests pursuant to
3 A.R.S. § 33-1805.

4 8. On or about August 5, 2019, Respondent filed an Answer to the Petition. In
5 its Answer, Respondent denied all of the complaint items in the Petition.

6 9. On or about August 23, 2019, the Department issued a Notice of Hearing
7 setting the above-captioned matter for hearing at 8:30 a.m. on October 18, 2019. The
8 Notice of Hearing set forth the issue to addressed at hearing as follows:

9 The Petitioner alleges that Sycamore Vista No. 7 Homeowners Association,
10 Inc. violated A.R.S. § 33-1804(B) and 33-1805 in a two issue petition.

11 10. At hearing, Petitioner's position was that Respondent failed to hold the
12 annual meetings in 2017 and 2018 as required and that Respondent repeatedly failed to
13 provide him the requested community documents within 20 business days as required.
14 Petitioner initially denied having received the June 27, 2019 email that included the
15 requested documents, but acknowledged that Respondent did email the documents to
16 him even if he did not see them when they were sent to him.

17 11. Respondent acknowledged that it did not hold annual meetings in 2017 and
18 2018. Respondent's witness indicated that because the lots were undeveloped and no
19 one was living in the association, Respondent believed it would be unable to have the
20 number of owners present to make a quorum necessary to hold the annual meeting. By
21 2019, a corporate entity had purchased enough of the lots in the association to constitute
22 a quorum.

23 **CONCLUSIONS OF LAW**

24 1. The Department has jurisdiction to hear disputes between a property owner
25 and a condominium owners association. A.R.S. § 32-2199 *et seq.*

26 2. In this proceeding, Petitioner bear the burden of proving by a
27 preponderance of the evidence that Respondent violated A.R.S. § 33-1804. A.A.C. R2-
28 19-119.

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

1 as 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 4. A.R.S. § 33-1804 provides, in relevant part, as follows:

4 B. . . . A meeting of the members' association shall be held at least once
5 each year.

6 5. A.R.S. § 33-1805 provides in pertinent part follows:

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

18 6. Petitioner established by a preponderance of the evidence that Respondent
19 failed to hold annual meetings in 2017 and 2018 as required by A.R.S. § 33-1804(B).
20 Respondent did hold the 2019 annual meeting as required.

21 7. Petitioner also established by a preponderance of the evidence that
22 Respondent failed to timely respond to his requests for community documents as required
23 by A.R.S. § 33-1805(A). Petitioner was eventually provided with the requested
24 documents.

25 8. This Tribunal concludes that Respondent violated the charged provisions of
26 A.R.S. § 33-1804(B) and A.R.S. § 33-1805(A).

27 **ORDER**

28 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing
29 party in this matter.

30 It is further ORDERED that Respondent pay Petitioner his filing fee of \$1000.00, to
be paid directly to Petitioner within thirty (30) days of this Order.

No Civil Penalty is found to be appropriate in this matter.

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NOTICE

Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S. § 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 4, 2019.

/s/ Tammy L. Eigenheer
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile December 4, 2019, to:

Judy Lowe, Commissioner
Arizona Department of Real Estate
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Phoenix, Arizona 85007

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Sycamore Vista No 7 HOA, Inc.
c/o BRADLEY P MILLER (Statutory Agent)
70 W CUSHING ST
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By Felicia Del Sol