

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Kenneth W Zablony,
Petitioner

4 vs.

5 Sycamore Hills Estates, Inc.,
6 Respondent

No. 20F-H2019022-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

7 **HEARING:** February 13, 2020.

8 **APPEARANCES:** Kenneth Zablony, Petitioner, appeared on his own behalf.
9 Sycamore Hills Estates, Inc., Respondent, did not appear.

10 **ADMINISTRATIVE LAW JUDGE:** Antara Nath Rivera.

11 **FINDINGS OF FACT**

12 1. On or about October 15, 2019, Petitioner filed a Homeowners Association
13 (HOA) Dispute Process Petition (Petition) with the Arizona Department of Real Estate
14 (Department). Petitioner asserted a violation of Arizona Revised Statute (A.R.S.) §33-
15 1805 and Article X of the Sycamore Hills Estates Bylaws (Bylaws).

16 2. On or about December 20, 2019, the Department issued a Notice of Hearing
17 in which it set forth the issue for hearing as follows:

18 The Petitioner alleges in the petition that that Sycamore Hills
19 Estates, Inc. is in violation of A.R.S. §33-1805 and community
20 documents Bylaws Article X Books and in a single-issue petition.

21 All errors in original.

22 3. The Department issued a Notice of Hearing, setting a hearing on February
23 13, 2020, at 1:00 p.m. The Department mailed copies of the Notice of Hearing to
24 Respondent at its address of record.

25 4. The Notice of Hearing informed the parties that “[i]f Respondent does not
26 appear, the hearing will proceed in the Respondent’s absence.”

27 5. Respondent did not request to appear telephonically and did not request that
28 the hearing be continued. Although the start of the hearing was delayed 20 minutes,
29 Respondent did not appear through an authorized member, employee, or attorney.

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- A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.
 - B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:
 - 1. Privileged communication between an attorney for the association and the association.
 - 2. Pending litigation.
 - 3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1804.
 - 4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
 - 5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the 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.

28 5. Article X, Books and Records, provides, in pertinent part:
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1 The books, records, and papers of the Association shall
2 at all times, during reasonable business hours, be
3 subject to inspection by any Member. The Declaration,
4 the Articles of Incorporation and the Bylaws of the
5 Association shall be available for inspection by any
6 Member at the principal office of the Association, where
7 copies may be purchased at a reasonable cost.

8 6. Petitioner established that Respondent violated A.R.S. § 33-1805
9 and Section X of the Bylaws. The evidence showed that Respondent did not give
10 Petitioner any access to review the books and records despite Petitioner's repeated
11 requests. Petitioner requested to see the documents in person at the convenience of
12 Respondent. Respondent's failure to respond and provide dates and times, within
13 reasonable business hours, was in violation of Section X of the Bylaws.

14 7. The Administrative Law Judge concludes that Petitioner
15 established by a preponderance of the evidence that Respondent violated A.R.S. § 33-
16 1805 and Section X of the Bylaws as described above. The Administrative Law Judge
17 concludes that Petitioner's Petition should be upheld.

18 **ORDER**

19 In view of the foregoing,

20 **IT IS ORDERED** that the Petition be upheld.

21 **IT IS FURTHER ORDERED** Petitioner be deemed the prevailing party in this
22 matter.

23 **IT IS FURTHER ORDERED** that Respondent supply Petitioner with the relevant
24 documents, within ten (10) days of this Order, pursuant to A.R.S. § 33-1805 and Section X
25 of the Bylaws.

26 **IT IS FURTHER ORDERED** that Respondent pay Petitioner his filing fee of
27 \$500.00, to be paid directly to Petitioner within thirty (30) days of this Order.

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

29 **NOTICE**

1 Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties
2 unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S. §
3 41-1092.09, a request for rehearing in this matter must be filed with the
4 Commissioner of the Department of Real Estate within 30 days of the service of this
5 Order upon the parties.

6 Done this day, March 3, 2020.

7 /s/ Antara Nath Rivera
8 Administrative Law Judge
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10 Transmitted electronically to:
11 Judy Lowe, Commissioner
12 Arizona Department of Real Estate
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