

Atty. JOHN SULLIVAN
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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

AZNH REVOCABLE TRUST,
by and through
JOHN and SUSAN SULLIVAN,
TRUSTEES, REAL PARTIES IN
INTEREST

Plaintiff

v.

KAY ABRAMSOHN,
ADMINISTRATIVE LAW JUDGE,
ARIZONA OFFICE OF
ADMINISTRATIVE HEARINGS,

and

TAMMY EIGENHEER,
INTERIM DIRECTOR,
ARIZONA OFFICE OF
ADMINISTRATIVE HEARINGS,

and

ARIZONA DEPARTMENT OF REAL
ESTATE,

and

SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,

Defendants

No. CV2025-036466

PLAINTIFF'S RESPONSE TO
DEPT. OF REAL ESTATE MOTION
TO DISMISS OR
DESIGNATE AS NOMINAL PARTY

(Original Special Action)

Assigned to:
Hon. Scott Blaney

1 The Attorney General, representing the Arizona Department of Real Estate (“ADRE”), has
2 moved:

3 (1) to dismiss the ADRE from this Original Special Action pursuant to
4 A.R.S. § 12-911(A)(4) (allowing a court to dismiss a party at will in an action to
5 review an administrative decision); or,

6 (2) alternatively, to designate ADRE as a nominal party.

7 For the reasons explained herein, **dismissal is not available** under A.R.S. § 12-911(A)(4) and
8 the **ADRE is a nominal party**.

9
10 **I. A.R.S. § 12-911 Not Applicable**

11 A.R.S. § 12-911 is part of the statutes governing Judicial Review of Administrative Decisions
12 found in Title 12, Ch. 7, **Art. 6**, encompassing A.R.S. §§ 12-901 to 914. **Art. 6** “applies to and
13 governs” “every action to judicially review a final decision of an administrative agency” and
14 “action to review the decision at an administrative hearing.” See A.R.S. § 12-902 (Scope of
15 Article).

16 Art. 6 defines “administrative decision” or “decision” as “any decision, order or
17 determination of an administrative agency that is rendered in a case . . . that terminates the
18 proceeding before the administrative agency.” A.R.S. § 12-901(Definitions) underscore added.
19 See *Arizona Bd. of Regents for & on Behalf of Univ. of Arizona v. State ex rel. State of Ariz.*
20 *Pub. Safety Ret. Fund Manager Adm’r*, 160 Ariz. 150, 154 (Ct. App. 1989) (agency decision
21 must terminate administrative proceeding before judicial review is available). This Original
22 Special Action does not request review of a decision which terminated an administrative
23 proceeding.

24 Pursuant to A.R.S. 41-1092.07(A), the Plaintiff exercised the peremptory right to replace the
25 assigned Administrative Law Judge (“ALJ”). Both the Interim Director of the Arizona Office of
26 Administrative Hearings (“OAH Director”) and the assigned ALJ refused to comply with the
27 statute – the ALJ refused to be replaced and (according to the ALJ) the Director refused to

1 replace the ALJ. Their refusal decision did not “terminate the proceeding.” In fact, the ALJ
2 proceeded with a hearing after refusing to be replaced but the Plaintiff did not attend or
3 participate in that hearing. In such circumstances, and pursuant to A.A.C. R2-19-117 (Failure of
4 Party to Appear for Hearing), the ALJ was required to vacate the hearing and return the matter
5 to the ADRE for further action.¹

6 Because the actions (or decision) of the OAH Director and ALJ did not terminate the
7 administrative proceeding, the Attorney General’s motion to dismiss based upon the statutes
8 governing Judicial Review of Administrative Decisions (such as A.R.S. § 12-911) must be
9 denied.
10

11 **II. Case History & ADRE Involvement**

12 In April 2024, Plaintiff complained to the ADRE that Sunland Springs Village HOA
13 (“HOA”) failed to comply with A.R.S. § 33-1812 (part of the Planned Communities Act).
14 After a hearing and adverse decision by ALJ Abramsohn, Plaintiff submitted a request to the
15 ADRE for rehearing. ADRE denied the request and in December, 2024, Plaintiff brought an
16 action in Superior Court (under Art. 6, *supra*) for Judicial Review of an Administrative Decision
17 (LC2025-000025) wherein the ADRE is a named defendant per A.R.S. § 12-908.

18 In April 2025, the Court remanded the matter to the ADRE and Ordered ADRE to conduct an
19 evidentiary hearing to introduce additional evidence.

20 In June 2025, the ADRE granted Plaintiff’s previously-denied request for rehearing and
21 Ordered that a rehearing be held on July 24, 2025, but the ADRE did not instruct the ALJ to
22 conduct the evidentiary hearing Ordered by the Court.

23 The HOA sought a continuance of the July rehearing and it was reset to September 26, 2025.

24 In August, 2025, Plaintiff requested a subpoena from the ALJ to obtain additional evidence
25 identified in Superior Court.

26 The ALJ refused to issue the subpoena and made the following statement:

27 //

¹ The ALJ may also receive evidence from the appearing party, but the ALJ did not do so in this case.

1 Maricopa County Superior Court (Court) remanded the matter to the Arizona
2 Department of Real Estate to conduct an Evidentiary Hearing “to address the
3 additional evidence proposed by AZNH.”
4

5 On June 2, 2025, the Department forwarded the matter back to the Tribunal,
6 issuing a Notice of Hearing which contained the Department’s Order granting
7 “Petitioner’s Dispute Rehearing Petition for the reason(s) outlined in the
8 Rehearing Petition.”
9

10 Petitioner’s Dispute Rehearing Petition did not allege, as grounds for rehearing,
11 “Newly discovered material evidence that could not with reasonable diligence
12 had been discovered and produced at the original hearing.”
13

14 The Department’s Notice of Hearing and Order does not address the remand
15 issue.
16

17 Based on the foregoing,
18 IT IS ORDERED that the administrative hearing in the instant matter is a
19 rehearing and will be limited to the allegations on which the Department ordered
20 the rehearing.

21 ALJ “*Order Regarding Hearing, Denying Subpoena*” Aug. 15, 2025. See also, A.A.C. R4-28-
22 1310 (ADRE regulation limiting the scope of a rehearing to matters identified in the ADRE
23 rehearing Order).

24 In early September, 2025, Plaintiff made an unsuccessful effort to obtain additional
25 enforcement of the Court’s Order for an evidentiary hearing – the Court (Mikitish, J.) denied
26 additional Orders without explanation (no findings of fact nor conclusions of law), but left the
27 existing Order for evidentiary hearing in place.

28 As of this writing:

- 29 ➤ the ADRE has failed to comply with the court Order;
- 30 ➤ no evidentiary hearing is scheduled; and,
- 31 ➤ the ADRE has not taken any action as required by A.A.C. R2-19-117 (*supra*) after the
32 ALJ “vacated” the scheduled hearing.

33 There are three (3) matters which involve the ADRE and which relate to the same underlying
34 facts and laws:

- 1 ➤ The Superior Court Order (LC2025-000025) requiring ADRE to conduct an evidentiary
- 2 hearing;
- 3 ➤ This Original Special Action; and,
- 4 ➤ A second Judicial Review of an Administrative Decision (LC2025-000397) commenced
- 5 Nov. 7, 2025.

7 **III. ADRE is a Nominal Party**

8 Plaintiff agrees with the Attorney General that the ADRE is a nominal party in all the above
9 matters. Nominal parties, *like the ADRE in this case*, have no pecuniary or proprietary interest
10 in the case; their interest lies in how the court’s decision might affect how it must deal
11 administratively with other parties in the future. *Bromley Grp., Ltd. v. Arizona Dep’t of*
12 *Revenue*, 170 Ariz. 532, 539-40 (Ct. App. 1991) (Dept. of Revenue is a nominal party because
13 of its general role as overall administrator of tax laws, and when it has no pecuniary or
14 proprietary interest in the outcome of the litigation, and when it does not participate as an
15 advocate on the merits). The Attorney General admits that the ADRE acts in an administrative
16 capacity in HOA disputes “pursuant to its statutory framework.” Atty. General Motion, Dec. 9,
17 2025, p.4, lines 9-11.

18 The Attorney General’s assertion that the ALJ is the final authority on administrative
19 decisions is incorrect. All administrative complaints that a homeowners association has violated
20 the Planned Communities Act (A.R.S. §§ 33-1801 to 1820) begin and end with the ADRE. See
21 A.R.S. § 32-2199 et seq.

22 The administrative proceedings begin with a Petition filed with the ADRE pursuant to the
23 ADRE enabling statutes. See A.R.S. § 32-2199.01. The ADRE sends the Petition to the HOA
24 for a Response and upon receiving the Response, the ADRE then determines if the matter
25 qualifies for a hearing. *Id.* If not, the Petition is rejected. *Id.* Otherwise, the ADRE sends the
26 Petition to the OAH with an Order to conduct a hearing. *Id.* At the conclusion of the

1 administrative hearing, and pursuant to A.R.S. § 41-1092.08, the ALJ returns the matter to the
2 ADRE for a final determination:

3
4 “Within thirty days after the date the [OAH] sends a copy of the administrative
5 law judge’s decision to the head of the agency, executive director, board or
6 commission, the head of the agency, executive director, board or commission
7 may review the decision and accept, reject or modify it. If the head of the
8 agency, executive director, board or commission declines to review the
9 administrative law judge’s decision, the agency shall serve a copy of the decision
10 on all parties.”

11 A.R.S. § 41-1092.08.

12 Similarly, when a party fails to appear for an administrative hearing, the ALJ is required to
13 send the matter back to the ADRE for “further action.” A.A.C. R2-19-117 (*supra*). And, as
14 shown herein-above, the ADRE decides whether a rehearing should be granted, and an ADRE
15 regulation controls the scope of that rehearing. See A.A.C. R4-28-1310 (*supra*).

16 This Original Special Action “might affect” the ADRE’s administrative obligations because
17 the Plaintiff has, among other things, asked this Court to vacate and nullify any related
18 proceedings conducted by the ALJ, and vacate any orders, decisions, or other actions by the
19 ALJ. If such relief is granted, the ADRE must consider how such relief affects its
20 responsibilities as the administrator and final decision-maker in this case and in future cases.
21 Thus, the ADRE is a nominal party under *Bromley Grp., Ltd.* (*supra*) and, based on the pending
22 Motion (which cited *Bromley Grp., Ltd.*), the Attorney General agrees.

23
Dated this 15TH day of December, 2025,

/s/ John F. Sullivan

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CERTIFICATE of SERVICE

A copy hereof shall be sent electronically this date, to:

Asst. Attorney General Deanie Reh (counsel for Az. Dept. of Real Estate) at
Deanie.Reh@azag.gov;

Asst. Attorney General Raya Gardner (counsel for Az. Dept. of Real Estate) at
Raya.Gardner@azag.gov;

Asst. Attorney General Kara Karlson (counsel for Defendant's Eigenheer & Abramsohn) at
Kara.Karlson@azag.gov; and,

Atty. Chad Gallacher (counsel for Sunland Springs Village Homeowners Assoc.) at
cgallacher@hoalaw.biz.

/s/ John F. Sullivan

Counsel for AZNH Revocable Trust