

1 **MAXWELL & MORGAN, P.C.**
2 PIERPONT COMMERCE CENTER
3 4854 EAST BASELINE ROAD, SUITE 104
4 MESA, ARIZONA 85206
5 TELEPHONE: (480) 833-1001
6 FAX: (480) 969-8267
7 EMAIL: MAIL@HOALAW.BIZ
8 FILE No.: 34721

9 CHAD M. GALLACHER, ESQ. SBN-025487
10 *Attorneys for Defendant Sunland Springs Village Homeowners Association*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE SUPERIOR COURT OF THE
COUNTY OF MARICOPA, STATE OF ARIZONA**

AZNH REVOCABLE TRUST, by and
through JOHN and SUSAN SULLIVAN,
Trustees, Real Parties In Interest,

Plaintiff,

vs.

SUSAN NICOLSON, COMMISSIONER,
ARIZONA DEPARTMENT OF REAL
ESTATE; and TAMMY EIGENHEER,
INTERIM DIRECTOR, ARIZONA
OFFICE OF ADMINISTRATIVE
HEARINGS; and SUNLAND SPRINGS
VILLAGE HOMEOWNERS
ASSOCIATION,

Defendants.

Case No. CV2026-008484

**DEFENDANT SUNLAND SPRINGS
VILLAGE HOMEOWNERS
ASSOCIATION'S REPLY IN
SUPPORT OF MOTION TO DISMISS**

Assigned to:
Hon. Adele Ponce

(Oral Argument Scheduled for
May 4, 2026, at 9:00 a.m.)

Defendant Sunland Springs Village Homeowners Association (“Association”), hereby submits this Reply in Support of its earlier filed Motion to Dismiss on the basis that Plaintiff’s Special Action Complaint fails to state a claim for which relief can be granted. Even if Plaintiff is correct that the Association’s Response was filed without proper authorization (which is not the case), Plaintiff would still not be entitled to relief he requests. As such, Plaintiff’s Special Action Complaint must be dismissed.

1 **I. THE ASSOCIATION TIMELY FILED A RESPONSE TO PLAINTIFF'S ADRE**
2 **PETITION.**

3 The Association finds Plaintiff's repeated argument that the Association failed to
4 submit a Response to his ADRE Petition to be both troubling and misleading. Plaintiff
5 acknowledges that a document was timely filed with the ADRE that purported to be a
6 "Response" to his ADRE Petition. The Response was signed by the then-Board President and
7 indicated it was filed on behalf of the Respondent Association. Plaintiff acknowledges all this
8 but continues to assert that the Association "has not submitted a Response." The Association
9 believes it would be more correct and less misleading for Plaintiff to assert that he believes
10 the Response that was in fact filed on behalf of the Association was filed without proper
11 authorization from the Board of Directors. Styled this way Plaintiff's argument, while still
12 incorrect, would at least not be blatantly false. Nevertheless, Plaintiff continues to assert that
13 the Association simply failed to file a Response to his ADRE Petition. The Association did
14 file a Response. It was attached as Exhibit "E" to Plaintiff's Special Action Complaint. For
15 Plaintiff to continue to argue that the Association failed to file a Response to his ADRE
16 Petition is fundamentally incorrect.

17 **II. THE ASSOCIATION'S RESPONSE WAS LEGALLY BINDING ON THE ASSOCIATION**
18 **EVEN IF THE THEN-BOARD PRESIDENT HAD ACTED OUTSIDE THE SCOPE OF HIS**
19 **AUTHORITY (WHICH HE DID NOT).**

20 As explained in the Association's Motion to Dismiss, and as addressed in the
21 Association's Response to Plaintiff's Motion for Judgment on Case Filings, the Arizona
22 Supreme Court held that even if a director does not have actual authority to enter a contract
23 or take action that binds a corporation, such director may legally bind the corporation because
24 of application of the principle of apparent authority. *See Miller v. Mason-Mcduffie Co.*, 153
25
26
27
28

1 Ariz. 585 (1987). Consequently, the filing of a Response signed by the then-Board President
2 legally became the Response of the Association regardless of whether he had acted outside
3 the scope of his authority (which he did not). *See id.* Thus, Plaintiff cannot claim that a
4 Response was never filed on behalf of the Association. Plaintiff's Response to the
5 Association's Motion to Dismiss does not address this argument nor present any valid
6 counterargument. If the other Board Members felt that the Board President acted outside the
7 scope of his authority and signed the Response without approval of a majority of the Board,
8 the Board Members could challenge the Response and attempt to have it set aside. However,
9 none of the Board Members have challenged the Response filed on behalf of the Association.
10 Plaintiff has no legal basis to argue in good faith that the Response filed by the Association
11 in the underlying ADRE matter was anything other than a Response that was legally binding
12 on the Association. *See Miller*, 153 Ariz. 585.

16 **III. THE DEPARTMENT OF REAL ESTATE WAS NOT REQUIRED TO ENTER A**
17 **DEFAULT JUDGMENT**

18 Plaintiff argued that he is entitled to special action relief compelling the Department
19 of Real Estate ("ADRE") to enter a default judgment against the Association because entry of
20 a default judgment was "a duty resulting from an office." *See Response*, p. 4, lns. 19-20.
21 Plaintiff argues that the ADRE had no choice and no option but to enter a default judgment in
22 favor of AZNH Revocable Trust because no discretion is granted the ADRE in circumstances
23 where a Response is not timely filed. However, Plaintiff is incorrect and ignores the
24 procedural steps and Administrative Procedures applicable to the ADRE matters. R4-28-
25 1304(B), applicable specifically to matters before the ADRE, provides as follows:
26
27
28

1 If the party fails to file a response or after being served notice, fails to appear at
2 a hearing within the time provided by the statute under which the hearing is
3 commenced, the Department may file an Affidavit of Default against the party,
4 and proceed to take action against the party based upon the allegations of the
5 charges. This action may be taken before the hearing date established in the
6 Notice of Hearing. The party may file a motion to vacate the default and any
7 action taken by the Commissioner within 15 days after receiving a copy of the
8 default and the action or order by the Commissioner. For good cause, the
9 Commissioner may vacate a default and any action taken and reschedule a
10 hearing.

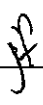
11 Consequently, and contrary to Plaintiff's assertions, R4-28-1304(B) indicates that the ADRE
12 should file an Affidavit of Default against a party that fails to file a Response to an ADRE
13 Petition. Once the Default is served on a party who failed to file a Response, the party may
14 move to set aside the default within fifteen days.

15 In this matter, the default rule of R4-28-1304(B) was inapplicable because the
16 Association did file a Response. Nevertheless, to the extent Plaintiff desires to argue that the
17 Association's Response should not have been accepted by the ADRE, Plaintiff would not
18 have been entitled to an automatic judgment as he claims. Rather, the ADRE had the ability
19 to file an Affidavit of Default which would have given the Association an additional fifteen
20 days to demonstrate that the Response was a proper Response on behalf of the Association.
21 The ADRE properly accepted the Response filed by the Association rendering the default
22 proceeding unnecessary. Still, if the Association's Response had been rejected, Rule R4-28-
23 1304(B) provides that the ADRE would not have been required to enter a default judgment
24 against the Association. Consequently, Plaintiff does not have any valid basis for obtaining
25 relief on his Special Action Complaint. The Special Action Complaint must be dismissed.
26
27
28

1 Asst. Attorney General
2 Deanie Reh, Esq.
3 Deanie.Reh@azag.gov
4 *Attorney for AZ Dept. of Real Estate*

4 Asst. Attorney General
5 Raya Gardner, Esq.
6 Raya.Gardner@azag.gov
7 *Attorney for AZ Dept. of Real Estate*

7 Asst. Attorney General
8 Kara Karlson, Esq.
9 Kara.Karlson@azag.gov
10 *Attorney for Defendant Eigenheer*

11 
12 _____

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28