

Atty. JOHN SULLIVAN
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Attorney for Plaintiff

**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.

**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

No. CV2026-008484

**Plaintiff's
Reply to
Sunland Springs Village HOA's
Opposition to
Judgment on the Case Filings**

**Assigned to the
Hon. Adele Ponce**

1 NOW COMES THE PLAINTIFF (“AZNH”) in Reply to Defendant’s Opposition to
2 Judgment on the Case Filings (“Defense Opposition”).
3

4 **I. A Defense Argument Based Upon a False Premise**

5 Atty. Gallacher argues that his client, Sunland Springs Village HOA (“the Corporation”)
6 prevailed in a hearing before the Office of Administrative Hearings (“OAH”) where the OAH
7 “issued a decision denying the Plaintiff’s petition and confirming that the Association complied
8 with A.R.S. § 33-1812 in its production of documents related to the 2024 election.” See
9 Defense Opposition, p.2, lines 25-28.

10 Atty. Gallacher must have forgotten that the “decision” he references was appealed to the
11 Superior Court, and that Court (Mikitish, J.) subsequently remanded the matter to the OAH for
12 an evidentiary hearing. At about the same time, the Commissioner of the Dept. of Real Estate
13 (“ADRE”) issued a separate Order for a “Rehearing” due to improprieties in the hearing process.
14 That matter is now awaiting renewed proceedings in the OAH. Thus, the victory he claims is
15 non-existent.

16 None of the above is actually pertinent to the controversy in this Court, but Atty. Gallacher
17 has integrated his victory claim into the Defense Opposition which the AZNH addresses below.
18 Atty. Gallacher’s misleading claim is not isolated and it gains increased significance by what the
19 Court shall read herein.
20

21 **II. Defendant’s Four Arguments to Avoid a Statutorily Mandated Default Decision**

22 There is no provision under A.R.S. § 32-2199.01 allowing the Respondent to cure a default;
23 failing to file a Response within the required time (20 days) is fatal. Complaint, p.3, lines 4-6.

24 A Response from the Corporation to the ADRE is jurisdictional. The Commissioner may
25 only send a Petition to the OAH for a hearing if the “named respondent” submits a Response.
26 A.R.S. § 32-2199.01(C, D & E). Absent a Response from the Corporation, the Commissioner is

1 mandated to issue a default decision in favor of AZNH and, therefore, the OAH has no subject
2 matter or personal jurisdiction to conduct an adversarial hearing. A.R.S. 32-2199.01(E).
3 Plaintiff's Motion for Judgment on the Case Filings, p. 5, lines 9-15.

4
5 *a. A Board Vote is Required for All Corporate Actions*

6 Under Atty. Gallacher's misperception of an OAH victory in 2024, he makes a convoluted
7 argument that, because the Corporation had voted to respond and contest the 2024 matter, there
8 was no need for the Corporation to vote again to authorize a Response to the 2025
9 administrative complaint which was served on the 2026 Board. He asserts, in essence, that
10 although the Board did not vote to defend the 2025 administrative complaint, this Court should
11 conclude that the decision to defend the 2024 matter applies to any and all subsequent
12 administrative complaints. He extends that argument to mean that the Corporation's 2024
13 decision to defend also authorized Mr. Pen Mann¹ to sign a Response *and* likewise authorized
14 Atty. Gallacher to submit that Response on behalf of the Corporation in the 2025 matter.

15 He has not provided any legal authority for that argument, and none can be found in a
16 Westlaw search. In fact, as shown in the Complaint and in Plaintiff's Motion for Judgment on
17 the Case Filings, the law is unambiguous that the Corporation must exercise corporate powers in
18 a duly-called, open meeting by quorum-majority vote each and every time it exercises corporate
19 powers.

20 To accept Atty. Gallacher's argument, it is necessary to conclude that the actions of the 2024
21 Board serve as a substitution for the inactions of the 2026 Board. Again, he provides no legal
22 support showing how that argument arises from the applicable laws. Furthermore, the 2026
23 Board is not the same Board as 2024 – the 2026 Board has only three (3) members (out of
24 seven) from 2024 Board. It is illogical to assume that every future Board shall act consistent
25 with all prior Boards.

¹ A pseudonym for the Corporation's former President.

1 ***b. Dubious Documents***

2 Atty. Gallacher submits Exhibit 5 with the Defense Opposition and claims, “the Board of
3 Directors formally voted at a duly called meeting to approve the Response filed in the
4 underlying ADRE Matter as the official Response of the Association.”

5 Exhibit 5 is three (3) pages. One page is purportedly the “Minutes” of a “Board of Directors
6 Executive Session Meeting” on March 6, 2026. The other two pages are purportedly the
7 “Minutes” of a Board “Open Session” meeting the same day.

8 These documents do not show what Atty. Gallacher claims.

9 But, even if they did, they are *not relevant*. The 2025 Board which was in-place when a
10 Response was due at ADRE, is the only Board which could have exercised corporate powers to
11 submit the Corporation’s Response in a timely manner. The current Board cannot convert the
12 fraudulent Response into a valid and timely Response to avoid a default decision. As previously
13 stated, and supported by law, failure to file a timely Response is fatal; the statute is
14 unambiguous; it does not provide a remedy; and, a default decision is mandatory. A.R.S. 32-
15 2199.01(E). Atty. Gallacher does not cite any authority which avoids the mandates of the statute
16 and none can be found.

17
18 ***c. A Specious Argument***

19 *Miller v. Mason-McDuffie Co.*, 153 Ariz. 585 (1979), cited by Atty. Gallacher, does not stand
20 for the proposition which he presents as follows:

21 “As explained in the Association’s Motion to Dismiss, **the Arizona Supreme**
22 **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
24 corporation because of application of the principle of apparent authority. See *Miller*
25 *v. Mason-Mcduffie Co.*, 153 Ariz. 585 (1987). Consequently, the filing of a
26 Response signed by the then-Board President legally became the Response of the

1 Association regardless of whether he had acted outside the scope of his authority
2 (which he did not). *See id.*”

3 See Defense Opposition, p. 4, lines 15-23 (bold added).

4 Atty. Gallacher did not give a pincite. So, one must read the entire Opinion in search of the
5 stated court holding. **Atty. Gallacher’s cited holding does not exist.**

6 The facts of *Miller*:

7 An assistant vice president (“VP”) of a commercial bank was a branch manager at
8 the bank’s San Diego, California office. The VP had an office, company
9 letterhead stationery, business cards, and the other usual accoutrements of his
10 position. The VP’s duties included processing of loan applications, but the loans
11 were subject to final approval by higher bank authorities. On approvals, the VP
12 received the loan commitment fees from the customers. Miller applied for a large
13 construction loan for a condominium project in Tempe, Az. and the VP forged a
14 loan commitment after the bank had rejected the loan. A short time later, Miller
15 wrote a \$36,000 check for the loan commitment which the VP pocketed. When
16 the fraud was discovered, construction in Tempe halted due to no funding and
17 Miller suffered significant financial damage. The bank attempted to avoid liability
18 by claiming that the San Diego-based VP acted on his own and did not have
19 authority to issue loan commitments for an Arizona project. The Court found for
20 Miller.

21 *Miller, supra*, establishes that a principal cannot avoid liability for an agent’s fraudulent acts
22 if the principal’s conduct creates apparent authority, even if the agent acts for their own purpose.

23 As this Court can see, *Miller, supra*, cannot (and does not) support Atty. Gallacher’s
24 argument. Atty. Gallacher’s reference to a fictitious court holding is a calculated attempt to
25 mislead this Court.

26

1 *d. An Agency Regulation Does Not Override a Statute*

2 Atty. Gallacher argues that R4-28-1304(B) overrides A.R.S. § 32-2199.01. He asserts that,
3 pursuant to the regulation:

4 “The ADRE should file an Affidavit of Default against a party that fails to file a
5 Response to an ADRE Petition. Once the Default is served on a party who failed
6 to file a Response, the party may move to set aside the default within fifteen
7 days.”

8 Atty. Gallacher gives no explanation of why the cited regulation supersedes the statute.

9 **The statute controls.**

10 The statute, in its own words, applies specifically to a “dispute between an owner and a
11 condominium association or planned community association.” A.R.S. § 32-2199.01(A). The
12 cited regulation is found among the regulations related to the licensing and regulation of real
13 estate brokers and sales persons.

14 Furthermore, “if an agency rule conflicts with a statute, the rule must yield.” *Arizona State*
15 *Bd. of Regents ex rel. Arizona State Univ. v. Arizona State Pers. Bd.*, 195 Ariz. 173, 175, ¶ 9
16 (Ariz. Supreme Court, 1999). See *Arizona Dept. of Econ. Sec. v. Leonardo*, 200 Ariz. 74, 79, ¶
17 16 (Div. 1, 2001) (an agency or administrative body may not enact rules or regulations which
18 conflict with a statute).

19
20 **III. The Corporation Has Admitted a Fraudulent Response was Submitted**

21 A fair reading of the Defense Opposition filing leads to a conclusion that the Corporation’s
22 Board of Directors did not meet in a duly called meeting and vote by a quorum-majority to
23 submit a Response to the 2025 administrative Petition (complaint). That fact alone is sufficient
24 to render judgment in favor of AZNH and to grant all requested relief.

25 AZNH submitted its Petition to the ADRE on November 27, 2025, and a Response was filed
26 by Atty. Gallacher on December 23, 2025. That is the only time period (“**the time period**”)

1 within which the BOD could have voted in a duly called meeting to submit a Response. The
2 Defense Opposition reveals that the BOD did not act during **the time period**.

3 The power to defend in the corporate name is among the specific corporate powers listed in
4 A.R.S. § 10-3302. See § 10-3302(1).

5 The Defense Opposition shows the Corporation failed to comply with all the requirements
6 necessary to authorize a Response to the ADRE in **the time period**:

- 7 1. A nonprofit corporation must have a Board of Directors (“BOD”). A.R.S. §
8 10-3801.
- 9 2. “All corporate powers shall be exercised by or under the authority of and the
10 affairs of the corporation shall be managed under the direction of its board of
11 directors. . . .” (“corporate powers”) *Id.*
- 12 3. The articles of incorporation (“Articles”) may delegate corporate powers to
13 other persons. *Id.* But the Corporation’s Articles do not delegate powers to
14 anyone. **Complaint Exhibit A**. Thus, all corporate powers are vested
15 exclusively in the BOD.
- 16 4. Nonprofit corporations exercise corporate powers at a “duly called meeting” by
17 a quorum majority vote. A.R.S. § 10-3140(2)(a).
- 18 5. To hold a duly called meeting, the BOD must publish a meeting notice and an
19 agenda to HOA members not less than 48 hours prior to the meeting. A.R.S.
20 33-1804(D) & (F). Meeting notices and agendas must “contain the information
21 that is reasonably necessary to inform members of the matters to be discussed
22 or decided.” *Id.* The BOD is further required to “ensure that members have the
23 ability to speak after discussion of agenda items, but before a vote of the Board
24 is to be taken.” *Id.* See A.R.S. 33-1804(A).

1 6. The Corporation is under a Court Order “that all voting or formal actions by
2 the Defendant's Board of Directors must occur in open meetings.” **Complaint**
3 **Exhibit F.**
4 The Corporation has admitted sufficient facts to warrant judgment for AZNH.

Respectfully submitted,

Dated this 12th day of April, 2026.

/s/ *John F. Sullivan*

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Certificate of Service

A copy hereof shall be sent via the Court’s electronic filing and delivery system 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
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Asst. Attorney General Kara Karlson (counsel for Tammy Eigenheer, Interim Director, Arizona
Office of Administrative Hearings) at Kara.Karlson@azag.gov; and,

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

Copy sent also to the Judicial Assistant of:
Hon. Adele Ponce (cvj06@jbazmc.maricopa.gov)

/s/ *John F. Sullivan*

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