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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.

**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
Commissioner's Response on Motion
for Judgment on the Case Filings**

**Assigned to the
Hon. Adele Ponce**

1 NOW COMES THE PLAINTIFF (“AZNH”) in Reply to Commissioner Susan Nicolson’s
2 Response on Motion for Judgment on the Case Filings.

3 The Commissioner has filed a single document combining a Motion to Dismiss with a
4 Response to Motion for Judgment on the Pleadings (sic) without separating those arguments or
5 identifying what part is a Motion and what is a Response. To the extent it is possible to do so,
6 Plaintiff shall address the Motion and Response with separate filings: (1) Plaintiff’s Response to
7 Commissioner’s Motion to Dismiss and (2) Plaintiff’s Reply to Commissioner’s Response on
8 Motion for Judgment on the Case Filings.

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10 **I. Judgment on the Case Filings**

11 Superior courts may decide special actions based on case filings and written evidence. *See,*
12 *e.g., Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 347-48 nn. 4,6, ¶¶ 8, 12 (App. 2001)
13 (deciding legal issues in special action based on the factual record created by the case filings).
14 *See also*, 2 Camila Alarcon et al., *Arizona Appellate Handbook 2.0* at 24.15 (2nd ¶) (2020)
15 (stating same).

16 A Judgment on the Case Filings differs from a Judgment on the Pleadings because the former
17 encompasses all case filings and written evidence, while the latter is limited to the contents of
18 pleadings, i.e., a Complaint and Answer. Thus, judgment on the case filings is similar to
19 Summary Judgment:

20 The court shall grant summary judgment if the moving party shows that there is no
21 genuine dispute as to any material fact and the moving party is entitled to
22 judgment as a matter of law.

23 Ariz.R.Civ.P. 56.

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1 **II. The Incontrovertible Material Facts**

2 The Complaint and AZNH’s Motion for Judgment on the Case Filings set forth
3 incontrovertible facts:

- 4 ➤ AZNH submitted a Petition to the Commissioner alleging Sunland Springs Village
5 HOA (a nonprofit corporation) (“Corporation”) had violated the Planned
6 Communities Act;
- 7 ➤ The Commissioner sent the Petition to the Corporation with instructions for the
8 Corporation to submit a Response within 20 days;
- 9 ➤ Per A.R.S. § 10-3302, whether to defend a matter is a corporate power;
- 10 ➤ Per A.R.S. § 10-3801, all corporate powers are vested in the corporate board of
11 directors;
- 12 ➤ Per A.R.S. § 10-3801 and the Corporation’s Articles of Incorporation, the
13 Corporation’s corporate powers cannot be delegated;
- 14 ➤ The Corporation’s Board took no action on the Petition or a Response;
- 15 ➤ Per A.R.S. § 32-2199.01(E), failure of the Corporation to submit a Response is
16 deemed an admission of the allegations made in the petition, and “the commissioner
17 shall issue a default decision;”
- 18 ➤ With knowledge that the Corporation’s Board had not authorized anyone to submit a
19 Response, the now-former president of Sunland Springs Village HOA signed a
20 Response and caused it to be delivered to the Commissioner; and,
- 21 ➤ The Commissioner subsequently and unknowingly treated the Response as one
22 submitted by the Corporation, and sent the matter for hearing to the Office of
23 Administrative Hearings (“OAH”) and the Commissioner did not issue the mandated
24 default decision.

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1 **III. The Commissioner’s Advocacy in Opposition**

2 The Commissioner advocates:

3 “Although Plaintiff uses a tortured analysis to devalue the response of the HOA,
4 the fact is that it was filed and received by ADRE. The Commissioner only has
5 authority to grant a default judgment against the home owner’s (sic) association if
6 no response has been filed. A.R.S. § 32-2199.01(E). The Commissioner has no
7 authority to determine if a response is ‘defective.’ ADRE (and the Commissioner)
8 only have the power to enter a default judgment against the home owner’s (sic)
9 association if a response is non-existent.”

10 See Commissioner’s combined Motion/Response, p.6, lines 1-6.

11 **A. *The AZNH ‘Analysis’***

12 The Commissioner’s allegation of “tortured analysis” and her advocacy that the Corporation
13 actually filed a Response, are not supported by the incontrovertible facts or the applicable law
14 [A.R.S. § 32-2199.01(E)].

15 The Commissioner has not identified any error by AZNH in analyzing the statutory
16 requirements which the Corporation must follow as *conditions precedent* to filing a valid
17 Response with the Commissioner. Consequently, the Commissioner has impliedly admitted that
18 the analysis in the Motion for Judgment on the Case Filings is correct.

19 **B. *The Commissioner’s Interpretation of A.R.S. § 32-2199.01 is Erroneous***

20 The correct interpretation of the statute is as follows:

- 21 1. Upon receipt of a Petition, the Commissioner mails a copy to the “named
22 respondent” and tells the respondent to submit a response within twenty days.
23 **A.R.S. § 32-2199.01(C).**
- 24 2. Upon receipt of a response, it is reviewed by the Commissioner (or designee)
25 and, if justified, the petition is referred to the OAH for a hearing. **A.R.S. § 32-**
26 **2199.01(D).** “The word ‘justified’ — the operative term here—commonly

1 means to have a reasonable or sufficient legal basis.” *Lucky's, LLC v. Berman*,
2 CA-CV 2024-0045, 2025 WL 2218597, ¶31 (Div. 2, 2025)
3 (MEMORANDUM DECISION).

- 4 3. If the “named respondent” does not submit a response within twenty (20) days,
5 the allegations of the petition are deemed admitted and “the commissioner
6 shall issue a default decision.” **A.R.S. § 32-2199.01(E)**.

7 The Commissioner was duped, and because she was duped, she had no actual authority to
8 refer the matter to the OAH. See A.R.S. § 32-2199.01(E). To be clear, AZNH does not contend
9 that the Commissioner is a wrong-doer in the traditional sense, or that she was obligated to
10 investigate whether the Corporation had followed the statutory requirements precedent to filing
11 a Response. The *fact is* the Commissioner was tricked into accepting a Response signed by
12 someone pretending to act on behalf of the Corporation and submitted by an attorney pretending
13 to represent the corporation.

14 Therefore, the Corporation (the “named respondent”) did not file a Response within the
15 twenty (20) day time limit, and the applicable rules do not provide any remedy or exception for
16 an untimely response. Therefore, the Commissioner currently has actual authority to issue a
17 default decision now that the fraud has been exposed. See **sec. V. infra**.

18 ***C. Case Filings Support Judgment for AZNH***

19 The current case filings and written evidence show that there is no genuine dispute as to any
20 material fact and AZNH is entitled to judgment in its favor as a matter of law.

21 The Commissioner has (as a result of being duped) “failed to perform a duty required by law
22 for which [the Commissioner has] no discretion” or “proceeded, or threatened to proceed,
23 without, or in excess of, jurisdiction or legal authority.” RPSA 2(b)(1), 4(a) & (b), and 6(a)(2).

24 The relief requested by AZNH is within the scope of relief available under RPSA 10 and,
25 among other things, the Court may ORDER the Commissioner to issue a default decision.
26 RPSA 10(a)(3).

1 **IV. The Commissioner Is No Longer a Nominal Party**

2 But for the Commissioner’s case filings, AZNH would agree that the ADRE is a nominal
3 party¹ in this case.

4 Nominal party status is primarily for avoidance of paying attorneys’ fees. See A.R.S. § 12-
5 348(A) & (H)(4) and cases arising thereunder. See, e.g., *Cortaro Water Users’ Ass’n v. Steiner*,
6 148 Ariz. 314, 318 (Ariz. Supreme Court, 1986) (State agency may be exempt from award of
7 attorneys’ fees under nominal party exclusion of A.R.S. § 12-348(H)(4) as long as agency
8 simply certifies record and answers complaint, but does not take role of advocate). See *Arizona*
9 *Tax Research Ass’n v. Dep’t of Revenue*, 163 Ariz. 255, 259 (Ariz. Supreme Court, 1989)
10 (restating same). See *Mission Hardwood Co., Inc. v. Registrar of Contractors of State of Ariz.*,
11 149 Ariz. 12, 16 (Div. 1, 1986) (if the agency adopts the role of an advocate, it ceases to be a
12 nominal party and loses its statutory protection from attorney fees). “*Cortaro* and *Mission*
13 *Hardwood* clearly stand for the proposition that abstention from actively participating as an
14 advocate is a necessary condition for attaining nominal party status.” *Bromley Group, Ltd. v.*
15 *Arizona Dept. of Revenue*, 170 Ariz. 532, 539 (Div. 1, 1991).

16 The Commissioner is required by the RPSA to “file an answer or other appropriate response
17 as provided in Rule 12 of the Rules of Civil Procedure.” RPSA 7(a)(2). “The nature of an
18 answer is to admit or deny the allegations of the complaint and assert defenses. See
19 Ariz.R.Civ.P. 8(b).” *MVC Const., Inc. v. Treadway*, 182 Ariz. 615, 620 (Div. 1, 1995).
20 Advocacy means: “The art of pleading for or actively supporting a cause or proposal.” Black’s
21 Law Dictionary (12th ed. 2024).

22 Had the Commissioner opted to file only an Answer, the Commissioner would **not** have lost
23 her nominal status. *Cortaro* at 318. See *Arizona Tax Research Ass’n v. Maricopa Cnty.*, 162
24 Ariz. 94, 97 (Div. 1), *vacated in part sub nom. Arizona Tax Research Ass’n v. Dep’t of Revenue*,

¹ A party who has some immaterial interest in the subject matter of a lawsuit and who will not be affected by any judgment, but who is nonetheless joined in the lawsuit to avoid procedural defects. PARTY, Black’s Law Dictionary (12th ed. 2024).

1 163 Ariz. 255 (1989) (protecting the State agency from attorneys’ fees because, “it at no time
2 advocated a position adverse” to plaintiff). By opting to seek and argue for dismissal, the
3 Commissioner became an advocate and thereby lost nominal party protection from attorneys’
4 fees.

5 Ordinarily, AZNH would not care whether the Commissioner is a nominal party because
6 costs are recoverable from the Commissioner jointly and severally with other defendants under
7 A.R.S. § 12-341. *MVC Const., Inc. v. Treadway*, 182 Ariz. 615, 621 (Div. 1, 1995). In
8 addition: “A party may claim costs and attorney fees in a special action as in any other civil
9 action as provided in Rules 54(f) and (g) of the Rules of Civil Procedure. RPSA 7.

10 The legislature defined the boundaries of governmental immunity in A.R.S. §§ 12–820 to 12–
11 826, “Actions Against Public Entities or Public Employees” (“immunity act”). Pursuant to the
12 immunity act, if judgment is rendered for a plaintiff against a public entity, it shall be with court
13 costs and legal interest thereon. A.R.S. § 12-823.

14 Currently, however, AZNH has also incurred attorneys’ fees for this action and the
15 Commissioner’s loss of nominal status means the Commissioner shall be jointly and severally
16 liable for those fees. A.R.S. § 12-348(A)(4) (“court shall award fees” against the State in
17 Special Action).

18

19 **V. The Matter is NOT Moot**

20 As spelled-out in detail in both the Complaint and AZNH’s Motion for Judgment on the Case
21 Filings, the Administrative Law Judge (“ALJ”) has no personal or subject matter jurisdiction.
22 So, nothing the ALJ does (or does not do) has any legally operative effect.

23 The fact remains that the Commissioner was required by A.R.S. § 32-2199.01(E) to issue a
24 default decision because the Corporation did not file a Response. So, an Original Special Action
25 is warranted regardless of whatever an ALJ may do.

1 The Commissioner correctly asserts that AZNH did not appear for a scheduled administrative
2 hearing on April 6, 2026. Commissioner’s Motion, p.6, lines 15-16. The Commissioner states
3 the Administrative Law Judge “dismissed” the underlying administrative matter (25F-H115-
4 REL) and directs readers to see “attached and incorporate (sic) Exhibit A, order of the
5 Administrative Law Judge.” Commissioner’s Motion, p.6, lines 15-17. No exhibits were
6 attached to (or accompanied) the Motion.

7 The ALJ did issue an “Administrative Law Judge Decision” (not an Order) dated April 9,
8 2026, which confirms: “Petitioner failed to appear at the hearing on April 6, 2026 by 1:15pm
9 and consequently, the matter was not convened and no evidence was taken.”

10 The ALJ has no authority to dismiss a matter when a party fails to appear:

11 If a party fails to appear at a hearing, the administrative law judge may proceed
12 with the presentation of the evidence of the appearing party, or vacate the hearing
13 and return the matter to the agency for any further action. A.A.C. R2-19-117.

14 Because the ALJ did not proceed with the presentation of evidence, the ALJ was required to
15 vacate the hearing and return the matter to the Commissioner. According to the ALJ, she
16 “transmitted” the so-called ‘decision’ to the Commissioner and various other persons on April 9,
17 2026.

18 So, the matter is **NOT dismissed** and now that the Commissioner is aware that she was
19 duped, she has an additional opportunity to issue a default decision as a matter of due course.
20 See A.R.S. § 41-1092.08(B) (Commissioner may accept, reject or modify an ALJ decision after
21 a hearing).

22 As of this writing, AZNH has not received anything from the Commissioner since the April
23 9th ‘decision’ (other than the filings and communications from the Commissioner’s lawyers
24 about court proceedings).

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1 **VI. Exhaustion of Administrative Remedies NOT Required**

2 The *Rules of Procedure for Special Actions* establish the grounds upon which an Original
3 Special Action may be brought against the Commissioner and there is no requirement to exhaust
4 administrative remedies. See. RPSA 4 (Grounds or Bringing a Special Action). “Special
5 actions allow a party to obtain relief in a superior or appellate court from a decision of a lower
6 court, or from a body, officer, or person.” RPSA 2. “Any person aggrieved by the action or
7 inaction of a body, officer, or person for the reasons set forth in Rule 4 may file an original
8 special action as a plaintiff.” RPSA 5.

9 Additionally, in disputes between a homeowner and an HOA, there is no requirement to seek
10 further administrative remedy after an ALJ hearing. Pursuant to A.R.S. § 41-1092, et seq, an
11 administrative law judge shall adjudicate complaints regarding and ensure compliance with
12 Arizona’s Planned Communities Act (A.R.S. §§ 33-1801 et seq.) and planned community
13 documents. See A.R.S. § 32-2199. The order issued by the administrative law judge in such
14 matters is subject to judicial review as prescribed by § 41-1092.08. See A.R.S. § 32-
15 2199.02(B). “After a hearing has been held and a final administrative decision has been entered
16 pursuant to § 41-1092.08, **a party is not required to file a motion for rehearing or review of**
17 **the decision in order to exhaust the party’s administrative remedies.**” A.R.S. § 41-
18 1092.09(A)(3)(bold added).

Respectfully submitted,

Dated this 29th 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 Commissioner) at Deanie.Reh@azag.gov;
Asst. Attorney General Raya Gardner (counsel for Commissioner) at Raya.Gardner@azag.gov;
Asst. Attorney General Kelly Gillilan-Gibson (counsel for Tammy Eigenheer, Interim Director,
Arizona Office of Administrative Hearings) at kelly.gillilan-gibson@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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