

Briefing Document: AZNH Revocable Trust v. Susan Nicolson, et al. (CV2026-008484)

Executive Summary

The litigation in *AZNH Revocable Trust v. Susan Nicolson, et al.* (Case No. CV2026-008484) centers on a dispute regarding the validity of a corporate response filed with the Arizona Department of Real Estate (ADRE). The Plaintiff, AZNH Revocable Trust, alleges that the Sunland Springs Village Homeowners Association (the "Corporation") failed to legally authorize a response to an administrative petition concerning a 2025 board election. The Plaintiff argues that because the Corporation's Board did not formally vote to submit a response or retain counsel, the document submitted by the then-President was a "non-existent" response. Under A.R.S. § 32-2199.01(E), the Plaintiff contends this failure to respond requires the Commissioner to issue a default decision. Conversely, the Defendants—including the ADRE Commissioner and the Corporation—assert that a response was indeed filed and received, thereby satisfying the statute and divesting the Commissioner of the authority to grant a default judgment. Crucially, the matter is further complicated by the Plaintiff's failure to appear at an April 6, 2026, hearing before the Office of Administrative Hearings (OAH), leading the Defendants to argue the case is now moot.

Litigation Overview and Parties

Central Matter

The Plaintiff filed a Verified Complaint for Special Action seeking a stay of proceedings and a permanent injunction. The action is predicated on three primary issues:

1. Alleged fraud perpetrated upon the Commissioner of the ADRE.
2. The interpretation of hearing rights and procedures under A.R.S. § 32-2199.01.
3. The validity of corporate acts under the Nonprofit Corporation Act (A.R.S. § 10-3304).

Key Parties

Party, Role, Legal Representation

AZNH Revocable Trust, Plaintiff, John F. Sullivan

Susan Nicolson, "Defendant (Commissioner, ADRE)", Deanie Reh; Raya Gardner (Asst. Attorneys General)

Tammy Eigenheer, "Defendant (Interim Director, OAH)", Kelly Gillilan-Gibson; Kara Karlson; Kyle Cummings (Asst. Attorneys General)

Sunland Springs Village HOA, Defendant (Corporation), "Chad M. Gallacher (Maxwell & Morgan, P.C.)"

Core Arguments and Evidence

Plaintiff's Position: The "Non-Existent" Response

The Plaintiff's legal theory rests on the strict application of corporate governance statutes:

- **Unauthorized Acts:** Under A.R.S. § 10-3801, corporate powers are vested in the board of directors and cannot be delegated. The Plaintiff asserts the Corporation's Board took no action to authorize the response or the hiring of attorney Chad Gallacher.
- **Fraud Allegations:** The Plaintiff claims the then-President (referred to by the pseudonym "Pen Mann") "tricked" the Commissioner by submitting a response without board approval.
- **Mandatory Default:** A.R.S. § 32-2199.01(E) states that if a respondent fails to submit a response within 20 days, the allegations are deemed admitted and "the commissioner shall issue a default decision." The Plaintiff argues that an unauthorized response is legally equivalent to no response at all.
- **Jurisdictional Challenge:** The Plaintiff contends that because the default was mandatory, the OAH and its Administrative Law Judge (ALJ) lack jurisdiction to hold a hearing.

Commissioner's Position: Nominal Status and Limited Authority

The ADRE Commissioner has moved to dismiss, arguing:

- **Nominal Party Status:** The Department acts as a neutral "conduit" to steer petitions to the OAH. It has no regulatory or adjudicative authority over HOA disputes and does not take positions on the merits.
- **No Duty to Investigate:** The Commissioner asserts that A.R.S. § 32-2199.01(D) only requires a review of the "face of the pleadings." The Department is not required to "go beneath" the filings to determine internal corporate validity or the truth of the statements.
- **Default Limitations:** The Commissioner argues they only have the power to enter a default judgment if a response is "non-existent." Because a document purported to be a response was received, the criteria for a default were not met.

Corporation's Position: Apparent Authority

The Sunland Springs Village HOA argues for dismissal under Rule 12(b)(6):

- **Binding Nature of Acts:** Citing *Miller v. Mason-McDuffie Co.*, the Corporation argues that even if a director acts outside their actual authority, they may legally bind the corporation under the principle of "apparent authority."
- **Sufficiency of Response:** The Corporation maintains that the response signed by the then-Board President was legally binding on the Association, rendering the Plaintiff's demand for a default judgment "fundamentally incorrect."

Procedural Timeline and Status

The following timeline outlines key events in the litigation during 2026:

- **February 26:** The Superior Court issues an Order to Show Cause; Summons and Complaint are filed.
- **February 27:** Plaintiff's counsel sends informal notice of the lawsuit via email to the Commissioner and Assistant Attorneys General.
- **March 1:** Documents are hand-delivered to a Director of the Corporation.
- **March 20:** The Corporation is served at its usual place of business via Miranda Alvarez, a legal secretary.

- **March 22:** Plaintiff files a Motion for Judgment on the Case Filings, incorporating newly obtained documentary evidence.
- **March 24:** Plaintiff restates a request for a Stay of Proceedings, arguing the upcoming OAH hearing should not proceed.
- **April 6:** The scheduled OAH hearing (Case No. 25F-H115-REL) takes place. The Plaintiff fails to appear.
- **April 9:** The ALJ issues a decision noting the Plaintiff's failure to appear and returns the matter to the ADRE.
- **April 21:** The Commissioner files a Motion to Dismiss, citing mootness and failure to exhaust administrative remedies.
- **April 29:** The Court resets oral arguments on the Motions to Dismiss and the Motion for Judgment on Case Filings for **June 26, 2026, at 8:30 a.m.**

Analysis of Legal Themes

1. Corporate Governance vs. Administrative Procedure

The conflict highlights a tension between the Nonprofit Corporation Act and the HOA Dispute Resolution Program. The Plaintiff seeks to use corporate governance violations (lack of board authorization) to trigger a specific administrative outcome (default judgment). The Defendants argue that administrative agencies are not the venue for litigating internal corporate disputes.

2. Nominal Party Status and Advocacy

A significant portion of the briefings involves whether Commissioner Nicolson has lost her "nominal party" status. The Plaintiff argues that by seeking dismissal and arguing against the Plaintiff's interpretation of the law, the Commissioner has become an advocate, thereby becoming liable for attorneys' fees under A.R.S. § 12-348. The Commissioner maintains that asserting jurisdictional defenses does not constitute advocacy on the merits.

3. Mootness and Failure to Appear

The Commissioner argues the Special Action is moot because the underlying OAH case was dismissed/returned following the Plaintiff's failure to appear. The Plaintiff counters that the ALJ lacked jurisdiction entirely, making any "dismissal" by the ALJ legally irrelevant to the Superior Court's review of the Commissioner's initial failure to grant a default.

Significant Quotes

"A fraudulent representation may be effected by deceitful statements or half-truths or even silence." — *Verified Complaint, Introduction*"The Commissioner was duped, and because she was duped, she had no actual authority to refer the matter to the OAH." — *Plaintiff's Reply to Commissioner's Response*"The Department lacks the express statutory authority to investigate fraudulent filings in the HOA dispute process... it is only intended to provide a conduit for such disputes." — *Commissioner's Motion to Dismiss*"Even if a director does not have actual authority to enter a contract or take action that binds a corporation, such director may legally

bind the corporation because of application of the principle of apparent authority." —
Corporation's Reply in Support of Motion to Dismiss