

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2023-000179-001 DT

08/02/2024

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
S. Ortega
Deputy

TOM BARRS

TOM BARRS
PO BOX 14122
SCOTTSDALE AZ 85267

v.

DESERT RANCH HOMEOWNERS
ASSOCIATION (001)

JUDGE MIKITISH
OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

MINUTE ENTRY

Agency Case No. HO22-22050 & HO22-22054

The Court has received and reviewed the Application for Attorneys' Fees and Taxation of Costs filed by Appellant Tom Barrs on April 24, 2024. The Appellee Desert Ranch Homeowners Association filed a response thereto on May 24, 2024. Mr. Barrs filed a Reply Brief on June 3, 2024.

The Association's response noted that it was filed "pro se". An Association may not represent itself in Court or file pleadings on its own behalf. Rather, it must be represented by an attorney. See Rule 31.2, Arizona State Supreme Court Rules; *Boydston v. Strole Development Co.*, 193 Ariz. 47, 49 ¶ 7 (1998). Therefore, this Court cannot consider the Association's response. Likewise, the Court will not consider the Reply Brief filed by Mr. Barrs.

In order to obtain an award of attorneys' fees, there must be legal authority to do so. "In Arizona we follow the general American rule that attorney [] fees are not recoverable unless they are

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2023-000179-001 DT

08/02/2024

expressly provided for either by statute or contract.” *Kaufmann v. Cruikshank*, 222 Ariz. 488, 490, ¶ 7 (App. 2009).

In his Opening Brief, Mr. Barrs argues that he is entitled to attorneys’ fees pursuant to A.R.S. § 10-11604. That statute provides that “[i]f a corporation does not allow within a reasonable time a member to inspect and copy any other record, the member who complies with section 10-11602, subsections B and C may apply to the court in the county where the corporation’s known place of business is located for an order to permit inspection and copying of the records demanded.” A.R.S. § 10-11604 (B). It further provides that “[i]f the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member’s costs, including reasonable attorney fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.” A.R.S. § 10-11604 (C).

In this case, Mr. Barrs did not bring his action in the “court in the county where the corporation’s known place of business is located” as provided in A.R.S. § 10-11604. Rather, he brought a complaint to the Arizona Department of Real Estate. Therefore, the attorneys’ fees provision in that statute does not apply. Because Mr. Barrs does not present applicable authority to obtain attorneys’ fees, his request for fees must be denied.

Mr. Barrs also does not provide any legal authority an award of his legal costs in this Judicial Review of Administrative Decision action. Therefore, the Court must conclude that Mr. Barrs is not entitled to court costs.

CONCLUSION:

Based on the foregoing,

IT IS ORDERED reaffirming this Court’s April 4, 2024, Ruling reversing the Department of Real Estate’s Final Decision in this matter.

IT IS FURTHER ORDERED denying the request for attorneys’ fees and court costs.

IT IS FURTHER ORDERED remanding the matter to the Arizona Department of Real Estate for further proceedings consistent with this order.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2023-000179-001 DT

08/02/2024

No matters remain pending in connection with this appeal. This is a final order. *See* Rules 12(c), 12(d), 14(b), Sup. Ct. R. App. P. – Civil and Rule 54(c), Ariz. R. Civ. P.

/s/ Joseph P. Mikitish
THE HON. JOSEPH P. MIKITISH
Judge of the Superior Court

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.