

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-014709

02/23/2023

HONORABLE JOHN REA

CLERK OF THE COURT
L. Gilbert
Deputy

R L WHITMER

ROSS P MEYER

v.

HILTON CASITAS HOMEOWNERS
ASSOCIATION

EDITH I RUDDER

COMM. JOHN REA

MINUTE ENTRY

The court has considered Defendants' motion to dismiss Amended Petition, filed January 18, 2023; Plaintiff's response, filed February 6, 2023; and Defendants' reply, filed February 16, 2023. The parties did not request oral argument and the court agrees that no oral argument is necessary.

The Amended Petition is based solely on the 2014 ALJ Decision, seeking a finding of contempt against Hilton Casitas and an order that the HOA comply with the ALJ Decision in the future.

The 2014 ALJ Decision addressed specific circumstances in 2013 and 2014. The HOA incurred legal expenses over budget because of actions filed by Plaintiff Whitmer and then Mr. Whitmer complained about the expenditures. The testimony before the ALJ was that the Board was aware of budget problem and intended to meet soon to ratify the increased legal costs. This is the factual context for the ALJ's order that "Hilton Casitas shall fully comply with the applicable provisions of 33-1243(D) in the future." Notably, the ALJ declined to award a civil penalty.

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There is nothing in the Decision indicating that the ALJ was ruling on anything more than the budgets of 2013 and 2014. “In the future” refers to the anticipated imminent meeting to ratify the expenses. Neither the discussion in the Decision nor the language of the Order indicates an intention to impose a directive on Hilton Casitas to generally comply with the law for the indefinite future on as yet unknown facts.

The court’s interpretation of the ALJ Decision is consistent with the authorities cited by Hilton Casitas disfavoring “obey the law” injunctions. The court also agrees that if the ALJ intended the Order to apply to future situations, the Order is too vague to enforce by contempt.

IT IS ORDERED Defendants’ motion to dismiss Amended Petition is granted.