

*N. Butzbach*

N. BUTZBACH, FILED

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R. L. Whitmer  
6333 N. Scottsdale Rd.  
Casita 21  
Scottsdale, Arizona 85250  
602.531.2615  
Pro Per

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

R. L. WHITMER,  
Plaintiff.

**CV2016-055080**

v.

**ORDER TO SHOW CAUSE  
HEARING MEMORANDUM**

HILTON CASITAS HOMEOWNERS  
ASSOCIATION, also known as  
HILTON CASITAS COUNCIL OF  
HOMEOWNERS, also known as  
COUNCIL OF CO-OWNERS, also  
known as HILTON CASITAS  
COUNCIL OF CO-OWNERS; and  
MICHAEL BENGSON, President of  
the named Respondent;

(Assigned to the  
Hon. Aimee L. Anderson)

Defendants.

The Complaint before the Court is the result of the current HOA president's complete indifference to the HOA's statutory and judicial obligations, along with his broken promise to the tribunal to "get everything on the right track." (P2:25, Ex. 1, of the complaint).

The HOA has been collecting \$43,500 annually (59% of the HOA's assessed expenses) for Safeguard Security. According to the notes on the Safeguard contract as provided to the Plaintiff by the HOA president (Ex. 6 of the complaint), the new annual Safeguard expense is projected to be only \$13,579.

Unfortunately, the HOA president and the board are not only withholding information about the estimated \$30,000 savings from the homeowners, but they

1 have ignored their statutory obligation to amend the HOA budget and seek  
2 ratification from the homeowners as required by ARS §33-1243.D and  
3 Administrative Law Judge Decision No. 14F-H1415004-BFS.

4 The Judicial Order states that they comply with ARS §33-1243.D, the State  
5 law mandating how HOAs adopt and amend budgets, along with the mandated  
6 opportunities given to homeowners to listen to the HOA board in an agenda-  
7 meeting to discuss the budget (on which their assessment will be based), and  
8 have sufficient time prior to the required unit owners meeting to consider the  
9 budget and discuss with other unit owners.

10 The Defendants' answer fails to factually refute the Complaint with any  
11 affidavits or exhibits. In their answer, the Defendants' admissions prove the  
12 following allegations:

13 1. In ¶7, the Defendants admit that "the unit owners have been  
14 assessed \$125 [a month] for services provided by Safeguard Security"... "that the  
15 Board sent out a notice on August 22, 2016, announcing that the Safeguard  
16 Security agreement had been amended and that any savings would be put in a  
17 reserve account." The Defendants offer no defense to not amending the budget  
18 as required by law and Judicial Order.

19 2. In ¶10, the Defendants deny that they are required to reallocate the  
20 casita owners' assessment payments. They would have the Court believe that  
21 they are not subject to ARS §33-1255 Assessments for common expenses;  
22 applicability:

23 ARS §33-1255.A ... After any assessment has been made by  
24 the association, assessments shall be made at least annually,  
25 based on a budget adopted at least annually by the  
26 association.

27 ARS §33-1255.G. If common expense liabilities are  
28 reallocated, common expense assessments and any  
installment on the assessments not yet due shall be  
recalculated in accordance with the reallocated common  
expense liabilities.

1           Accordingly, HOA assessments are required to be “recalculated” to reflect  
2 the new reallocated “Safeguard” expense liabilities, which requires the HOA to amend its  
3 budget as outlined by ARS §33-1243.D and ordered by the administrative tribunal.

4           **3.**     The Defendants admit that the only board meeting prior to the March  
5 31, 2016 annual meeting was held on February 16, 2016. Exhibit 4 of the  
6 complaint was the notice and agenda for that meeting as emailed by the HOA’s  
7 agent on February 15, 2016. The agenda did not list the board’s consideration or  
8 adoption of the annual budget as required by ARS §33-1248.E:

9           ARS §33-1248.E. It is the policy of this state as reflected  
10 in this section that all meetings of a condominium,  
11 whether meetings of the unit owners' association or  
12 meetings of the board of directors of the association, be  
13 conducted openly and that notices and agendas be  
14 provided for those meetings that contain the information  
15 that is reasonably necessary to inform the unit owners of  
16 the matters to be discussed or decided and to ensure that  
17 unit owners have the ability to speak after discussion of  
18 agenda items, but before a vote of the board of directors  
19 is taken. Toward this end, any person or entity that is  
20 charged with the interpretation of these provisions shall  
21 take into account this declaration of policy and shall  
22 construe any provision of this section in favor of open  
23 meetings. (Emphasis added).

24           Without an agendized adoption of the budget, none of the casita owners  
25 would have known to attend in order to listen to the board’s deliberations to know  
26 what the budget contained, and then be able to comment on the budget prior to  
27 the board’s vote to adopt the budget. Accordingly, the board did not and could  
28 not adopt a budget at that meeting.

**4.**     If the board had actually agendized and adopted the 2016 annual  
budget at their February 16<sup>th</sup> meeting, the board could not have complied with all  
the statutory deadlines under ARS §33-1243.B and D for the budget to be  
considered at the March 31, 2016 annual meeting.

**a.**     If, as claimed by the Defendant without any factual basis, the

1 board had adopted a budget at their February 16<sup>th</sup> meeting, they  
2 would have had a maximum of 30 days (March 17, 2016) to circulate  
3 the budget to all of the casita owners.

4 b. On March 24, 2016, the board's management agent distributed  
5 the meeting documents via email (Ex. 8) including the statutorily  
6 required board secretary's notice to the unit owners of an annual  
7 meeting for March 31, 2016 (Ex.3 of the complaint). While the  
8 agenda lists adopting a budget, no budget was attached to the email  
9 (Ex. 8).

10 The secretary's notice violates ARS §33-1243.B which requires a  
11 minimum 10 day prior notice of an annual meeting. Accordingly, if a  
12 notice was given on March 24<sup>th</sup>, the soonest date that an annual  
13 meeting could be held would have been April 3<sup>rd</sup>.

14 c. ARS §33-1243.D requires a minimum of 14 days after the  
15 board secretary notices a budget consideration meeting for the actual  
16 budget consideration meeting to be held.

17 According to the statute, based on the March 24<sup>th</sup> notice, the soonest  
18 that the budget consideration meeting could have been held would  
19 have been April 7, 2016, not the March 31<sup>st</sup> annual meeting.  
20

## 21 **CONCLUSION**

22 Given the undisputed facts, undisputed evidence, and the Defendants'  
23 admissions presented to the Court, there is no need for the Court to hold an  
24 evidentiary hearing.

25 Because the Defendants show no intent or inclination to become compliant  
26 with State law and the Judicial Order, the Plaintiff requests pursuant to ARS §12-  
27 861 et seq and Arizona Rules of Civil Procedure 65(f) that the Court:

28 1. Find the Defendants in contempt of the Administrative Law Judge

1 Decision No. 14F-H1415004-BFS.

- 2
- 3 2. Order sanctions on the HOA's president Mr. Michael Bengson and  
4 the HOA's paid officer/general counsel Mr. Robert Anderson<sup>1</sup> in the  
5 amount of \$10,000 each as the means of detouring further  
6 misconduct.
- 7 3. Order the HOA to become compliant within 45 days with the  
8 Administrative Law Judge Decision No. 14F-H1415004-BFS., or be  
9 subjected to a \$5,000 fine, and additional fine of \$250 per day until  
10 compliance is attained.

11 Dated this 25<sup>th</sup> day of January, 2017.

12 

13  
14 R. L. Whitmer

15  
16 ORIGINAL filed this  
17 25<sup>th</sup> day of January, 2017, with the  
18 Clerk of the Court;  
19 and a COPY mailed this same date to:

20 Robert Anderson  
21 14580 N. Scottsdale Road, Suite 500  
22 Scottsdale, Arizona 85254

23 \_\_\_\_\_

24 <sup>1</sup> As noted in the Administrative Law Judge Decision No. 14F-H1415004-BFS, even  
25 though Mr. Bengson was not an officer of the HOA and at that time lacked any authority  
26 to engage Mr. Anderson for the administrative hearing, "Mr. Bengson testified that he  
27 retained Respondent's counsel, Robert Anderson, Esq., as a friend to help Hilton  
Casitas out." (Ex.1 to the complaint, P.1:L13-15).

28 On March 31, and 27, 2015, Mr. Bengson's "friend," Mr. Anderson billed the HOA a total  
of \$6,727.00 for his friendly help. (Ex. 9).

# Exhibit 8

**R L Whitmer**

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**Subject:** FW: Scottsdale Hilton Annual Meeting Ballot  
→ **Attachments:** → Amended Declarations of Hilton Casitas.pdf; Signed Notice of meeting.pdf; Scottsdale Hilton 2016 Ballot.pdf

On Thursday, March 24, 2016 1:57 PM, Evon Potocki <[Evon@cpihoa.com](mailto:Evon@cpihoa.com)> wrote:

Good Afternoon-

As you know the Annual Meeting is scheduled for:

Date: Thursday, March 31<sup>st</sup>, 2016.

Located: Scottsdale Hilton Ballroom

Time: 4:30pm

Homeowners are encouraged to attend the meeting. Attached is also the Board of Directors Ballot where you may cast your vote for the Amended and Restated Declarations. For delivery of your filled out and signed ballot: email to [Mike@mbengson](mailto:Mike@mbengson), deliver to **Casita 11**, or bring your ballot to the Annual Meeting.

Have a nice Easter weekend!

**Evon Potocki**  
*Community Manager*



**Cornerstone Properties, Inc.**  
P.O. Box 62073  
Phoenix, AZ 85082

Office: (602) 433-0331 x103  
Fax: (602) 244-9214  
E-Mail: [evon@cpihoa.com](mailto:evon@cpihoa.com)  
<http://www.cpihoa.com>

# Exhibit 9

# CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500  
Scottsdale, Arizona 85254  
Telephone (480) 684-1100  
Fed.ID # 38-0425840

## INVOICE

Hilton Casitas Council of Homeowners  
Attn: Michael Bengson  
6333 N. Scottsdale Road  
Unit 10  
Scottsdale, AZ 85250-5428

Invoice # 574583  
March 31, 2015  
Client: 48320  
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through November 30, 2014

Total Services:	\$4,420.00
<b>INVOICE TOTAL</b>	<b>\$4,420.00</b>

PAYABLE UPON RECEIPT IN U.S. DOLLARS

## CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners  
Condominium Reorganization and Whitmer Dispute  
March 31, 2015  
INVOICE # 574583  
Page 2

### DETAILED DESCRIPTION OF SERVICES

10/22/14	Telephone call from M. Bengson regarding condominium restructure (.3 no charge); review letter from attorney for association regarding issues.	R Anderson	.20	65.00
10/30/14	Bengson: Review legal action by unit owner; review declaration and statutory authority; telephone call to M. Bengson regarding legal issue.	R Anderson	.50	162.50
10/31/14	Telephone call from M. Bengson regarding bylaws, board meeting, and current issues.	R Anderson	.20	65.00
11/12/14	Telephone call to M. Bengson regarding lawsuit against association.	R Anderson	.40	130.00
11/14/14	Review file documents; review Motion for Summary Judgment; prepare Response to Motion.	R Anderson	3.50	1137.50
11/17/14	Telephone call from H. Mesrand, Department of Safety, regarding administrative hearing; review Notice of Hearing.	R Anderson	.80	260.00
11/20/14	Telephone call from M. Bengson regarding meeting with L. Whitmer.	R Anderson	.20	65.00

# CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners  
Condominium Reorganization and Whitmer Dispute  
March 31, 2015  
INVOICE # 574583  
Page 3

11/21/14	Telephone call from M. Bengson regarding meeting with L. Whitmer; telephone call to M. Bengson regarding claims.	R Anderson	.30	97.50
11/21/14	Meeting with L. Whitmer regarding lawsuit, history of association.	R Anderson	2.00	NO CHARGE
11/26/14	Review petition, motion for summary judgment, and other legal claims for administrative hearing; review prior minutes; review Board and budget analysis of the original association and new association; review Corporation Commission records; review original by-laws and proposed amended by-laws..	R Anderson	3.70	1202.50
11/26/14	Meeting with L. Whitmer, A. Eli regarding condo ground lease issues.	R Anderson	2.50	NO CHARGE
11/28/14	Research issue of authority of association, amending declaration/bylaws, issue of replacement of unincorporated association with non-profit association, review ground lease and restrictions on casitas.	R Anderson	3.80	1235.00

\$4,420.00

## TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	4.50 hours at	\$0.00 =	\$0.00
RGA	Robert G. Anderson	13.60 hours at	\$325.00 =	\$4,420.00

# CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500  
Scottsdale, Arizona 85254  
Telephone (480) 684-1100  
Fed.ID # 38-0425840

## INVOICE

Hilton Casitas Council of Homeowners  
Attn: Michael Bengson  
6333 N. Scottsdale Road  
Unit 10  
Scottsdale, AZ 85250-5428

Invoice # 578577  
March 27, 2015  
Client: 48320  
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through December 31, 2014

Total Services:	\$2,307.50
<b>INVOICE TOTAL</b>	<b>\$2,307.50</b>

PAYABLE UPON RECEIPT IN U.S. DOLLARS

## CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners  
Condominium Reorganization and Whitmer Dispute  
March 27, 2015  
INVOICE # 578577  
Page 2

### DETAILED DESCRIPTION OF SERVICES

12/05/14	Telephone call to M. Bengson regarding meeting and leasing (.2 no charge).	R Anderson	.20	NO CHARGE
12/08/14	Telephone call from L. Whitmer regarding ground lease issue, hotel's offer (.2 no charge).	R Anderson	.20	NO CHARGE
12/12/14	Telephone call from M. Bengson regarding hearing (.2 no charge); telephone call from C. Hill, attorney for lawsuit.	R Anderson	.40	NO CHARGE
12/15/14	Meeting with M. Bengson, B. and S. Askenazi regarding Board elections, Administrative Hearing, witnesses, and evidence.	R Anderson	1.20	390.00
12/16/14	Telephone call from B. Askenazi regarding witnesses for hearing (.2 no charge).	R Anderson	.20	NO CHARGE
12/18/14	Review emails from M. Bengson, L. Whitmer, E. Karatz.	R Anderson	.30	97.50
12/19/14	Telephone call to M. Bengson regarding leasing; review evidence.	R Anderson	.20	65.00
12/22/14	Telephone call to M. Bengson regarding hearing; review evidence; review file; review pleading and Whitmer's evidence; prepare for hearing.	R Anderson	3.20	1040.00

**CLARK HILL P.L.C.**

Hilton Casitas Council of Homeowners  
Condominium Reorganization and Whitmer Dispute  
March 27, 2015  
INVOICE # 578577  
Page 3

12/23/14	Prepare for hearing and attend administrative hearing on Whitmer petition.	R Anderson	2.20	715.00
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\$2,307.50

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	1.00 hours at	\$0.00 =	\$0.00
RGA	Robert G. Anderson	7.10 hours at	\$325.00 =	\$2,307.50