

Shaw & Lines, LLC

4523 E. Broadway Road

Phoenix, AZ 85040

Phone (480) 456-1500

Facsimile (480) 456-1515

www.shawlines.com

Augustus H. Shaw IV - #021593

Mark E. Lines - #020553

Nicole D. Payne - #031213

Attorneys for Respondents

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

R.L. WHITMER,

Petitioner,

v.

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
Hilton Casitas Homeowners Association,

Respondents.

Case No. CV2016-055080

**MOTION AND APPLICATION FOR
AWARD OF ATTORNEY FEES**

Respondents, by and through counsel undersigned, hereby moves this Court for an award of attorney fees in an amount not less than \$23,176.50. Respondents' Motion to Dismiss Petitioner's Complaint specifically alleges Respondents' entitlement to and specific request for mandatory attorney fees pursuant to A.R.S. §12-349, and 12-350.

Pursuant to the Court's March 20, 2017 Minute Entry ("Minute Entry") the Respondents' Motion to Dismiss Petitioner's Complaint ("Motion") was granted for lack of subject matter jurisdiction pursuant to Ariz. R. Civ. P. 12(b)(1). In the Minute Entry, the Court instructed the Respondents to submit a request for an award of fees and costs incurred herein.

1 **I. RESPONDENTS ARE ENTITLED TO ATTORNEY'S FEES PURSUANT**
2 **TO A.R.S. §12-349, A.R.S. §12-350 AND RULE 11(A), ARIZ. R. CIV. P.**

3 As a starting point, it is important to note that pro per litigants, such as the
4 Petitioner, are held to the same standards as attorneys regarding procedures, statutes,
5 rules, and legal principles. *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12, 981 P.2d 134,
6 138 (App.1999). As such, the Petitioner should be held responsible for knowing and
7 understanding the relevant Statutes and Rules of Civil Procedure regarding the award of
8 attorney's fees and costs.

9 Based on the above, the Respondents are entitled to a full award of attorney's fees
10 pursuant to relevant statutory law and the Arizona Rules of Civil Procedure.

11 Pursuant to A.R.S. §12-349:

12 In any civil action commenced or appealed in a court of record in this state, the
13 court *shall* assess reasonable attorney fees, expenses. . ." Emphasis added.

14 In addition, Rule 11(a), Ariz. R. Civ. P. Provides, in part:

15 The signature ...of a party constitutes a certificate by the signer that the signer
16 has read the pleading, motion, or other paper; that to the best of the signer's
17 knowledge, information, and belief formed after reasonable inquiry it is well
18 grounded in fact... and is not interposed for any improper purpose, such as to
19 harass or to cause unnecessary delay or needless increase in the cost of
litigation.

20 Based on the undisputed facts applied to the above law, it is clear that the
21 Respondents are entitled to an award of all of its fees and costs incurred.

22 It is clear that the Petitioner did not fully research or analyze whether his claims
23 could be heard before the Superior Court prior to filing his action. This may be seen by
24 the fact that the Petitioner submitted evidence (the letter received from the Office of
25 Administrative Hearings attached to Petitioner's Motion to Reconsider) that he did not
26 investigate whether the Superior Court has jurisdiction to hear his claims until after the
27 Association filed its Motion to Dismiss.
28

1 This fact, in concert with the Petitioner's other actions and filings, supports an
2 award of *all* fees and costs incurred by the Respondents.

3 Additionally, the undersigned certifies that the fees requested herein are
4 reasonable and were necessarily incurred in securing this judgment. The total fees
5 requested constitute fair and reasonable fees, and are in compliance with the requisite
6 elements set forth in *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d
7 927 (App. 1983). Respondents' undersigned counsel has submitted the requisite
8 affidavit and exhibit detailing the specific work performed, billing rates, time billed and
9 the intricacy of legal work performed.
10

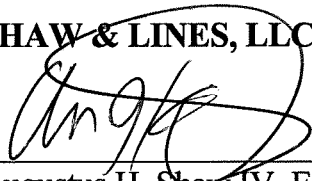
11 Additionally, Respondents' counsel avows that efforts expended in this action (as
12 set forth in specific detail in the undersigned's affidavit detailing all such fees) are in
13 compliance with the requisite ethical standards, and pursued as efficiently as possible to
14 minimize the fees incurred.

15 **II. CONCLUSION.**

16 For the foregoing reasons, the Association respectfully submits that it is entitled
17 to an award of all its legal fees as requested herein, and that the amount requested is
18 reasonable.

19 DATED this 13 day of April, 2017.

20 **SHAW & LINES, LLC**

21 
22 _____
23 Augustus H. Shaw IV, Esq.
24 Nicole D. Payne, Esq.
25 4523 E. Broadway Rd.
26 Phoenix, Arizona 85040
27 Attorney for Respondents
28

///

///

1 ORIGINAL submitted for electronic filing
2 this 13 day of April, 2017, with:

3 Clerk of the Maricopa County Superior Court

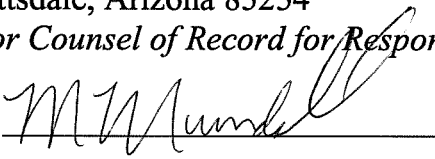
4 ORIGINAL hand-delivered
5 this 14 day of April, 2017, to:

6 Hon. Aimee Anderson
7 Maricopa County Superior Court,
8 Northeast Regional Court Center
9 18380 North 40th Street
Phoenix, Arizona 85032

10 COPY of the foregoing mailed
11 this 14 day of April, 2017, to:

12 R.L. Whitmer
13 6333 North Scottsdale Road, Casita 21
14 Scottsdale, Arizona 85250
Petitioner, Pro Per

15 Paige Martin & Bob Anderson
16 Clark Hill, PLC
17 14850 North Scottsdale Road, Suite 500
18 Scottsdale, Arizona 85254
Prior Counsel of Record for Respondents

19 By: 
20
21
22
23
24
25
26
27
28