

MICHAEL K. JEANES  
Clerk of the Superior Court  
By Kelsey Norton, Deputy  
Date 09/05/2017 Time 10:41:20

Description	Amount
CASE# CV2017-055475	
CIVIL NEW COMPLAINT	322.00
TOTAL AMOUNT	322.00

Receipt# 26139504

William M. Brown  
6751 E. Amber Sun Drive  
Scottsdale, AZ 85266  
(480) 595-9131

Plaintiffs on his own behalf

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

William M. Brown, an individual,

Plaintiff,

Case No.

CV2017-055475

Verified Complaint,  
Application for An Order to  
Show Cause

(Enforcement of An  
Administrative Law Order No.  
17F-H1716005-REL; Arizona  
Department of Real Estate  
Final Order No. 17F-  
H1716005-REL and ADRE  
Order Denying Request for  
Rehearing)

vs.

Terravita Country Club, Inc., an Arizona  
non-profit corporation; Sterling J. Laaveg,  
President TCC, Inc., and his spouse; Paul  
David Tolk, Vice-President TCC, Inc., and  
his spouse; William H. Greig, Secretary  
TCC, Inc., and his spouse; Michael T.  
Ellington, Treasurer TCC, Inc., and his  
spouse; John Does I-X and Jane Does I-X

and their spouses; Carpenter, Hazlewood,  
Delgado & Bolen, PLC; Joshua M. Bolen  
024053 and Anjali J. Patel 028138

Defendants.

Plaintiff for his complaint against Defendants, alleges as follows:

Nature of the Action

Pursuant A.R.S. § 12-861 *et seq.* and Arizona Rules of Civil Procedure 65(f) this Court has the inherent power to punish Defendants' willful defiance of the Office of Administrative Hearings' Judge Velva Moses-Thompson's July 10, 2017 Decision finding Petitioner ("Plaintiff," William M. Brown) is deemed the prevailing party in 17F-H1716005-REL and "It is further ORDERED that Terravita ("Defendants," TCA, Inc., et al.) comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Terravita's records within 10 days of the Order entered in this matter; willful defiance of the Arizona Department of Real Estate's Commissioner Judy Lowe's July 11, 2017 Final Order "accepting (sic) the ALJ decision that Petitioner be deemed the prevailing party...Respondent comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Respondent's records...(sic)," and ADRE's Commissioner's August 16, 2017 Order Denying Request For Rehearing, an order re-confirming OAH/ALJ's Decision and ADRE/Commissioner's Final Order, "This Order is a final administrative action and is effective immediately from the date service is complete," Plaintiff requests this Court

order Defendants pursuant to Ariz. R. Civ. P., Rule 65(f) to appear and show cause why the Defendant's should not be found in willful contempt of the decision and final orders of the OAH and ADRE, acts that show willful disrespect for the administration of justice and the dignity of the law.

### Parties

Plaintiff, William M. Brown, has been a legal and equitable owner of 6751 East Amber Sun Drive, Scottsdale, Arizona (Terravita) 85266-7029, Maricopa County, continuously since May 31, 1996.

Defendants, pursuant to owner's (Plaintiff) mandatory social membership compelled by deed and Club Terravita Social Membership Agreement filed of record and appurtenant to the land, agree to extend to owner of real property in Terravita the right to use Club Terravita's facilities which are generally made available to Social Members.

Defendant, Terravita Country Club, Inc. ("TCC"), is an Arizona non-profit corporation formed May 28, 1998 to operate as a private social recreational club for the social and recreational benefit of its members; Defendant's principal place of business is maintained in Maricopa county at 34034 N. 69th Way, Scottsdale, Arizona 85266 where all its corporate business is transacted.

Defendant, an Arizona non-profit corporation, is a planned community created for the purpose of managing, maintaining or improving the property and in which the owners (Plaintiff, et al.) of separately owned lots/parcels are mandatory members and, as such, Title 33, Chapter 16, Article 1, Arizona's Planned Community Statutes, applies to Defendant.

Defendants Laaveg, Tolk, Greig, Ellington constitute a quorum (4 of 7) of corporation's board of directors who are charged with the management of the affairs of the corporation and are authorized to make all decisions and take all actions not specifically reserved to the County Club Members pursuant to the Amended and Restated Bylaws of Terravita Country Club, Inc., March 2016.

### Jurisdiction and Venue

This action arises under state law. This Court has jurisdiction pursuant to A.R.S. §§ 12-123 and 12-1801 *et.seq.*

Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

### Statement of Facts

On July 29, 2016, pursuant to Arizona Revised Statutes, Title 33, Chapter 16, § 33-1805, William M. Brown made a detailed unambiguous lawful records request of Terravita Country Club, Inc. for specific records of account and documents in the matter of *Bianco, et al. vs. Terravita Country Club, Inc., et al.*, CV2014-053595. (Exhibit A)

Following William M. Brown's July 29, 2016 records request for TCC, Inc.'s records of account and TCC, Inc.'s failure to timely provide the requested records, on August 15, 2016 William M. Brown ("Petitioner") filed a Homeowners Association (HOA) Dispute Process Petition with the Arizona Department of Real Estate alleging Terravita Country Club, Inc.'s ("Respondent") violation of A.R.S. § 33-1805(A). (Exhibit B)

On January 26, 2017, Petitioner's proposed resolution of the contested matter (Respondent's Answer in 17F-H1716005-REL was non-responsive, incomplete and inaccurate...see Exhibit A and Exhibit D, Petitioner's subpoena duces tecum) was sent via electronic mail to Respondents in advance of ALJ Moses-Thompson's order that the parties file a status report on or before February 8, 2017...proposed resolution would be in the best interests of the parties and the members' best interests. (Exhibit C)

Following a June 19, 2017 hearing on the merits, on July 10, 2017 Administrative Law Judge Velva Moses-Thompson issued the Office of Administrative Hearings' Recommended Order; "...Petitioner is (sic) deemed the prevailing party...Terravita comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Terravita's records within 10 days of the Order in this matter." (Exhibit E)

On July 11, 2017, the Commissioner of the Arizona Department of Real Estate issued the Department's Final Order, "The Commissioner accepts the ALJ decision that Petitioner be deemed the prevailing party...that Respondent comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Respondent's records...(sic)." (Exhibit F)

On July 31, 2017 Petitioner sought leave to re-open the record for the limited purpose of reconsidering the appropriateness of Judge Moses-Thompson's July 10, 2017 Decision, "No Civil Penalty is found to appropriate in this matter," notwithstanding incontrovertible evidence of the Respondent's historic and instant willful non-compliance with the Planned Community Statutes and Respondent's notorious defiance of Judge Moses-Thompson's Decision and Commissioner Lowe's Final Orders in 17F-

H1716005-REL articulated and supported by tangible records found in Petitioner's Motion To Re-Open Record. (Exhibit G)

On August 16, 2017, Commissioner Lowe issued ADRE's Order Denying Request For Rehearing, "This Order is a final administrative action and is effective immediately from the date service is complete," an order which reaffirmed the OAH's decision and the ADRE's final orders. (Exhibit H)

Notwithstanding Respondent's counsel's January 31, 2017 e-mail to Petitioner, "The Board has reviewed your settlement offer and has decided to decline it" (Exhibit C, P4 (iii)), Petitioner/Plaintiff's August 21, 2017 electronic mail to Respondent/Defendants' counsel entreating the Defendants' compliance with the Final Orders (Exhibit I), Respondent's counsel's August 23, 2017 reply (Exhibit J) evidences Respondent's continuing willful ignorance of the law (§ 33-1805), defies credulity with respect to the sworn testimony and evidence adduced at the June 19, 2017 hearing in 17F-H1716005-REL and the record in 11F-H1112007-BFS (*see* Exhibit G, p.3 'Findings of Fact', 14), an earlier books and records contested matter between the parties (William M. Brown was the prevailing party in that matter as well). Defendant's arrogance in defiance of the OAH and ADRE's orders ill-serves the administration of justice, a just outcome in 17F-1716005-REL and ill-serves the mandatory members of the defendant corporation.

On September 1, 2017, Plaintiff in this matter sent Respondent's corporate officers (Laaveg, Tolk, Greig and Ellington) in care of Respondent's counsel a further resolution entreatment, 'TCC, Inc.'s

continuing failure to responsively, completely and accurately comply with this matter's (17F-H1716005-REL) records request may cause Petitioner to "...seek any and all legal recourse pursuant to Arizona law (sic...quoting Respondent's counsel)," to include court ordered sanctions for civil and/or criminal contempt.'

To date, Defendant, its corporate officers and the corporation's counsel continue to be non-responsive.

### Prayer for Relief

Plaintiff incorporates paragraphs one through nineteen as set forth above.

Given Defendant's long history of non-compliance with Arizona's Planned Community Statutes, its notorious defiance of Judge Moses-Thompson's Decision and Commissioner Lowe's Final Orders in 17F-H1716005-REL and Defendants and counsel's non-responsiveness in this matter which gives rise to Plaintiff's Verified Complaint, Application for An Order to Show Cause, Plaintiff requests this Court grant:

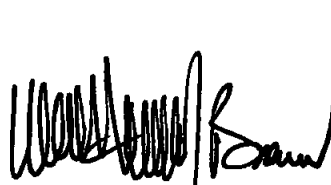
1. A show cause hearing be set in this matter;
2. The Court finding the Defendants in contempt of the OAH's Decision and the ADRE's Final Orders, declare Defendants' contempt warrants sanctions against the Defendant, its corporate officers and the corporation's counsel for their willful failure to comply with Arizona law and their notorious defiance of OAH and ADRE's decision and orders evidencing the Defendants' disrespect for the administration of justice and the dignity of the law in the amount of \$10,000 per defendant and/or an

amount determined by the Court sufficient to deter any further defiance of the State's administrative tribunals and courts; defiance intended to frustrate the administration of justice, to harass Plaintiff, to cause unnecessary litigation and unnecessary delay and to needlessly increase costs in furtherance of a just outcome (Defendant's 2015 total revenues, \$3,748,429 [2015 Form 990 beginning May 1, 2015 and ending April 30, 2016]);

3. Grant Plaintiff his taxable costs in bringing this matter, and
4. Grant further relief as the Court deems appropriate.

Respectfully submitted this 5th day of September 2017.

William M. Brown  
6751 East Amber Sun Drive  
Scottsdale, Arizona 85266-7029

A handwritten signature in black ink, appearing to read 'William M. Brown', written over a horizontal line.

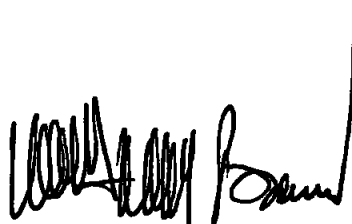
William M. Brown  
Plaintiff, Pro Se

## Verification

William M. Brown pursuant to Rule 80(i), Ariz.R.Civ.P., verifies under penalty of perjury as follows:

I am the Plaintiff in this matter. I have read the foregoing Verified Complaint and know its contents. The information in the complaint is true and accurate to the best of my knowledge, information and belief.

September 5, 2017

A handwritten signature in black ink, appearing to read 'William M. Brown', written over a horizontal line.

William M. Brown  
Plaintiff, Pro Se

## **Exhibit A**

**william brown**

---

**From:** "william brown" <wmbs-pp@msn.com>  
**To:** "Richard Cain" <rlc401@cox.net>  
**Sent:** Friday, August 12, 2016 7:50 PM  
**Attach:** 8-12-16 Cust-Forbes 'no whistleblower policy-Snell & Wilmer'.email; 8-5-16 Cust Recds Req Whistleblower-Snell & Wilmer.email  
**Subject:** Fw: Records Request

RC:

Drop dead date...COB Friday, August 12, 2016...nothing from TCC/Forbes other than the attached re August 5,2016 records request.

WMB

----- Original Message -----

**From:** william brown  
**To:** few1@comcast.net  
**Sent:** Saturday, July 30, 2016 8:35 AM  
**Subject:** Records Request

Via Electronic Mail

July 29, 2016

Custodian of the Record

Terravita Country Club, Inc.

34034 N. 69<sup>th</sup> Way

Scottsdale, Arizona 85262

Re: Records Request

Custodian of the Record:

Pursuant to Arizona's Revised Statutes (Title 33 Chapter 16) with reference to CV2014-053595 *Bianco v. TCC, Inc. and TCA, Inc.*, please make the following association record(s) responsive to the following questions available for examination and/or, on request, purchase of copies:

1. How much has the law firm of Carpenter, Hazlewood, Delgado & Bolen PLC billed Terravita Country Club, Inc. ("TCC") for its representation of TCC in the referenced matter from on or about June 17, 2014 thru April 28, 2016 to date, including legal fees, taxable costs and any and all related expenses?

Please provide the corporation's records of account/documents responsive to this question/request.

2. Who was TCC's insurer in this matter? Was the claim submitted to the insurer? Were any of the legal fees, taxable costs and any or all related expenses referenced in paragraph one covered by TCC's D & O policy? Were there any exclusions or limits of liability for which the underwriter would not be liable to make any payment for loss in this matter made against TCC? Was the claim accepted subject to the insurer's reservation of rights? What was TCC's insurer's retention in this matter? In this matter, how much did the insurer pay its insured (TCC)?

Please provide the corporation's records of account/documents responsive to these questions/requests: D&O Policy (to include but not limited to coverages/retention/endorsements/limitations/restrictions/reservations/other provisions) re this matter; insured's transmittal letter to insurer submitting claim; insurer's letter to insured re any exclusions or limits of liability for which the underwriter would not be liable; insurer's letter to insured accepting claim subject to the insurer's reservation of rights; letter/check/other form of insurer's payment to insured pursuant to the contract (policy) between the parties.

3. How much has TCC paid out of the corporation's funds to its insurer for any direct (retention/other) or indirect (premium/other) costs with respect to the referenced matter to date? How much did TCC pay the plaintiffs as a prerequisite for their agreement to settle the matter?

Please provide the corporation's records of account/documents responsive to these questions/requests.

4. How much, if any, did the plaintiffs pay of TCC's legal fees, taxable costs, and any or all related expenses with respect to the referenced matters to date?

Please provide the corporation's records of account/documents responsive to this question/request.

If my request is denied in whole or part, you are requested to justify all deletions by reference to specific exemption of the statutes. You are expected to release all segregable portions of otherwise exempt materials. I, of course, reserve the right to appeal your decision to withhold any requested information.

Your timely compliance is appreciated in advance.

s/William M. Brown

651 East Amber Sun Drive

Scottsdale, Arizona 85266-7029

## **Exhibit B**

H017-16/005



Arizona Department of Real Estate (ADRE)

www.azre.gov

2910 N. 44th STREET STE-100, PHOENIX, AZ 85018

DOUGLAS A. DUCEY GOVERNOR

RECEIVED JULY 2016 COMMISSIONER

AUG 18 2016

HOMEOWNERS ASSOCIATION (HOA) DISPUTE PROCESS PETITION

LEGAL ACTION

AZ Dept. of Real Estate

Does an attorney represent this matter? Yes [ ] No [x]
Attorney Name:
Address: Suite: City: State: Zip Code:
Phone: Fax: Email address:

INVOLVED PARTIES (An owner's petition (complaint) must be about a dispute between the owner and the association. An association's petition (complaint) must be about a dispute between the association and the owner.)

PETITIONER IS A (check one)
RESPONDENT IS A (check one)
Homeowner
Condominium/Community Association
Planned Community Association

RESPONDENT INFORMATION (Respondent may not be a management company)

Homeowner / Association Name:
Terravita Country Club, Inc. (Frances Eleanor Wylie, Corporation Secretary/Custodian of the Record)
Address: 34034 N. 69th Way
City: Scottsdale
State: AZ
Zip Code: 85266
Phone: (480) 595-5501
Email address: few1@comcast.net

PETITIONER (YOUR NAME AND ADDRESS)

Mr [x] Ms [ ]
First Name: William
MI: M.
Last Name: Brown
Address: 6751 East Amber Sun Drive
City: Scottsdale
State: AZ
Zip Code: 85266-7029
Home Phone: (480) 595-9131
Work Phone: (480) 595-9131
Email address: wmbs-pp@msn.com

ADDRESS OF SUBJECT PROPERTY

Address: 34034 N. 69th Way
City: Scottsdale
State: AZ
Zip Code: 85266

COMPLAINT

This complaint is a violation of:
Condominium Statutes (ex. A.R.S. § 33-1243):
Planned Community Statutes (ex. A.R.S. § 33-1810): A.R.S. § 33-1805(A)
Bylaws (Example: Article 4.1(a))
CC&Rs (Example: Article 4, Sec. 1(a))
Arizona Dept. of Real Estate
Deposit No.: 982044 08/23/16 9:19 AM

NUMBER OF ISSUES CLAIMED IN THIS PETITION

1 \$500 [x]
2 \$1,000 [ ]
3 \$1,500 [ ]
4 \$2,000 [ ]

HOA Petition Fee \$500.00
Check \$500.00
Change: \$0.00
Clerk: jmanzanarez
Customer: H017-16/005 BROWN





Arizona Department of Real Estate (ADRE)

www.azre.gov

2910 N. 44th STREET STE-100, PHOENIX, AZ 85018

DOUGLAS A. DUCEY
GOVERNOR

JUDY LOWE
COMMISSIONER

Multiple horizontal lines for text entry.

PETITION CERTIFICATION (MUST BE SIGNED AND DATED)

Under penalty of perjury, I swear that this complaint, consisting of 3 pages, is true and accurate to the best of my knowledge.

Handwritten signature of William M. Brown

August 15, 2016

PETITIONER Signature

Date:

William M. Brown

PETITIONER Print Name

REMINDER: Please check and ensure:

- Checkboxes for: The Petition is fully completed; If alleged violation involves the condominium / planned community documents, please attach or include ONE COPY of the condominium or planned documents at issue; The CORRECT filing fee is enclosed, or paid online; Petition is signed and dated; I have read the Information provided on the ADRE's Homeowners Association Dispute Process webpage and understand this form.

Submit the Petition and supporting documents through the ADRE Message Center or by mail to:

ADRE HOA Dispute Process
2910 N. 44th Street, Ste. 100
Phoenix, AZ 85018

Americans with Disabilities Act

The Department of Real Estate complies with American Disabilities Act. Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats or assistance with physical disability. Requests for accommodations must be made with 72 hours prior notice. If you require special accommodations, please contact the Department at (602) 771-7766.

## Exhibit C

**william brown**

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**From:** "william brown" <wmbs-pp@msn.com>  
**To:** <josh@carpenterhazlewood.com>  
**Sent:** Thursday, January 26, 2017 11:38 AM  
**Subject:** 17F-H1716005-REL, William M. Brown v. Terravita Country Club, Inc.

Via Electronic Mail

January 26, 2017

Joshua M. Bolen, Esq.

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 East Southern Avenue, Suite 400 .

Tempe, Arizona 85282-5691

Re: No. 17F-H1716005-REL, William M. Brown v. Terravita Country Club, Inc.

Counsel:

In advance of ALJ Moses-Thompson's November 8, 2016 Order that on or before February 8, 2017 the parties must file a status report in this matter and recognizing in an unrelated matter, CV2016-054557 Anita R. Bell and William M. Brown v. Terravita Country Club, Inc., wherein "...the Country Club Board also appreciates that engaging in litigation in this matter would not be beneficial to its members...please understand that the Country Club has no intention of spending any of its funds to litigate this matter," perhaps in furtherance of resolving this statutory contested matter TCC, Inc. will consider providing the following on or before February 3, 2017 in resolution of 17F-H1716005-REL:

1. Records request dated July 29, 2016 sent via electronic mail on July 30, 2016 to TCC, Inc.'s Secretary/Custodian of the Record;

Pursuant to Arizona's Revised Statutes (Title 33 Chapter 16) with reference to CV2014-053595 *Bianco v. TCC, Inc. and TCA, Inc.*, please make the following association record(s) responsive to the following questions available for examination and/or, on request, purchase of copies:

1. How much has the law firm of Carpenter, Hazlewood, Delgado & Bolen PLC billed Terravita Country Club, Inc. ("TCC") for its representation of TCC in the referenced matter from on or about June 17, 2014 thru April 28, 2016 to date, including legal fees, taxable costs and any and all related expenses?

Please provide the corporation's records of account/documents responsive to this question/request.

2. Who was TCC's insurer in this matter? Was the claim submitted to the insurer? Were any of the legal fees, taxable costs and any or all related expenses referenced in paragraph one covered by TCC's D & O policy? Were there any exclusions or limits of liability for which the underwriter would not be liable to make any payment for loss in this matter made against TCC? Was the claim accepted subject to the insurer's reservation of rights? What was TCC's insurer's retention in this matter? In this matter, how much did the insurer pay its insured (TCC)?

Please provide the corporation's records of account/documents responsive to these questions/requests: D&O Policy (to include but not limited to coverages/retention/endorsements/limitations/restrictions/reservations/other provisions) re this matter; insured's transmittal letter to insurer submitting claim; insurer's letter to insured re any exclusions or limits of liability for which the underwriter would not be liable; insurer's letter to insured accepting claim subject to the insurer's reservation of rights; letter/check/other form of insurer's payment to insured pursuant to the contract (policy) between the parties.

3. How much has TCC paid out of the corporation's funds to its insurer for any direct (retention/other) or indirect (premium/other) costs with respect to the referenced matter to date? How much did TCC pay the plaintiffs as a prerequisite for their agreement to settle the matter?

Please provide the corporation's records of account/documents responsive to these questions/requests.

4. How much, if any, did the plaintiffs pay of TCC's legal fees, taxable costs, and any or all related expenses with respect to the referenced matters to date?

Please provide the corporation's records of account/documents responsive to this question/request.

2. Pay Petitioner's \$500.00 filing fee on or before February 10, 2017;

3. Respondent to prepare on or before February 8, 2017 a Stipulation to be timely filed with the OAH wherein the parties agree to enter into a Consent Agreement for the purposes of settlement memorialized by 1. and 2. above and 3. in 17F-H1716005-REL.

In the alternative, Petitioner will request ALJ Moses-Thompson continue the matter until such time as Petitioner's doctors and surgeons determine Petitioner will be available for a hearing on the merits. Prior to any scheduled hearing, Petitioner will request the ALJ issue appropriate subpoenas compelling witnesses appearance.

The current board of directors, in deference to that which "would not be beneficial to its members," would be well-served to recall Petitioner's October 21, 2011 records request to TCC, Inc.'s Custodian of the Record giving rise to 11F-H1112007-BFS, a statutory books and records contested matter, and Judge Kowal's ruling, findings of fact, conclusions of law and order excerpted as follows:

No. 11F-H1112007-BFS

**ADMINISTRATIVE LAW JUDGE DECISION, May 8, 2012**

**Ruling**

This hearing involved Petitioner William M. Brown's ("Petitioner") request to Respondent Terravita Country Club, Inc. ("Respondent") to receive a copy of Respondent's Directors and Officers Liability Insurance Policy ("Policy") and the allegation that Respondent did not provide him with a copy of the policy within the required statutory time period. The Administrative Law Judge concludes that while Respondent provided Petitioner with a copy of the Policy, that did not occur within ten business days of his request and, therefore, Respondent violated A.R.S. § 33-1805(A).

**Findings of Fact**

8. Ms. Rausch was unable to recall when she opened that email.

11. Ms. Rausch testified that on Friday November 4, 2011, she sent an email to Petitioner with the Policy as an attachment. Ms. Rausch could not recall the exact time the email was "sent" to Petitioner. She recalled pressing the send button to have the email delivered to Petitioner and her computer screen then went blank. At that time, Ms. Rausch believed she had sent the Policy to Petitioner. Ms. Rausch could not state whether she sent the November 4, 2011 email at 6:25 p.m. before or after she sent the email with the Policy as an attachment that became "stuck" in her outbox.

12. Ms. Rausch testified that sometime on Monday, November 7, 2011, she became aware that the November 4, 2011 email with the attached Policy had become "stuck" in her outbox and had not been delivered to Petitioner. Thus, Respondent asserted that due to a "computer error" that was unintentional, the Policy was not sent to Petitioner on November 4, 2011

**Conclusions of Law**

10. The evidence of record established that Respondent thought that on November 4, 2011, it had complied with the law and provided Petitioner with a copy of the Policy; when Respondent became aware that the Policy had not been electronically transmitted, Respondent re-sent it on Monday November 7, 2011. Consequently, the Administrative Law Judge concludes that the imposition of sanctions against Respondent is not warranted.

11. The Administrative Law Judge concludes that Petitioner has shown by a preponderance of the evidence that Respondent violated A.R.S. § 33-1805(A).

12. As Petitioner is the prevailing party, Respondent shall pay Petitioner his filing fee. See A.R.S. § 41-2198.02.

**Order**

Based on the above, Respondent shall pay Petitioner his filing fee of \$550.00 within 30 days of the effective date of the Order entered in this matter, and as Respondent has already provided a copy of the Policy to Petitioner, no further action is required of Respondent.

Upon information and belief, TCC, Inc. spent +/- \$13,600 of its funds to litigate that matter.

TCC, Inc. may find it noteworthy that on July 30, 2016 an appropriately captioned and substantively mirror image records request dated July 29, 2016 was made to Terravita Community Association, Inc.'s Secretary/Custodian of the Record.

TCA, Inc.'s counsel's response on August 8, 2016 was in-part non-responsive, incomplete and/or inaccurate. Upon notice, counsel's follow-up response provided the records requested and a copy of the *Bianco* Settlement Agreement.

Petitioner in 17F-H1716005-REL trusts TCC, Inc. will agree the proposed resolution of this matter is in the parties and members' best interests.

Your timely reply is appreciated in advance.

s/William M. Brown

6751 East Amber Sun Drive

Scottsdale, Arizona 85266-7029

(480) 595-9131

wmbs-pp@msn.com

**william brown**

---

**From:** "Josh Bolen" <josh.bolen@carpenterhazlewood.com>  
**To:** "william brown" <wmbs-pp@msn.com>  
**Cc:** "Anjali Patel" <Anjali.Patel@carpenterhazlewood.com>; "Theresa Laubenthal" <Theresa.Laubenthal@carpenterhazlewood.com>  
**Sent:** Thursday, January 26, 2017 11:47 AM  
**Subject:** RE: 17F-H1716005-REL, William M. Brown v. Terravita Country Club, Inc.

Mr. Brown,

I will present your offer to the Board and respond as soon as possible.

Sincerely,



**CARPENTER HAZLEWOOD**

**Josh Bolen, Esq.**

Direct Line: 480-427-2862

[josh.bolen@carpenterhazlewood.com](mailto:josh.bolen@carpenterhazlewood.com)

**CARPENTER, HAZLEWOOD, DELGADO & BOLEN, PLC**

Phoenix, 480-427-2800, 1400 East Southern Ave, Suite 400, Tempe, Arizona 85282

Tucson, 520-744-9480, 333 North Wilmot Rd, Suite 180, Tucson, Arizona 85711

Prescott, 928-443-0775, 1550 Plaza West Dr, Prescott, Arizona 86303

[www.carpenterhazlewood.com](http://www.carpenterhazlewood.com)



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This firm is a debt collector. Any information obtained will be used for that purpose.

---

**From:** william brown [mailto:wmbbs-pp@msn.com]  
**Sent:** Thursday, January 26, 2017 11:39 AM  
**To:** Josh Bolen  
**Subject:** 17F-H1716005-REL, William M. Brown v. Terravita Country Club, Inc.

Via Electronic Mail

January 26, 2017

Joshua M. Bolen, Esq.

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 East Southern Avenue, Suite 400

Tempe, Arizona 85282-5691

Re: No. 17F-H1716005-REL, William M. Brown v. Terravita Country Club, Inc.

Counsel:

6/15/2017

**william brown**

---

**From:** "Josh Bolen" <josh.bolen@carpenterhazlewood.com>  
**To:** "william brown" <wmbs-pp@msn.com>  
**Cc:** "Anjali Patel" <Anjali.Patel@carpenterhazlewood.com>; "Theresa Laubenthal" <Theresa.Laubenthal@carpenterhazlewood.com>  
**Sent:** Tuesday, January 31, 2017 4:19 PM  
**Subject:** RE: 17F-H1716005-REL, William M. Brown v. Terravita Country Club, Inc.

Dear Mr. Brown,

The Board has reviewed your settlement offer and has decided to decline it.

In this matter, TCC never received the records request at issue. It is also its position that if TCC rules regarding requesting records had been followed this never would have been an issue.

The Board encourages you to simply dismiss your petition and request reimbursement of your filing fee. TCC will support the reimbursement of your filing fee from the Department.

If you choose to move forward with this matter, TCC will agree to the continuation of the hearing until you are medically able to attend and participate.

Please let me know if you have any questions or concerns.

Sincerely,



**CARPENTER HAZLEWOOD**

**Josh Bolen, Esq.**

Direct Line: 480-427-2862

[josh.bolen@carpenterhazlewood.com](mailto:josh.bolen@carpenterhazlewood.com)

**CARPENTER, HAZLEWOOD, DELGADO & BOLEN, PLC**

Phoenix, 480-427-2800, 1400 East Southern Ave, Suite 400, Tempe, Arizona 85282

Tucson, 520-744-9480, 333 North Wilmot Rd, Suite 180, Tucson, Arizona 85711

Prescott, 928-443-0775, 1550 Plaza West Dr, Prescott, Arizona 86303

[www.carpenterhazlewood.com](http://www.carpenterhazlewood.com)



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**From:** william brown [mailto:wmbs-pp@msn.com]  
**Sent:** Thursday, January 26, 2017 11:39 AM  
**To:** Josh Bolen  
**Subject:** 17F-H1716005-REL, William M. Brown v. Terravita Country Club, Inc.

Via Electronic Mail

January 26, 2017

6/15/2017

Joshua M. Bolen, Esq.

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 East Southern Avenue, Suite 400

Tempe, Arizona 85282-5691

Re: No. 17F-H1716005-REL, William M. Brown v. Terravita Country Club, Inc.

Counsel:

In advance of ALJ Moses-Thompson's November 8, 2016 Order that on or before February 8, 2017 the parties must file a status report in this matter and recognizing in an unrelated matter, CV2016-054557 Anita R. Bell and William M. Brown v. Terravita Country Club, Inc., wherein "...the Country Club Board also appreciates that engaging in litigation in this matter would not be beneficial to its members...please understand that the Country Club has no intention of spending any of its funds to litigate this matter," perhaps in furtherance of resolving this statutory contested matter TCC, Inc. will consider providing the following on or before February 3, 2017 in resolution of 17F-H1716005-REL:

1. Records request dated July 29, 2016 sent via electronic mail on July 30, 2016 to TCC, Inc.'s Secretary/Custodian of the Record;

Pursuant to Arizona's Revised Statutes (Title 33 Chapter 16) with reference to CV2014-053595 *Bianco v. TCC, Inc. and TCA, Inc.*, please make the following association record(s) responsive to the following questions available for examination and/or, on request, purchase of copies:

1. How much has the law firm of Carpenter, Hazlewood, Delgado & Bolen PLC billed Terravita Country Club, Inc. ("TCC") for its representation of TCC in the referenced matter from on or about June 17, 2014 thru April 28, 2016 to date, including legal fees, taxable costs and any and all related expenses?

Please provide the corporation's records of account/documents responsive to this question/request.

2. Who was TCC's insurer in this matter? Was the claim submitted to the insurer? Were any of the legal fees, taxable costs and any or all related expenses referenced in paragraph one covered by TCC's D & O policy? Were there any exclusions or limits of liability for which the underwriter would not be liable to make any payment for loss in this matter made against TCC? Was the claim accepted subject to the insurer's reservation of rights? What was TCC's insurer's retention in this matter? In this matter, how much did the insurer pay its insured (TCC)?

Please provide the corporation's records of account/documents responsive to these questions/requests: D&O Policy (to include but not limited to coverages/retention/endorsements/limitations/restrictions/reservations/other provisions) re this matter; insured's transmittal letter to insurer submitting claim; insurer's letter to insured re any exclusions or limits of liability for which the underwriter would not be liable; insurer's letter to insured accepting claim subject to the insurer's reservation of rights; letter/check/other form of insurer's payment to insured pursuant to the contract (policy) between the parties.

3. How much has TCC paid out of the corporation's funds to its insurer for any direct (retention/other) or indirect (premium/other) costs with respect to the referenced matter to date? How much did TCC pay the plaintiffs as a prerequisite for their agreement to settle the matter?

Please provide the corporation's records of account/documents responsive to these questions/requests.

4. How much, if any, did the plaintiffs pay of TCC's legal fees, taxable costs, and any or all related expenses with respect to the referenced matters to date?

Please provide the corporation's records of account/documents responsive to this question/request.

2. Pay Petitioner's \$500.00 filing fee on or before February 10, 2017;

3. Respondent to prepare on or before February 8, 2017 a Stipulation to be timely filed with the OAH wherein the parties agree to enter into a Consent Agreement for the purposes of settlement memorialized by 1. and 2. above and 3. in 17F-H1716005-REL.

In the alternative, Petitioner will request ALJ Moses-Thompson continue the matter until such time as Petitioner's doctors and surgeons determine Petitioner will be available for a hearing on the merits. Prior to any scheduled hearing, Petitioner will request the ALJ issue appropriate subpoenas compelling witnesses appearance.

The current board of directors, in deference to that which "would not be beneficial to its members," would be well-served to recall Petitioner's October 21, 2011 records request to TCC, Inc.'s Custodian of the Record giving rise to 11F-H1112007-BFS, a statutory books and records contested matter, and Judge Kowal's ruling, findings of fact, conclusions of law and order excerpted as follows:

No. 11F-H1112007-BFS

6/15/2017

**ADMINISTRATIVE LAW JUDGE DECISION, May 8, 2012****Ruling**

This hearing involved Petitioner William M. Brown's (Petitioner) request to Respondent Terravita Country Club, Inc. (Respondent) to receive a copy of Respondent's Directors and Officers Liability Insurance Policy (Policy) and the allegation that Respondent did not provide him with a copy of the policy within the required statutory time period. The Administrative Law Judge concludes that while Respondent provided Petitioner with a copy of the Policy, that did not occur within ten business days of his request and, therefore, Respondent violated A.R.S. § 33-1805(A).

**Findings of Fact**

8. Ms. Rausch was unable to recall when she opened that email.

11. Ms. Rausch testified that on Friday November 4, 2011, she sent an email to Petitioner with the Policy as an attachment. Ms. Rausch could not recall the exact time the email was sent to Petitioner. She recalled pressing the send button to have the email delivered to Petitioner and her computer screen then went blank. At that time, Ms. Rausch believed she had sent the Policy to Petitioner. Ms. Rausch could not state whether she sent the November 4, 2011 email at 6:25 p.m. before or after she sent the email with the Policy as an attachment that became stuck in her outbox.

12. Ms. Rausch testified that sometime on Monday, November 7, 2011, she became aware that the November 4, 2011 email with the attached Policy had become stuck in her outbox and had not been delivered to Petitioner. Thus, Respondent asserted that due to a computer error that was unintentional, the Policy was not sent to Petitioner on November 4, 2011.

**Conclusions of Law**

10. The evidence of record established that Respondent thought that on November 4, 2011, it had complied with the law and provided Petitioner with a copy of the Policy; when Respondent became aware that the Policy had not been electronically transmitted, Respondent re-sent it on Monday November 7, 2011. Consequently, the Administrative Law Judge concludes that the imposition of sanctions against Respondent is not warranted.

11. The Administrative Law Judge concludes that Petitioner has shown by a preponderance of the evidence that Respondent violated A.R.S. § 33-1805(A).

12. As Petitioner is the prevailing party, Respondent shall pay Petitioner his filing fee. See A.R.S. § 41-2198.02.

**Order**

Based on the above, Respondent shall pay Petitioner his filing fee of \$550.00 within 30 days of the effective date of the Order entered in this matter, and as Respondent has already provided a copy of the Policy to Petitioner, no further action is required of Respondent.

Upon information and belief, TCC, Inc. spent +/- \$13,600 of its funds to litigate that matter.

TCC, Inc. may find it noteworthy that on July 30, 2016 an appropriately captioned and substantively mirror image records request dated July 29, 2016 was made to Terravita Community Association, Inc.'s Secretary/Custodian of the Record.

TCA, Inc.'s counsel's response on August 8, 2016 was in-part non-responsive, incomplete and/or inaccurate. Upon notice, counsel's follow-up response provided the records requested and a copy of the *Bianco* Settlement Agreement.

Petitioner in 17F-H1716005-REL trusts TCC, Inc. will agree the proposed resolution of this matter is in the parties and members' best interests.

Your timely reply is appreciated in advance.

s/William M. Brown

6751 East Amber Sun Drive

Scottsdale, Arizona 85266-7029

(480) 595-9131

wmbs-pp@msn.com

## Exhibit D

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Case No. HO 17-16/005

Docket No. 17F-H1716005-REL

William M. Brown v. Terravita Country Club, Inc.

Subpoena Duces Tecum

Under the Authority of Arizona Revised Statutes 41-1092.07(C)

Terravita Country Club, Inc., Respondent

Frances Eleanor Wylie, Secretary/Custodian of the Record 2015-2017

William H. Greig, Secretary/Custodian of the Record 2017-2019

You are commanded to produce documents or other tangible items for the above entitled matter, specifically,

Board Code of Conduct

Terravita Country Club's, Golf Club's & Community Association's Member Code of Conduct

Any tangible documents and/or printed forms of electronically stored records/information, to include but not limited to all communications whether letter, memorandum, electronic mail, notes of conversations and/or meetings and minutes of meetings, maintained at Terravita Country Club, Inc.'s principal office, 34034 N. 69<sup>th</sup> Way, Scottsdale, Arizona 85266, regarding Petitioner's statutory records request dated July 29, 2016 and sent via electronic mail on July 30, 2016 to the Custodian of Records for TCC, Inc. beginning on or about July 30, 2016 thru August 15, 2016, petition filing date with ADRE, and continuing to date, May 18, 2017.

on or before May 27, 2017 delivered to William M. Brown, 6751 East Amber Sun Drive, Scottsdale, Arizona 85266.

The Office of Administrative Hearings endeavors to ensure the accessibility of its hearings to all persons with disabilities. Should you need special accommodations, please contact the Office of Administrative Hearing at (602) 542-9826 at least three working days prior to the hearing.

Dated this 7 day of <sup>June</sup>~~May~~, 2017

  
Velva Moses-Thompson  
Administrative Law Judge



At the request of:

s/William M. Brown  
6751 East Amber Sun Drive  
Scottsdale, Arizona 85266-7029  
wmbs-pp@msn.com  
(480) 595-9131  
May 18, 2017

**Statement of Relevance:**

Frances Eleanor Wylie has been a director of the Terravita Country Club, Inc. board of directors since May 5, 2015; on September 28, 2015 Wylie was appointed Secretary and Custodian of the Record, a position she has held until April 24, 2017; as a seasoned board member and officer of the corporation, Wylie is knowledgeable respecting Arizona's planned community statutes, notably Title 33, Property, Chapter 16, Planned Communities, Article 33-1805, Association financial and other records, relevant to any member's statutory right to examine and/or purchase copies of the financial and other records of the corporation and the corporation's governing documents; further, Wylie is knowledgeable respecting the statutory obligation ("shall") to provide requested records within ten business days; at all times relevant to Petitioner's February 6, 2017 records request and continuing thru April 24, 2017, Wylie was the corporation's Secretary and Custodian of the Record.

William H. Greig was elected to the Terravita Country Club, Inc. board of directors on March 27, 2017; Greig's term is for 2017 - 2019; on May 1, 2017 Greig was elected Secretary of the board of directors; pursuant to Article V, Officers, of TCC, Inc.'s bylaws, the secretary shall "be custodian of the corporate records..."

The Respondent's record of "compliance" since its incorporation, thru late 2006 (Laws 2006, Chapter 324, HB2824) and to date with members' requests for the corporation's books and records has been to be non-compliant short of an administrative tribunal's order or order of an Arizona court.

## Exhibit E



1           8.     On July 30, 2016, Mr. Brown requested records of Terravita Community  
2 Association, Inc., (hereinafter "TCA"). Mr. Brown submitted the records request by e-  
3 mail.

4           9.     On August 8, 2016, TCA informed Mr. Brown that it received its records  
5 request on July 30, 2016, and provided Mr. Brown with information regarding his  
6 request.

7           10.    On July 30, 2016, Mr. Brown requested records of Terravita. Mr. Brown  
8 submitted the records request to Ms. Wiley, by e-mail on July 30, 2016. The date of the  
9 records request was July 29, 2016.

10          11.    Terravita did not respond to Mr. Brown's records request within 10  
11 business days.

12          13.    On August 6, 2016, Mr. Brown requested records of Terravita to Ms.  
13 Wiley. On August 12, 2016, Terravita responded to the request.

14          12.    On August 18, 2016, the Arizona Department of Real Estate, (hereinafter  
15 "Department"), received a Petition for Hearing from Mr. Brown alleging that Terravita  
16 failed to timely respond to his July 30, 2016 records request, pursuant to A.R.S. § 33-  
17 1805(A).

18          13.    On September 9, 2016, Terravita filed a response to Mr. Brown's Petition  
19 for Hearing. In its Answer, Terravita alleged that it did not receive Mr. Brown's July 30,  
20 2016 records request.

21          14.    On September 13, 2016, Department issued a Notice of Hearing setting  
22 the above-captioned matter for hearing on November 9, 2016 at 8:30 a.m.<sup>1</sup> The  
23 September 13, 2016 Notice of Hearing provides, in relevant part, as follows:

24                YOU ARE HEREBY NOTIFIED that pursuant to Arizona Revised Statutes  
25 ("A.R.S."), § 41-1092.01, your request for hearing upon the charges made in the  
26 Petition for Hearing will be conducted through the Office of Administrative  
27 Hearings, an independent agency...."

28          15.    At hearing, Mr. Brown testified that he requested records of Terravita via  
29 email to Ms. Wiley on July 30, 2016. Mr. Brown testified that Terravita failed to timely  
30 respond to his request.

<sup>1</sup> The matter was continued to June 19, 2017.



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2. Petitioner bears the burden of proof to establish that Respondent violated A.R.S. § 33-1258 by a preponderance of the evidence.<sup>2</sup> Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.<sup>3</sup>

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."<sup>4</sup> A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."<sup>5</sup>

4. A.R.S. § 33-1805 provides as follows:

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.

2. Pending litigation.

<sup>2</sup> See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

<sup>3</sup> See A.A.C. R2-19-119(B)(2).

<sup>4</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>5</sup> BLACK'S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

1 3. Meeting minutes or other records of a session of a board  
2 meeting that is not required to be open to all members pursuant to  
3 section 33-1804.

4 4. Personal, health or financial records of an individual member of  
5 the association, an individual employee of the association or an  
6 individual employee of a contractor for the association, including  
7 records of the association directly related to the personal, health  
8 or financial information about an individual member of the  
9 association, an individual employee of the association or an  
10 individual employee of a contractor for the association.

11 5. Records relating to the job performance of, compensation of,  
12 health records of or specific complaints against an individual  
13 employee of the association or an individual employee of a  
14 contractor of the association who works under the direction of the  
15 association.

16 C. The association shall not be required to disclose financial and  
17 other records of the association if disclosure would violate any  
18 state or federal law.

19 5. Mr. Brown established by a preponderance of the evidence that he submitted  
20 a July 29, 2016 request for records of Terravita to its Secretary, Ms. Wiley, via e-mail on  
21 July 30, 2016. Mr. Brown established by a preponderance of the evidence that  
22 Terravita failed to fulfill his request for examination of records within 10 business days.  
23 Mr. Brown established by a preponderance of the evidence that he sent a July 29, 2016  
24 request for records for Terravita to its Secretary, Ms. Wiley, via e-mail on July 30, 2016.

25 6. "In applying a statute . . . its words are to be given their ordinary meaning  
26 unless the legislature has offered its own definition of the words or it appears from the  
27 context that a special meaning was intended."<sup>6</sup> The plain meaning of A.R.S. § 33-1805  
28 is that homeowners' associations must provide access to financial and other records to  
29 its members within 10 business days of such a request for such documents. Terravita  
30 failed to do so. Terravita did not even contend that any of the exceptions listed in  
A.R.S. 33-1805(B) or A.R.S. 33-1805(C) applied.

7. This Tribunal concludes that Terravita violated the charged provision of  
A.R.S. § 33-1805.

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<sup>6</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

**RECOMMENDED ORDER**

1 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing  
2 party in this matter.

3 It is further ORDERED that Terravita comply with the applicable provisions of  
4 A.R.S. § 33-1805 regarding Petitioner's request of Terravita's records within 10 days of  
5 the Order entered in this matter.

6 It is further ORDERED that Terravita pay Petitioner his filing fee of \$500.00, to be  
7 paid directly to Petitioner within thirty (30) days of this Order.

8 No Civil Penalty is found to be appropriate in this matter.

9 *In the event of certification of the Administrative Law Judge Decision by the*  
10 *Director of the Office of Administrative Hearings, the effective date of this Order will be*  
11 *five (5) days from the date of that certification.*

12 Done this day, July 10, 2017

13  
14 Velva Moses-Thompson  
15 Administrative Law Judge  
16  
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19 Transmitted electronically to:

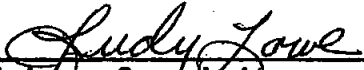
20 Judy Lowe, Commissioner  
21 Arizona Department of Real Estate  
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**Exhibit F**



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DATED this 11th day of July 2017.

  
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Judy Lowe, Commissioner  
DEPARTMENT OF REAL ESTATE

The foregoing mailed this 11th day of July 2017,  
via certified mail receipt number 91 7199 9991 7038 0621 7139 to:

William M. Brown  
6751 E. Amber Sun Drive  
Scottsdale AZ 85266

Copy sent via certified mail receipt no. 91 7199 9991 7038 0621 7122 to:

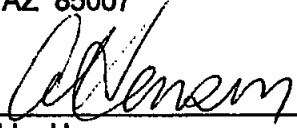
Carpenter, Hazlewood, Delgado & Bolen, PLC  
1400 E. Southern Ave. Suite 400  
Tempe AZ 85282

Copy sent via certified mail receipt no. 91 7199 9991 7038 0621 7085 to:

Terravita Country Club, Inc.  
34034 N 69<sup>th</sup> Way  
Scottsdale AZ 85266

COPY electronically transmitted to:

The Office of Administrative Hearings  
1400 W Washington St, Suite 101  
Phoenix, AZ 85007

By:   
\_\_\_\_\_  
Abby Hansen  
HOA Coordinator

## Exhibit G

William M. Brown  
6751 East Amber Sun Drive  
Scottsdale, Arizona 85266-7029  
(480) 595-9131

Petitioner on his own behalf

In the Office of Administrative Hearings

William M. Brown

Petitioner

vs.

17F-H1716005-REL

Terravita Country Club, Inc.

Motion To Re-Open Record

(Assigned to the Honorable  
Vela Moses-Thompson)

(Commissioner Lowe, ADRE)

Respondent

Pursuant to the Uniform Administrative Hearings Procedures, Title 41, Chapter 6, Article 10, and the Office of Administrative Hearings Procedural Rules R2-19-115(D) Rights and Responsibilities of Parties, Petitioner submits this Motion to Re-Open Record for the limited purpose of reconsidering the appropriateness of Judge Moses-Thompson's July 10, 2017 Decision, "No Civil Penalty is found to be appropriate in this matter," a decision adopted by Commissioner Lowe's July 11, 2017 Final Order, given the following material evidence in support of a civil penalty.

The Respondent's record of "compliance" since its incorporation (1998), thru late 2006 (Laws 2006, Chapter 324, HB2824) and to date with members' requests for the corporation's books and records, whether by records request or by subpoena, has been to

be non-compliant short of an administrative tribunal's order or order of an Arizona court.  
17F-H1716005-REL and 17F-1717032-REL

On July 10, 2017, OAH's Judge Velva Moses-Thompson, ALJ, "ORDERED that **Terravita comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Terravita's records** within 10 days of the Order entered in this matter." (**Emphasis added**)

On July 11, 2017, ADRE's Commissioner Lowe, entered ADRE's Final Order, "The Commissioner accepts the ALJ decision that Petitioner be deemed the prevailing party in this matter. It is further Ordered that **Respondent comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Respondent's records** within 10 days of the Order entered in this matter." (**Emphasis added**)

On July 18, 2017, TCC, Inc.'s General Manager (Forbes) mailed Respondent's "**July 30, 2016 Records Request**" to Petitioner.

Forbes' "Tuesday, July 18, 2017 8:40 AM" response to Petitioner's July 29, 2017 records request pursuant to § 33-1805(A), the OAH's Administrative Law Judge's Decision and ADRE's Commissioner's Final Order adopting Judge Moses-Thompson's decision while in-part responsive to Petitioner's lawful request, was in-part non-responsive, incomplete, inaccurate and in defiance of the orders of OAH and ADRE.

Petitioner's July 29, 2016 (e-mailed July 30, 2016) records request (Exhibit A, 17F-H1716006, Exhibit P2) was unambiguous, detailed and specific as was Petitioner's

records request in 11F-H1112007-BFS, WMB vs. TCC, Inc., notwithstanding Respondent's sworn witnesses' testimony excerpted below that defied credulity (*See* Judge Lewis D. Kowal's May 8, 2012 Decision, 11F-H1112007-BFS):

#### **Findings of Fact**

4. Ms. Rausch testified that upon receipt of the above-mentioned e-mail, she did not understand what Petitioner was requesting and contacted Tom Forbes ("Mr. Forbes"), the General Manager of the country club, and Raquel Shull ("Ms. Shull"), Respondent's Controller, and forwarded Petitioner's request to them.
6. On October 21, 2011, at 4:48 p.m., Petitioner sent Ms. Rausch another email requesting a copy of the same records he previously requested. In that request, Petitioner specifically requested the Directors and Officer's Liability Insurance Policy number PHSD646331 issued by Philadelphia Ins. Co.
7. Ms. Rausch testified that she did not understand what Petitioner was requesting and again forwarded the request to Ms. Shull and Mr. Forbes.
9. On November 4, 2011 at 4:55 p.m., Petitioner sent another request to Ms. Rausch via email that mirrored the request made on October 21, 2011.
10. On November 4, 2011, at 6:25 p.m., Ms. Rausch sent an email to Petitioner referring to two prior emails, stating that "we" are still not sure what Petitioner wanted, but that if what he has been sent is not what he is requesting to contact her.
14. Petitioner asserted that Respondent did not provide a copy of the Policy to him within the time frame set forth in A.R.S. § 33-1805. Petitioner represented, and the facts show, that Petitioner submitted three requests to obtain the Policy, while he asserted that he only had to make the request once.

#### **Conclusions of Law**

3. The evidence of record established that Petitioner requested that a copy of the Policy be provided to him via email. The record is unclear as to why Ms. Rausch, Mr. Forbes, or Ms. Shull did not understand what Petitioner was requesting from Respondent
6. After the hearing, Petitioner submitted a document alleging that Ms. Rausch perjured herself at hearing, that her testimony should not be given any weight, and that sanctions should apply.

Respondent's habit and practice respecting its members' lawful records requests is to be either non-responsive or to respond incompletely and inaccurately, to deny the existence of the requested record or "blame" the requester for not making their request

two, three or more times all the while feigning ignorance respecting unambiguous, detailed and specific records requests...decisions, conduct and actions aided and abetted by the corporation's retained counsel. (Exhibit B: Terravita Litigation (68 matters); Bolen, July 28, 2017; Forbes, July 18, 2017 "response" to the OAH and ADRE's Orders; 17F-H1717032-REL, Petitioner's Exhibit P3(i) thru P3(vi)...Petitioner's sworn testimony re Respondent denying the existence of the corporation's whistleblower policy while filing a Form 990 tax return for the past 8 years or more (Forbes) affirming to the IRS the existence of the very same whistle blower policy...testimony acknowledged by Judge Kowal in 11F0H1112005-BFS that there is no statutory requirement a requester must/shall make multiple requests following requester's initial request)

Judge Kowal ordered the record in 11F-H1112005-BFS be re-opened.

The public's confidence in a fair hearing respectful of the truth, "I find Ms. Wylie's (Respondent's Secretary/Custodian of the Record and witness in 17F-1716005-REL) testimony to be unreliable" while finding "Mr. Brown's testimony to be credible (sic)," has been challenged by this Respondent and the corporations' lawyers for seven or more years. (Exhibit C, Director Palma, Director Vanell and Ms. Eileen Klein)

Forbes' July 18, 2017 willful defiance of Judge Moses-Thompson's July 10, 2017 Decision and Commissioner's Lowe's July 11, 2017 Final Order demands the record be re-opened and the finding that "No Civil Penalty is found to be appropriate in this matter" be reconsidered, vacated and an appropriate civil penalty be levied against Respondent.

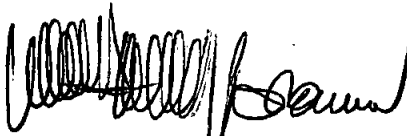
Respondent's denial of its members' lawful records requests, its willful historic and present-day non-compliance with the Planned Community Statutes (Title 33, Ch. 16, Art. 1 [§ 33-1803, § 33-1804, § 33-1805 and other]) and its notorious defiance of Judge Moses-Thompson's Decision and Commissioner Lowe's Final Order in 17F-H1716005-REL demands the OAH (ALJ Velva Moses-Thompson) levy a civil penalty endorsed by ADRE (Commissioner Lowe) based upon the violations in this matter.

Respondent's 2015 total revenues, as reported on its Form 990 Return of Organization Exempt From Income Tax (May 1, 2014 - April 30, 2015), were \$3,699,803 and, pursuant to Section B. Policies of the 2015 return, Respondent affirmed, "Yes," to the IRS's question, "Did the organization have a written whistleblower policy."

The Respondent and its agents are demonstrably instinctive liars and have been so for nearly twenty (20) years...the sworn testimony of Forbes and Wylie, Respondent's witnesses in 17F-H1716005-REL, defied credulity as has the testimony of other Respondent witnesses in other hearings before the OAH...Respondent's corporation's counsel's "arguments" were as equally incredulous as was his witnesses' sworn testimony before Judge Moses-Thompson in 17F-H1716005-REL and 17F-H1717032-REL.

Petitioner requests OAH levy a civil penalty, to be adopted by ADRE sufficient to punish Respondent's violations, to include but not limited to violations of statute, defending a lawful records request without substantial justification, defending 17F-H1716005-REL for improper purposes to include causing unnecessary delay, needlessly increasing the costs associated with defending the matter, harassing Petitioner with frivolous pleadings and arguments absent a scintilla of evidentiary support.

Respectfully submitted this 31st day of July 2017.



William M. Brown, Petitioner, Pro Se

Certificate of Service

Original by facsimile, (602) 542-9827, this 31st day of July 2017 to:

The Honorable Velva Moses-Thompson  
Office of Administrative Hearings  
1400 West Washington, Suite 101

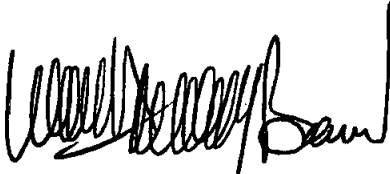
Phoenix, Arizona 85007

Copy by facsimile, (602) 468-0562, this 31st day of July 2017 to:

Commissioner Judy Lowe  
Arizona Department of Real Estate  
c/o Ms. Abbey Hansen  
2910 N. 44th Street  
Phoenix, Arizona 85018

Copy mailed this 31st day of July 2017 to:

Carpenter, Hazlewood, Delgado & Bolen, PLC  
1400 E. Southern Avenue, Suite 400  
Tempe, Arizona 85282



William M. Brown

**Exhibit A**

**william brown**

---

**From:** "william brown" <wmbs-pp@msn.com>  
**To:** "Richard Cain" <rc401@cox.net>  
**Sent:** Friday, August 12, 2016 7:50 PM  
**Attach:** 8-12-16 Cust-Forbes 'no whistleblower policy-Snell & Wilmer'.email; 8-5-16 Cust Recds Req Whistleblower-Snell & Wilmer.email  
**Subject:** Fw: Records Request

RC:

Drop dead date...COB Friday, August 12, 2016...nothing from TCC/Forbes other than the attached re August 5,2016 records request.

WMB

----- Original Message -----

**From:** [william brown](#)  
**To:** [few1@comcast.net](#)  
**Sent:** Saturday, July 30, 2016 8:35 AM  
**Subject:** Records Request

Via Electronic Mail

July 29, 2016

Custodian of the Record  
Terravita Country Club, Inc.  
34034 N. 69<sup>th</sup> Way  
Scottsdale, Arizona 85262

Re: Records Request

Custodian of the Record:

Pursuant to Arizona's Revised Statutes (Title 33 Chapter 16) with reference to CV2014-053595 *Bianco v. TCC, Inc. and TCA, Inc.*, please make the following association record(s) responsive to the following questions available for examination and/or, on request, purchase of copies:

1. How much has the law firm of Carpenter, Hazlewood, Delgado & Bolen PLC billed Terravita Country Club, Inc. ("TCC") for its representation of TCC in the referenced matter from on or about June 17, 2014 thru April 28, 2016 to date, including legal fees, taxable costs and any and all related expenses?

Please provide the corporation's records of account/documents responsive to this question/request.

2. Who was TCC's insurer in this matter? Was the claim submitted to the insurer? Were any of the legal fees, taxable costs and any or all related expenses referenced in paragraph one covered by TCC's D & O policy? Were there any exclusions or limits of liability for which the underwriter would not be liable to make any payment for loss in this matter made against TCC? Was the claim accepted subject to the insurer's reservation of rights? What was TCC's insurer's retention in this matter? In this matter, how much did the insurer pay its insured (TCC)?

Please provide the corporation's records of account/documents responsive to these questions/requests: D&O Policy (to include but not limited to coverages/retention/endorsements/limitations/restrictions/reservations/other provisions) re this matter; insured's transmittal letter to insurer submitting claim; insurer's letter to insured re any exclusions or limits of liability for which the underwriter would not be liable; insurer's letter to insured accepting claim subject to the insurer's reservation of rights; letter/check/other form of insurer's payment to insured pursuant to the contract (policy) between the parties.

3. How much has TCC paid out of the corporation's funds to its insurer for any direct (retention/other) or indirect (premium/other) costs with respect to the referenced matter to date? How much did TCC pay the plaintiffs as a prerequisite for their agreement to settle the matter?

Please provide the corporation's records of account/documents responsive to these questions/requests.

4. How much, if any, did the plaintiffs pay of TCC's legal fees, taxable costs, and any or all related expenses with respect to the referenced matters to date?

Please provide the corporation's records of account/documents responsive to this question/request.

If my request is denied in whole or part, you are requested to justify all deletions by reference to specific exemption of the statutes. You are expected to release all segregable portions of otherwise exempt materials. I, of course, reserve the right to appeal your decision to withhold any requested information.

Your timely compliance is appreciated in advance.

s/William M. Brown

651 East Amber Sun Drive

Scottsdale, Arizona 85266-7029

**Exhibit B**

Terravita Litigation: Sixty-eight (68) lawsuits thru June 28, 2017  
Maricopa County Civil Court Information

<http://www.superiorcourt.maricopa.gov/docket/CivilCourtCases/caseSearch.asp>

Since incorporation, October 8, 1993, Terravita Community Association, Inc. has been a litigant in the following lawsuits beginning with TCA v. Wussow on January 9, 1997 thru June 28, 2017.

TCA: TCA has been a plaintiff in 65.00% of all TCA's civil lawsuits (Ekmark & Ekmark, L.L.C.)

CV1997-000435 TCA v. Adolph H. Wussow  
CV1998-002987 TCA v. Margaret Rowland  
CV2006-051448 WMB v. TCA Civil-books and records  
CV2007-007364 TCA v. Rosemarie Burke  
CV2008-013449 Jean Piserchia, Robert Ball, John Abbett, Stephanie Wolfe, Jo Ann Sharp v. TCA/TGC  
CV2009-090674 WMB v. Louise A. Harkinson, TCA, CCMC Civil – defamation, dismiss WMB  
CV2009-010695 TCA v. Helene Joy Karlin  
CV2009-010962 TCA v. Stephanie Barcello Leon  
CV2009-010963 TCA v. Tamara M. Davis  
CV2010-052446 TCA v. AB/WMB; Superior Court; iron pyrite, 1 of 800+ similarly situated HO's sued  
CV2013-050300 TCA v. Helene Joy Karlin  
CV2013-051832 TCA v. Mary Ann Lowther  
CV2013-053163 TCA v. Yolanda C. Pena  
CV2014-053595 Bianco v. TCC/TCA  
CC2006-184083 Brian W. Blacklock v. TCA, CCMC  
TJ2010-001810 TCA v. Judith A. Moore  
TJ2010-015745 TCA v. Tamra M. Davis  
LC2007-000588 TCA v. WMB; DFBLs/OAH/Superior Court; not action; no atty fees  
LC2012-000699 WMB v. TCA; DFBLs/OAH/Superior Court/Court of Appeals  
1 CA-CV 14 -4555 WMB v. TCA, Court of Appeals Decision 7/30/2015

TCC, Inc. (MBCC, Inc.) and TGC, Inc. (BMGC, Inc.) were created out of a class action settlement with the Del Webb Corporation on May 28, 1998 and have since been litigants in the following lawsuits:

TCC (BMCC): TCC has been a plaintiff in 57.76% of all TCC's civil lawsuits (Carpenter, Hazlewood, Delgado & Bolen (Wood), PLC

CV2001-021928 Christopher Meleshkov v. TCC  
CV2002-002925 Maureen Hess v. TCC  
CV2002-004639 TCC v. Helene Joy Karlin  
CV2003-018588 TCC v. Deborah G. Aksamit  
CV2003-021851 Margaret Thayer v. TCC  
CV2004-002882 TCC v. Shirley E. Omalley  
CV2004-004867 TCC v. NLP Systems Limited  
CV2004-008824 TCC v. Helene Joy Karlin, City of Scottsdale

CV2006-015717 TCC v. NLP Systems Limited  
 CV2009-036870 TCC v. Helene Joy Karlin  
 CV2011-080089 TCC v. Helene Joy Karlin  
 CV2011-093260 TCC v. Joseph D. Meloni  
 CV2012-007949 QED, Inc. v. TCC  
 CV2012-018573 TCC v. Gary C. Wright, Pamela Hazen  
 CV2013-011608 TCC v. Helene Joy Karlin  
 CV2013-053198 Helene Rand v. TCC  
 CV2014-053595 Bianco v. TCC/TCA  
 CV2016-091991 TCC, Inc. v. Anita Bell  
 CV2016-054557 ARB/WMB v. TCC, Inc.  
 CC2009-049122 Capital One Bank v. TCC  
 CC2013-051050 ABell v. TCC; Small Claims Court/Superior Court/Court of Appeals; pending  
 TJ2007-007317 Arrow Financial Services, LLC v. TCC  
 TX2002-000128 BMCC v. Maricopa County  
 TX2002-000431 BMCC v. Maricopa County  
 TX2003-000149 BMCC v. Maricopa County  
 TX2004-000889 BMCC v. Maricopa County, Arizona State Department of Revenue  
 TX2007-000315 TCC v. MC, MC Attorney, MC Assessor, MC Board of Supervisors, ADOR  
 TX2007-000446 BMCC v. Maricopa County  
 TX2011-000847 BMCC v. Maricopa County  
 DFBS 10/08/2015 ABell v. TCC  
 17F-H1716005-REL WMB v. TCC, Inc.  
 17F-H1717032-REL WMB vs. TCC, Inc.  
 18F-H1717041-REL WMB vs. TCC, Inc.

**TGC (BMGC):** TGC has been a defendant in 100% of all TGC's civil lawsuits (Moyes Storey/WJSims III)

CV2003-021851 Margaret Thayer v. TGC, Aaron Michaelson, Joan Burnett, Larry Ray, Andy Orzel  
 CV2004-007779 Charles Mason v. TGC  
 CV2004-007845 Alegis Group LP v. BMGC  
 CV2008-013449 Jean Piserchia, Robert Ball, John Abbett, Stephanie Wolfe, Jo Ann Sharp v. TGC, TCA  
 CC2007-165446 James Farmer v. TGC

**william brown**

---

**From:** "william brown" <wmbs-pp@msn.com>  
**To:** "Josh Bolen" <josh.bolen@carpenterhazlewood.com>  
**Sent:** Friday, July 28, 2017 4:49 PM  
**Subject:** Re: OAH-ADRE Orders

Counsel:

"My (sic) position is," the July 29, 2016 records request was unambiguous, detailed and specific...juxtapose TCC/Forbes' response with the request...the tail wagging the dog?

----- Original Message -----

**From:** Josh Bolen  
**To:** william brown  
**Cc:** Theresa Laubenthal ; Anjali Patel  
**Sent:** Wednesday, July 19, 2017 1:54 PM  
**Subject:** RE: Records Request

Mr. Brown,

The records have already been mailed, but of course TCC kept copies of what was mailed to you, so if you would still like to designate someone in writing to me and have that person pick them up you still can. You will then have two sets.

Also, the mailed packet includes the \$500.00 reimbursement check.

Please let me know if you have any questions or concerns. Hope you are well.

Sincerely,

Josh Bolen, Esq.

s/William M. Brown

----- Original Message -----

**From:** Josh Bolen

**To:** william brown

**Cc:** Theresa Laubenthal

**Sent:** Friday, July 28, 2017 1:41 PM

**Subject:** RE: OAH-ADRE Orders

Mr. Brown,

Please inform me of how the response was "non-responsive, incomplete, inaccurate or in defiance"? I am willing to assist with curing this issue, but I cannot guess at your position. If you supply me with your position, I will be happy to respond accordingly.

Sincerely,



**CARPENTER HAZLEWOOD**

**Josh Bolen, Esq.**

Direct Line: 480-427-2862

[josh.bolen@carpenterhazlewood.com](mailto:josh.bolen@carpenterhazlewood.com)

**CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

Phoenix, 480-427-2800, 1400 East Southern Ave, Suite 400, Tempe, Arizona 85282

Tucson, 520-744-9480, 333 North Wilmot Rd, Suite 180, Tucson, Arizona 85711

Prescott, 928-443-0775, 1550 Plaza West Dr, Prescott, Arizona 86303

[www.carpenterhazlewood.com](http://www.carpenterhazlewood.com)



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This firm is a debt collector. Any information obtained will be used for that purpose.

---

**From:** william brown [mailto:wmbp@msn.com]  
**Sent:** Friday, July 28, 2017 12:55 PM  
**To:** Josh Bolen  
**Subject:** OAH-ADRE Orders

17F-H1716005-REL, WMB vs. TCC, Inc.:

July 10, 2017 / July 11, 2017

Counsel:

On July 10, 2017, OAH's Judge Velya Moses-Thompson, ALJ, "ORDERED that Terravita comply with the applicable provisions of A.R.S. Â§ 33-1805 regarding Petitioner's request of

Terravita's records within 10 days of the Order entered in this matter."

On July 11, 2017, ADRE's Commissioner Lowe, entered ADRE's Final Order, "The Commissioner accepts the ALJ decision that Petitioner be deemed the prevailing party in this matter. It is further **Ordered** that Respondent comply with the applicable provisions of A.R.S. Â§ 33-1805 regarding Petitioner's request of Respondent's records within 10 days of the Order entered in this matter."

On July 18, 2017, TCC, Inc.'s General Manager mailed Respondent's "July 30, 2016 Records Request" to Petitioner.

Forbes' "Tuesday, July 18, 2017 8:40 AM" response to Petitioner's July 29, 2017 records request pursuant to Â§ 33-1805(A), the OAH's Administrative Law Judge's Decision and ADRE's Commissioner's Final Order adopting Judge Moses-Thompson's decision while in-part responsive to Petitioner's lawful request , was in-part non-responsive, incomplete, inaccurate and in defiance of the orders of OAH and ADRE.

TCC, Inc.'s immediate responsive, complete and accurate compliance will foreclose Petitioner "...seeking (sic) any and all legal recourse pursuant to statute (sic) and Arizona law."

----- Original Message -----

**From:** Tom Forbes

**To:** 'wmbs-pp@msn.com'

**Cc:** Cici Rausch

**Sent:** Wednesday, July 19, 2017 9:07 AM

**Subject:** Records Request

Mr. Brown,

The records relating to case HO17-16/005 are ready. Since your criminal conviction prohibits you from contacting personnel at the Club or returning to Club property you can authorize a representative, in writing, to pick-up your records or have them mailed to you. If I don't hear from you by 11:30 am today

7/19/2017

through our attorneys Carpenter, Hazelwood, Delgado and Bolen that you are designating someone to pick-up your records, your records will be mailed to you at that time.

**TOM FORBES**

General Manager

Terravita Country Club

34034 North 69<sup>th</sup> Way | Scottsdale, AZ 85266

Direct 480-437-9285 | Mobile 480-299-9311

[www.terravita.com](http://www.terravita.com)

[tomf@terravita.com](mailto:tomf@terravita.com)

s/William M. Brown

## Exhibit C

**Tom Forbes**

---

**Sent:** Tuesday, July 18, 2017 8:40 AM

July 30, 2016 Records Request

1. No Records, TCC did not pay CHDB they were hired by LIU.
2. Liberty D&O Policy and CHDB Billing
3. Retention expense and Settlement Statement enclosed
4. No records

**TOM FORBES**

General Manager

Terravita Country Club

34034 North 69<sup>th</sup> Way | Scottsdale, AZ 85266

Direct 480-437-9285 | Mobile 480-299-9311

[www.terravita.com](http://www.terravita.com)

[tomf@terravita.com](mailto:tomf@terravita.com)



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*Retention Branch*

April 16, 2012

Director Gene Palma  
Department of Fire, Building and Life Safety  
1110 W. Washington, Suite 100  
Phoenix, Arizona 85007

Director Cliff J. Vanell  
Arizona Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007

Re: Petitioner's Complaint to DFBLS and OAH – Rausch's Perjury

Case No. HO 11-12/007, Docket No. 11F-H1112007-BFS, William M. Brown v.  
Terravita Country Club, Inc.

Dear Directors Palma and Vanell:

Petitioner and the public's confidence in a fair, impartial and independent hearing before an ALJ that is respectful of the truth demands DFBLS and OAH refer Rausch's perjury to the appropriate criminal prosecutorial agency.

The willfully false (intentional lie[s]) testimony under oath by Celia Anne Rausch a/k/a Cici Rausch on April 9, 2012 in the referenced matter is a felony violation of the criminal code, A.R.S. § 13-2701 *et seq.*, vitiates my reasonable right to expect a fair hearing respectful of the truth and, as such, Rausch's violation of Arizona law following and coupled with the Respondent and Director of Administration/Custodian of Records' violation of the planned community statute, A.R.S. § 33-1805(A), which gave rise to this contested matter, demands the Department and Agency refer the violation to the proper criminal prosecutorial agency.

Respondent's Director of Administration/Custodian of Records violated Arizona's criminal code, A.R.S. § 13-2710 *et seq.*, when, following Judge Kowal's calling the case, having the parties and counsel identify themselves and administering the oath and affirmations to the witnesses to tell the truth, the whole truth and nothing but the truth, Rausch defied Judge Kowal and the law by willfully breaching her oath to tell the truth.

Judge Kowal re oaths and affirmations:

Conversion Document 4/9/2012 Audio (0:20:04 to 0:20:31)

Q: Do each of you swear or affirm that the testimony you are about to give at this administrative hearing will be the truth, the whole truth and nothing but the truth?

Directors Palma and Vanell

April 16, 2012

Page Two

A: Brown, "Yes"

A: Rausch, "Yes"

Judge Kowal: ...witnesses responded in the affirmation and are duly sworn.

Conversion Document 4/9/2012 Audio (0:42:21 to 0:42:30)

Judge Kowal: Ms. Rausch, state your name and spell your name please.

A: Cici Rausch, spelled "C i c i R a u s c h."

With respect to the public record, which includes matters of recordation as well as court proceedings, Cici Rausch is no more the witness' name, Celia Anne Rausch, than "Timmy" Horn is Timothy L. Horn's name (president of TCC's board of directors, a member of the public attending the April 9<sup>th</sup> hearing), or I. Lewis Libby is "Scooter" and/or "Candy" Kowal is Candace L. Kowal's name with respect to the public record.

The directors of the Department of Fire, Building and Life Safety and the Office of Administrative Hearings in furtherance the public's belief that fair, impartial and independent hearings respectful of the truth will be afforded any and all petitioners (whether homeowner or association) must refer Rausch's willful violation of Arizona law to the appropriate criminal prosecutorial agency.

Awaiting your advice,

William M. Brown  
6751 East Amber Sun Drive  
Scottsdale, Arizona 85266

WMB/dl

B:/WMB/Terravita/TCC, Inc./HO 11-12/007- Directors DFBLs-OAH/Rausch's Perjury, 13-2701/File

May 14, 2012

Ms. Eileen Klein  
Office of the Arizona Governor  
Executive Tower  
1700 West Washington Street  
Phoenix, AZ 85007

Re: Department of Fire, Building and Life Safety  
Office of Administrative Hearings

Dear Ms. Klein:

The public's confidence in a fair, impartial and independent hearing before the Office of Administrative Hearings pursuant to the Fiftieth Legislature, First Regular Session (SB1148), providing homeowners and associations an administrative venue to resolve their contested matters, an alternative to Arizona's civil courts' system, pursuant to A.R.S. § 41-2141(B) and A.R.S. § 41.2198 *et seq.*, that is respectful of the truth demands the Directors of Arizona's Department of Fire, Building and Life Safety and Office of Administrative Hearings be as responsive to the citizens of Arizona as the Governor and the Directors' affirmations to the public proclaim, "*serve the citizens of Arizona well*," Honorable Janice K. Brewer, February 11, 2010 (re Palma), recognize "*that each case is the most important case to the parties...it is no more than our duty...it is we who thank you (To the Citizens) for the opportunity to serve*," Cliff J. Vanell, 1996 Founding Director, Arizona Office of Administrative Hearings (Vol. 2, January 1997).

On April 16, 2012, Directors Palma and Vanell were noticed that Celia Anne Rausch willfully testified falsely under oath in a hearing at the OAH before Judge Lewis D. Kowal on April 9, 2012 in Case No. HO 11-12/2007 – Docket No. 11F-H1112007-BFS, a felony violation of the criminal code, A.R.S. § 13-2701 *et seq.* (See enclosed)

On April 25, 2012, the courtesy of both directors' response was requested. (See enclosed)

Director Palma, Director Vanell nor their respective agencies' staffs have been responsive to date.

On Thursday, April 10, 2012, Governor Brewer signed into law HB 2571, state personnel system, in furtherance of making government (includes agency directors) more efficient, accountable and productive.

My reasonable right to expect a fair hearing respectful of the truth was vitiated on April 9, 2012 when Rausch committed a serious criminal offense, perjury, an offense ignored to date by DFBLS and OAH, agencies responsible to "*serve the citizens of Arizona well*."

Ms. Eileen Klein  
May 14, 2012  
Page Two

Perjury, a serious criminal offense whether Thomas-Aubuchon, *The Arizona Republic*, April 19, 2012, "Bar counsel: Disbar Aubuchon now (\*)," Celia Anne Rausch or any person that willfully perjures themselves in Arizona's courts, before the Office of Administrative Hearings and its Administrative Law Judges or declares (affiant) under penalty of perjury that their affirmations are the truth should be criminally prosecuted.

(\*) <http://www.azcentral.com/arizonarepublic/local/articles/2012/04/19/20120419bar-counsel-disbar-aubuchon-now.html>

If the Office of the Governor agrees that accountability (responsiveness) to the citizens of Arizona is a priority of Governor Brewer, then may we agree that non-responsiveness is no way to run a railroad and, as such, DFBS and OAH is deserving of the Office of the Governor's direct and immediate attention.

Thank you in advance.

Awaiting your advice,

William M. Brown

WMB/dl

Enclosures

cc: Lupe Lerma

B:/WMB/Terravita/TCC, Inc/11F-H1112007-BFS/EKlein-Gov/Perjury/File

William M. Brown  
6751 East Amber Sun Drive  
Scottsdale, Arizona 85266-7029  
(480) 595-9131

June 1, 2012

Ms. Eileen Klein  
Office of the Arizona Governor  
Executive Tower  
1700 West Washington Street  
Phoenix, AZ 85007

Re: Department of Fire, Building and Life Safety  
Office of Administrative Hearings

Dear Ms. Klein:

With appreciation to you and the Office of the Governor for your attention to our May 14, 2012 prayer which precipitated "I am in receipt of your correspondence of April 17 and April 26, 2012. I am also in receipt of a letter that you directed to Eileen Klein referencing that same correspondence (Vanell, May 16, 2012)" and "...replying on behalf of Director Palma regarding your correspondence dated April 16, 2012 and April 25, 2012. Director Palma is also in receipt of your letter to Eileen Klein citing the same correspondence (Blake for Palma, May 16, 2012)," timely but disappointing responses. (See Vanell 05/16/2012 and Palma 05/16/2012 enclosed).

With too few exceptions, albethey well-deserved exceptions (Office of the Governor and others), is there little wonder why government is generally held in low-regard (10% Congressional Job Approval, Gallup survey February 2-5, 2012)?

My unambiguous April 16, 2012 notice to the directors of DFBLS and OAH of a witness's under oath perjury during a hearing at the OAH before an ALJ and false swearing in an affidavit prepared under the supervision of any attorney flowing from a meritorious contested matter petition filed with DFBLS and referred by DFBLS to OAH did not request either Palma or Vanell intervene in the substantive matter of the petition, a violation of ARS 33-1805(A), did not request either director to influence ALJ Kowal but requested both directors refer perjury/false swearing in their respective departments/agencies to the proper authorities. Too obtuse a request for the Governor's appointees? (See Rausch Perjury-Summary, No. 11F-H1112007-BFS enclosed)

Directors Vanell and Palma should demand that those appearing before their respective agencies/departments are reverential of the integrity absolutely necessary to a fair hearing respectful of the truth and when persons (witness/affiant) conduct themselves antagonistically towards the truth there are consequences...refer the criminal conduct to the appropriate prosecutorial agency.

Ms. Eileen Klein  
June 1, 2012  
Page Two

My reasonable right to expect a fair hearing respectful of the truth was vitiated on April 9, 2012 when Rausch committed a serious criminal offense, perjury, an offense continuously ignored (April 16, 2012 to date) by DFBLS and OAH, agencies responsible to "*serve the citizens of Arizona well.*"

Perhaps, if pursuant to A.R.S. § 41-2198.04, a motion for review (A.R.S. § 41-1092.09) of the administrative law judge's decision is filed with the Department of Fire, Building and Life Safety, Director Palma will not permit perjury to stand unchallenged in Arizona's administrative tribunals.

In the alternative, perhaps Governor Brewer will find the performance of OAH's chief administrative law judge inadequate (Perjury...a serious criminal offense deserves equally serious attention by the directors of OAH and DFBLS rather than accepting the quality of Respondent's counsel's response, "...was a simple misunderstanding," and Rausch's affidavit, "...answered honestly and to the best of my abilities (sic)," sworn statements under oath that defy credulity, are assaults on the truth and, while likely enjoyed by Joseph Heller, should be unequivocally rejected by the Governor's appointees) and, pursuant to SPS (HB2571), require the agency and its director's accountability in service to Arizona's citizens.

May we trust Joe Kanefield's understanding of the meaning of "term" with respect to Arizona's Constitution trumps Chris Herstam's...continued best wishes to Governor Brewer.

William M. Brown

WMB/dl

Enclosures

B:/WMB/Terravita/TCC, Inc/Vanell-OAH, Palma-DFBLS/EKlein-Gov/Perjury/File

William M. Brown  
6751 East Amber Sun Drive  
Scottsdale, Arizona 85266-7029  
(480) 595-9131

July 12, 2012

Ms. Eileen Klein  
Office of the Arizona Governor  
1700 West Washington Street  
Phoenix, AZ 85007

Re: Department of Fire, Building and Life Safety/Director Gene Palma

Dear Ms. Klein:

The enclosed application for a rehearing/appeal of the ALJ's May 8, 2012 decision in No. 11F-H1112007-BFS, *William M. Brown vs. Terravita Country Club, Inc.*, a decision certified on June 14, 2012 by the director of the Office of Administrative Hearings, Cliff J. Vanell, to the director of the Department of Fire, Building and Life Safety, Gene Palma, and Director Palma's decision to assess a civil penalty or grant/deny a rehearing may well-serve as a measure of the public's confidence in a fair, impartial and independent hearing before the OAH and will affirm or reject the Fiftieth Legislature's (SB1148) providing homeowners and associations an administrative venue to resolve their contested matters that is respectful of the truth, responsive to the citizens of Arizona and reflects the Governor's affirmation that the Department "*serves (sic) the citizens of Arizona well.*"

Director Palma finding the Respondent's Director of Administration/Custodian of Records' testimony was perjurious and levying a civil penalty pursuant to A.R.S. § 41-2108.02 sufficient to deter any future like-kind offenses by this Respondent will contemporaneously send a message to the public that DFBLS, OAH and ALJs will not tolerate any respondent and their counsel's violation of Arizona law and will embrace the belief that making government (includes agency directors) more efficient, accountable and productive to the citizens of Arizona is a priority of Governor Brewer.

Will advise the Governor's Chief of Staff of Director's Palma's decision,

William M. Brown

WMB/dl

Enclosure

B:/WMB/Terravita/TCC, Inc/11F-H1112007-BFS Rehearing-Appeal/EKlein-Gov/Perjury/File

William M. Brown  
6751 East Amber Sun Drive  
Scottsdale, Arizona 85266-7029  
(480) 595-9131

**Exhibit H**

1 ARIZONA DEPARTMENT OF REAL ESTATE  
2 IN AND FOR THE STATE OF ARIZONA

3  
4 William M. Brown, )  
5 Petitioner, ) CASE NO. HO 17-16/005  
6 vs. ) DOCKET NO. 17F-H1716005-REL  
7 Terravita Country Club, Inc. )  
8 Respondent. ) ORDER DENYING REQUEST  
9 FOR REHEARING

10 Pursuant to Arizona Revised Statutes (“A.R.S.”) § 32-2199.04 and Arizona Administrative  
11 Code R4-28-1310, a party may file a motion for rehearing or review with the Commissioner  
12 (“Commissioner”) of the Arizona Department of Real Estate (“Department”).

13 On or about July 10, 2017, the Office of Administrative Hearings (“OAH”) issued an  
14 Administrative Law Judge (“ALJ”) Decision in the above captioned matter ordering that the  
15 Petitioner be deemed the prevailing party in this matter.

16 It was further ORDERED that Terravita comply with the applicable provisions of A.R.S. §  
17 33-1805 regarding Petitioner’s request of Terravita’s records within 10 days of the Order entered in  
18 this matter.

19 It was further ORDERED that Terravita pay Petitioner his filing fee of \$500.00, to be paid  
20 directly to Petitioner within thirty (30) days of the Order.

21 No Civil Penalty was found to be appropriate in this matter.

22 On or about July 11, 2017, the Commissioner of the Department of Real Estate issued a final  
23 order accepting the ALJ’s decision. On or about August 9, 2017, Petitioner filed a request for  
24 rehearing. On or about August 9, 2017, Respondent filed a response to Petitioner’s request for  
25 rehearing.

26 **ORDER**

27 After careful review of the documents submitted concerning the request for rehearing and the  
28 ALJ Decision, the Commissioner of the Department issues the following Order in this matter.

1 Pursuant to A.R.S. § 32-2199.04 the Commissioner of the Department hereby **denies** the  
2 request for rehearing because it is believed that the ALJ 's decision to not award a Civil Penalty in  
3 the matter was appropriate. Petitioner's evidence failed to establish grounds on which the  
4 Commissioner could grant rehearing pursuant to Arizona Administrative Code R4-28-1310 (B) (1  
5 through 8).

6 This Order is a final administrative action and is effective immediately from the date service  
7 is complete. Service is complete upon personal service or five (5) days after the mailing date  
8 indicated below.

9 A party may appeal this final administrative decision by filing a complaint for judicial review  
10 pursuant to Title 12, Chapter 7, Article 6. The Order will not be stayed unless a stay is obtained  
11 from the court in conjunction with the judicial review action.

12 **DATED this 16th day of August 2017.**

13  
14   
15 Judy Lowe, Commissioner  
Arizona Department of Real Estate

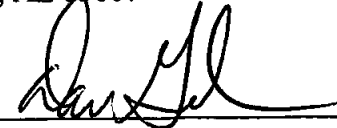
16 **The foregoing mailed this 16<sup>th</sup> day of August 2017,**  
17 **via certified mail receipt no. 91 7199 9991 7037 6594 5370 to:**

18 William M. Brown  
19 6751 E. Amber Sun Drive  
20 Scottsdale, AZ 85266

21 Copy sent via certified mail receipt no. 91 7199 9991 7037 6594 5387 to:  
22 Terravita Country Club, Inc.  
23 c/o Carpenter, Hazlewood, Delgado & Bolen, PLC  
1400 E Southern Ave. Suite 400  
Tempe AZ 85282

24 Copy electronically transmitted to:

25 Office of Administrative Hearings  
26 1400 West Washington, Suite 101  
27 Phoenix, AZ 85007

28 By: 

## Exhibit I

**william brown**

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**From:** "william brown" <wmbs-pp@msn.com>  
**To:** <josh@carpenterhazlewood.com>  
**Sent:** Monday, August 21, 2017 4:57 PM  
**Subject:** 17F-H1716005-REL and 17F-H1717032-REL

Via Electronic Mail

August 21, 2017

Terravita Country Club, Inc.

c/o Joshua M. Bolen

Carpenter, Hazlewood, Delgado & Bolen, LLP

1400 E. Southern Avenue, Suite 400

Tempe, Arizona 85282

Re: 17F-H1716005-REL and 17F-H1717032-REL

Counsel:

Following service of ADRE's Commissioner Lowe's August 16, 2017 orders in the referenced matters and absent Respondent's timely filing an action for judicial review of the final administrative decisions, may we agree that Respondent's compliance with the Final Orders ("...comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Respondent's records within 10 days of the Order entered in this matter") at this time is in the best interests of the Respondent, its members and select third-parties.

Failure to responsively, completely and accurately comply with these matters' records requests and failure to comply with the orders thru and/or immediately after the time provided for by statute to commence an action for judicial review of either or both matters, Petitioner "...will seek any and all legal recourse pursuant to Arizona law (sic)," to include court ordered sanctions for civil contempt and/or for criminal contempt.

8/30/2017

Respondent's timely compliance with the final orders in these matters is appreciated in advance.

s/William M. Brown

## Exhibit J



## CARPENTER HAZLEWOOD

Carpenter, Hazlewood, Delgado & Bolen, LLP  
ATTORNEYS AT LAW

PHOENIX  
1400 East Southern Avenue, Suite 400  
Tempe, Arizona 85282-5691  
T 480-427-2800  
F 480-427-2801

**Anjali J. Patel, Esq.**  
*Licensed in Arizona*  
e-mail: [anjali@carpenterhazlewood.com](mailto:anjali@carpenterhazlewood.com)  
direct: 480-427-2865

August 23, 2017

**VIA E-MAIL AND FIRST CLASS MAIL**

**([wmbbs-pp@msn.com](mailto:wmbbs-pp@msn.com))**

William M. Brown  
6751 East Amber Sun Drive  
Scottsdale, Arizona 85266

Re: 17F-H1716005-REL and 17F-H1717032-REL

Dear Mr. Brown:

Thank you for your correspondence dated August 21, 2017 regarding the two Department of Real Estate Petitions referenced above.

As referenced in our pleading filed on August 9, 2017 in 17F-H1716005-REL (the "motion"), it is our position that on July 19, 2017, the Country Club fulfilled the records request as ordered by the Department of Real Estate in its Final Order dated July 11, 2017 (the "response"). A copy of the response to your records request was attached as Exhibit B to the motion for reference. If you claim you did not receive the Country Club's response, take issue with the response, or seek to further clarify any part of your records request, please let us know with specifics so the Country Club can supplement its response (if necessary).

With respect to 17F-H1717032-REL, we plan to seek a stay from the Court regarding its final order pending our filing of an appeal regarding the final decision from the Department of Real Estate. To that end, compliance with the Department of Real Estate's Final Order is premature. However, we are happy to discuss fulfilling the records request pending the outcome of the appeal, should it be necessary at that time.

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SALT LAKE CITY • SAN ANTONIO • SAN DIEGO • SANTA FE • TUCSON

CARPENTERHAZLEWOOD.COM  
NATIONWIDE T 800-743-9324 • F 800-743-0494

Thank you, again, for your correspondence. Please let us know if we can address any questions or concerns with regard to these matters.

Sincerely,



Anjali J. Patel, Esq.  
ior

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP

## **Exhibit K**

**william brown**

---

**From:** "william brown" <wmbs-pp@msn.com>  
**To:** <josh@carpenterhazlewood.com>  
**Sent:** Friday, September 01, 2017 4:56 PM  
**Subject:** 17F-H1716005-REL

Via Electronic Mail

September 1, 2017

Terravita Country Club, Inc.

Sterling J. Laaveg

Paul David Tolk

William H. Greig

Michael T. Ellington

c/o Joshua M. Bolen

Carpenter, Hazlewood, Delgado & Bolen, LLP

1400 E. Southern Avenue, Suite 400

Tempe, Arizona 85282

Re: 17F-H1716005-REL

Counsel:

Following service of ADRE's Commissioner Lowe's August 16, 2017 order in the referenced matter, may we agree that Respondent's compliance with the Final Order ("...comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Respondent's records within 10 days of the Order entered in this matter") is in the best interests of the Respondent, its members and select third-parties.

TCC, Inc.'s continuing failure to responsively, completely and accurately comply with this matter's records request may cause Petitioner to "...seek any and all legal recourse pursuant to Arizona law (sic)," to include court ordered sanctions for civil contempt and/or for criminal contempt.

A simple "Yes" followed by compliance now or a "No" reflecting TCC, Inc.'s continuing non-compliance would be appreciated rather than Respondent revisiting Patel's August 23, 2017 plaint, "If you claim you did not receive the Country Club's response, take issue with the response, or seek to further clarify any part of your records request, please let us know with specifics so the Country Club can supplement its response (if necessary)."

Respondent's timely compliance with the final order in this matter is appreciated.

s/William M. Brown