

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000025-001 DT

04/17/2025

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
N. Johnson
Deputy

A Z N H REVOCABLE TRUST
JOHN SULLIVAN
SUSAN SULLIVAN

JOHN SULLIVAN

v.

ARIZONA DEPARTMENT OF REAL ESTATE
(001)
SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION (001)

LYNETTE EVANS
B AUSTIN BAILLIO

JUDGE MIKITISH
REMAND DESK-LCA-CCC

**MINUTE ENTRY
ORDER OF DISMISSAL**

The Court has received and reviewed the Motion for Evidentiary Hearing to Introduce Additional Evidence filed by the appellant AZNH Revocable Trust on January 21, 2025, the response thereto filed by the Appellee Sunland Springs Village Homeowners Association on February 18, 2025, and AZNH reply filed on February 19, 2025.

In the Motion, AZNH argues that it filed a petition with the Department of Real Estate (the Department) alleging that Sunland Springs violated state law by failing 1) to retain all ballots and related materials, and 2) to make them available for inspection. A.R.S. § 33-1812. It argues that the Department held hearing through the Office of Administrative Hearings and concluded that Sunland Springs did not violate the law because voting was done through an electronic user interface without ballots. AZNH argues that, after the Department's Decision, AZNH obtained an electronic ballot which Sunland Springs had in its custody but failed to produce. AZNH requests an Evidentiary Hearing to present the additional evidence. It argues that a remand to the Agency is unnecessary because the Office of Administrative Hearings conducts Department hearings

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without experts in the Department's regulatory arena. Therefore, it argues that this Court is in as good a position to conduct the hearing as the Department.

Sunland Springs argues that an Evidentiary Hearing simply to present additional evidence is not contemplated by the rules. It argues that the evidence presented by AZNH is inadmissible and belongs to VoteHOANow and is not a part of the records of the Association. It argues that the Department and Office of Administrative Hearings has extensive experience in HOA disputes and should be the proper venue for resolving AZNH's request.

The applicable rules of procedure provide that any party seeking to introduce exhibits or testimony (or both) not offered during the administrative hearing must file a written motion identifying the evidence, setting forth the appropriate legal authority in support of its admission, and addressing whether a remand to the Agency is appropriate. Rule 10, Rules of Procedure for Judicial Review of Administrative Decisions. Arizona Law provides that the Superior Court may, when a hearing has been held by an agency, remand for the purpose of taking additional evidence when from the state of the record of the administrative agency or otherwise it appears that such action is just. A.R.S. § 12-911.

In this case, the background of the documents, the entity owning and storing the documents, and the details of the use of various technologies in the HOA election all require detailed analysis through a hearing.

THE COURT FINDS that the Department is in the best position to conduct the hearing.

Therefore,

IT IS ORDERED denying the Motion for the Superior Court to conduct an Evidentiary Hearing.

IT IS FURTHER ORDERED dismissing the appeal and remanding the matter to the Department to conduct an Evidentiary Hearing to address the additional evidence proposed by AZNH.

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

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

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