

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-010998

07/29/2015

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT  
L. Nelson  
Deputy

ROBERT FABRIZIO, et al.

JENNIFER A REITER

v.

FIDELITY NATIONAL TITLE COMPANY

BRIAN J COSPER

DEBRA J. RUDD  
ARIZONA BOARD OF APPRAISAL  
15 S. 15TH AVE, STE 103A  
PHOENIX AZ 85007

**RULING**

The Court has considered Plaintiffs, Robert and Cristal Fabrizio's (collectively, Fabrizio") Motion to Compel Production of Documents pursuant to Subpoena *Duces Tecum*, the Arizona State Board of Appraisal's Response, and the Reply in Support.

This is an action against Defendant, Fidelity National Title Insurance Company for breach of contract and bad faith, arising out of Fidelity's alleged failure to report a water line easement across property Fabrizio intended to purchase. Fabrizio maintains that Fidelity's low diminution in value assessment resulted from its reliance, in part, on the defective appraisal of Warren Tolson.

Fabrizio filed a Complaint (Case #3661) before the Arizona State Board of Appraisal ("Board") on January 22, 2014 against Tolson. Tolson responded to the Complaint and the Board's Chief Investigator completed a Standard 3 Review. A second Standard 3 Review (dated November 3, 2014) was completed by a different certified general appraiser. On November 21, 2014, the Board dismissed the Complaint, finding no violation of the Uniform Standards of Professional Appraisal Practice ("USPAP") or the Board's governing statutes and rules.

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The Fabrizio subpoena requested “any and all investigative reports and/or reviews from “case 3661.” This would include the Standard Review 3 materials.

The Board maintains that the appraisal report and reviews are confidential under A.R.S. §32-3609(3), and not subject to disclosure.

**§ 32-3609. Confidential records<sup>1</sup>**

Except as otherwise provided by law, the following records are confidential:

\* \* \* \*

3. Appraisal reports or appraisal reviews and supporting documentation deemed confidential under the uniform standards of professional appraisal practice edition adopted by the board.

The Board maintains that a straightforward reading of the statute establishes that “appraisal reports” and “appraisal reviews” are confidential.<sup>2</sup>

Fabrizio notes that the Board followed a “mysterious” path in reaching its decision—only to simply dismiss the Complaint some months later. Fabrizio argues that the Board’s nondisclosure position furthers a cloud of secrecy and is contrary to the concept of “open meetings.” To the contrary, the Board should be required to disclose the basis of its decision and that a subpoena is the legal device to do so.

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<sup>1</sup> **§32-3609. Confidential records**

Except as otherwise provided by law, the following records are confidential:

1. Questions contained in any examination administered by or for the board or in any examination submitted to the board for course approval.
2. Questions asked and the answers of individual examinees, except that the board shall provide the grades of each examinee for public inspection and copying.
3. Appraisal reports or appraisal reviews and supporting documentation deemed confidential under the uniform standards of professional appraisal practice edition adopted by the board.
4. All documents associated with a complaint until the complaint is resolved.

<sup>2</sup> The Board maintains that only the “supporting documentation” must meet the confidentiality provisions of the USPAP.

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There appears to be no case law addressing A.R.S. § 32-3609. The Appraiser Licensing and Certifying Act, A.R.S. §32-3601 *et seq.*, provides for an administrative review of appraisals and identifies those records that are confidential or which have limited protection. While the statute states, " Except as otherwise provided by law...", the Court is unaware of any law that would provide an exception under these circumstances. A subpoena is not a universal exception to statutory protection.

Finally, the Court finds that due process was not violated by prosecuting the Complaint and maintaining the confidential nature of certain material pursuant to A.R.S. §32-3601 *et seq.* Furthermore, Fabrizio did not have a property right at risk in this administrative proceeding which could implicate a due process right.

Based on the foregoing,

**IT IS ORDERED** sustaining the Board's Objection to the Subpoena *Duces Tecum* and quashing the subpoena in its entirety.