



1 It Is Hereby Ordered that the Petition and Complaint of Patricia Shepard is  
2 dismissed.

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4 **Further Issues**

5 Counsel for the Respondents moved for attorney's fees under A.R.S. §12-348 for  
6 the reason that the determination by the Department of Building and Fire Safety (BFS),  
7 to set the instant case for hearing was not "justified" under the language of A.R.S. §41-  
8 2198.01(D). The basis for the claim is that neither BFS nor the Office of Administrative  
9 Hearings had proper jurisdiction of the case because the Petitioner had been evicted for  
10 non payment of rent after a forcible detainer court proceeding and judgment for the  
11 instant Respondent, in Maryvale Justice Court, Case No. CV 99-01395FD, prior to the  
12 filing of the petition. The judgment was obtained on April 20, 1999, a writ of restitution  
13 for the removal of the Petitioner was signed on April 26, 1999 and the Petitioner was to  
14 move from the premises by May 3, 1999.

15  
16 The instant petition was not filed with BFS until on or about May 30, 1999, at  
17 which time, it is argued by the Respondent, the Petitioner having been lawfully evicted  
18 under a court order, was no longer a tenant and had no standing to file her petition. The  
19 Respondent submitted its answer setting forth the above and other defenses to BFS on  
20 or about June 30, 1999. The case was referred by BFS to the Office of Administrative  
21 Hearings to be set for hearing, on or about June 30, 1999.

22 The motion for attorney's fees must be denied for a number of reasons. The  
23 Office of Administrative Hearings does not have jurisdiction to award attorney fees  
24 under Title 12 which addresses courts and civil proceedings. Rather, A.R.S. §41-1007  
25 addresses the award of attorney fees in administrative proceedings. BFS, though  
26 issuing the Notice of Hearing, is not a party to the instant proceeding and was not  
27 present to present any argument against the Respondent's motion. The file does not  
28 establish that BFS had the Respondent's answer prior to requesting that the matter be  
29 set for hearing by Office of Administrative Hearings. In light of the above, any further  
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1 discussion regarding the appropriateness of attorney fees even if the facts were as  
2 represented by the Respondent, would be pointless since the issue is essentially moot.

3 The Respondent also moved that the Administrative Law Judge require BFS to  
4 submit a memorandum to explain why the matter was set for hearing in light of the  
5 Respondent's answer to the petition. This motion is also denied for multiple reasons.  
6 BFS is not a party to the case and under the circumstances, the Administrative Law  
7 Judge has no jurisdiction to issue or compel compliance with such an order. As  
8 referenced previously, it is unknown if BFS had knowledge of the Respondent's answer  
9 at the time the hearing request was sent to Office of Administrative Hearings.  
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11 **Order**

12 In view of the foregoing, the Respondent's motions for attorney fees and the  
13 Respondent's motion to require the Department of Building and Fire Safety to provide  
14 an explanatory memorandum, are denied.  
15

16 Done this day, August 25, 1999  
17

18 \_\_\_\_\_  
19 Allen Reed  
20 Administrative Law Judge  
21

22 Original transmitted by mail this  
23 \_\_\_\_ day of \_\_\_\_\_, 1999, to:  
24

25 Department of Building & Fire Safety  
26 N. Eric Borg, Director  
27 99 E. Virginia, Suite 100  
28 Phoenix, AZ 85004  
29 ATTN: Michelle M. Castaneda  
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