

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 25, 2019

CASE: 2019-00063SA

Citation: 1507451 Ontario Ltd. v York Region Standard Condominium Corporation No. 1302, 2019 ONCAT 23

Order under section 1.44 of the *Condominium Act, 1998*

Member: Ian Darling, Chair

The Applicant
1507451 Ontario Ltd.

Colin Cochrane, Paralegal

The Respondent
York Region Standard Condominium Corporation No.
1302

Tom Lato, Representative

Hearing: May 29, 2019 to July 10, 2019, Written online hearing

REASONS FOR DECISION

A. OVERVIEW

- [1] The Applicant is a unit owner of York Region Standard Condominium Corporation No. 1302 (YRSCC 1302). The applicant requested an order from the Tribunal to enforce a Settlement Agreement. The agreement was created by the parties in Stage 1 - Negotiation using the Condominium Authority Tribunal Online Dispute Resolution system (CAT-ODR).
- [2] The settlement agreement was entered into on December 19, 2018 to resolve case 2018-00357R - 1507451 Ontario Ltd. & York Region Standard Condominium Corporation No. 1302.
- [3] The issues in dispute in case 2018-00357R related to accessing records, and a possible penalty for refusing to provide a record. The settlement agreement listed the following records and information that were sought by the applicant:
 - “a - Recent and up-to-date copy of condo by-laws
 - b - A copy of audited financials since 2015 - as per by-laws
 - c - A complete list of the board of directors and associated mailing addresses
 - d - The location, date, and times the condo board meet
 - e - All signed maintenance and upkeep contracts relating to the unit in question
 - f - The monetary value of the Condo reserve fund
 - g - All Correspondence for the condo corporation.”

[4] The terms of the settlement were:

1507451 Ontario Ltd. proposes that a meeting be held on February 1st of 2019 at which all outstanding documents will be provided by YRSCC 1302. If all requested documents are not provided at this juncture YRSCC#1302 also agrees to pay all costs incurred by 1507451 Ontario Ltd. (including legal) through the process.

[5] The parties confirmed that the meeting was held on February 2nd. The applicant asserted that the records provided at the meeting were incomplete. They also stated that not all the requested records were provided. On May 5th, the Applicant submitted a new case to the Tribunal to enforce the settlement agreement. They also asked for a penalty against the corporation for refusing to provide records.

[6] I find that the Respondent did not comply with the Settlement Agreement, and a penalty of \$750.00 and costs of \$5597.00 are awarded against the Respondent.

B. PRELIMINARY ISSUES

[7] The Respondent was notified and joined the case on the CAT-ODR system on May 24, 2019 but did not respond to any messages. At my request, on June 6th the CAT Clerk contacted the Respondent to remind them that they needed to participate in the online hearing. The Respondent posted its one and only written message on June 11th. They were given opportunities to participate throughout the hearing but remained silent.

[8] The Respondent's single message reads as follows (In the following quote "... " is used to indicate sections edited by the Tribunal to remove personal information):

In follow up to our Settlement Agreement of December 19, 2018 in related Case: 2018-00357R, a purported Turn Over Meeting was called for on proper notice to all 5 Unit owners to be held on the adjoining property ... on February 1, 2019.

Unfortunately, only Unit 5 was represented ... at the appointed time and place. A quorum for formal turnover was not met because of the collective fault of the remaining Unit owners. Nonetheless we proceeded to address the remaining issues in the Settlement Agreement and related management of owner concerns. Any delay, rightly or wrongly, in holding an earlier Turn Over Meeting was then explained as a function of current management attending to repair and replacement issues in certain Units, all of which I believe (*sic*) to be completed at this time.

With Unit 5's agreement expressed in conversation directly with Mr. Cochrane a further attempt to set and proceed with a Turn Over Meeting will now go forward for a date of mutual convenience and place.

C. ISSUES & ANALYSIS

[9] The Tribunal identified three issues to be decided in the hearing.

1. Has the Respondent complied with the Settlement Agreement?
2. Should the Tribunal impose a penalty for refusing to provide access to records?
3. Will the Tribunal order an award of costs to the Applicant?

Issue 1: Has the Respondent complied with the Settlement Agreement?

[10] The evidence shows that a meeting occurred, and that several of the requested records were shown to the Applicant. The Applicant's evidence demonstrates that the meeting did not satisfy the terms of the agreement because not all the records were provided. This is indicated by messages from the Applicant to the Respondent following the meeting. The Respondent's solitary message made no attempt to confirm that they complied with the Settlement Agreement.

[11] In its submissions, the Applicant stated that the Respondent satisfied some of the terms of the agreement when it provided the Corporation's by-laws, the director information (names and mailing addresses), maintenance contracts, and correspondence.

[12] The Applicant stated that the Respondent did not provide the location, date and times of board meetings because none had been held. Although included in the Settlement Agreement, this is a request for information, rather than a specific record.

[13] The Applicant considered two aspects of the agreement unresolved. It stated that the financial statements were informal and were not in accordance with Generally Accepted Accounting Principles. The agreement was for audited financial statements.

[14] They also indicated that the Reserve Fund information was incomplete, informal and not up to date. Therefore, the Reserve Fund information is also outstanding.

[15] The agreement was that the Respondent would provide audited financial statements. Section 66 of the Act provides the following instructions regarding audited financial statements of a condominium corporation in Ontario:

Financial statements

66 (1) A corporation shall have its financial statements prepared in the prescribed manner and in accordance with generally accepted accounting principles as are prescribed. 1998, c. 19, s. 66 (1).

Contents

- (2) The financial statements shall include,
- (a) a balance sheet;
 - (b) a statement of general operations;

- (c) a statement of changes in financial position;
- (d) a statement of reserve fund operations;
- (e) prescribed information relating to the reserve fund study and the operation of the reserve fund;
- (f) an indication of the aggregate remuneration paid to the directors in that capacity and the aggregate remuneration paid to the officers in that capacity; and
- (g) the additional statements or information that the regulations require. 1998, c. 19, s. 66 (2); 2015, c. 28, Sched. 1, s. 146 (1).

Approval

(3) The board shall approve the financial statements before placing them before an annual general meeting. 1998, c. 19, s. 66 (3).

[16] Financial statements are defined as core records in Ontario Regulation 48/01.

[17] I find the Applicant's reference to a "copy of audited financials since 2015 - as per by-laws" and "the monetary value of the Condo reserve fund" to be a request for Financial statements as described in s. 66 of the Act.

[18] The financial statements provided by the Respondent did not satisfy these requirements. If they had, they would also have provided the information requested regarding the Respondent's reserve fund, which was also lacking in the documents provided by the Respondent.

[19] The Respondent did not dispute that validity of the Settlement Agreement. It did not provide any evidence to suggest that it complied with the Settlement Agreement. Based on the evidence that is before me, I find that the Respondent did not fully comply with the agreement.

Issue 2: Should the Tribunal impose a penalty for refusing to provide access to records?

[20] The Applicant requests that the Respondent be ordered to pay a penalty under section 1.44(1)6 of the Act. This section allows the Tribunal to order a penalty to be paid to the Applicant if the Respondent refused to provide the requested records without a reasonable excuse.

[21] The Applicant is entitled to the records. The applicant has the right to request and receive the Financial Statements because they are specifically identified as core records in the Regulations under the Act. The required contents of the financial statements are further defined in s.66. Based on the evidence before me, the Respondent has not provided these records.

[22] The Respondent stated that the records had not been provided. They indicated that they had not provided the records because the Turn-over meeting had not yet occurred. They stated that it was "a function of current management attending to

repair and replacement issues in certain Units”. It is not clear to me how this is relevant to either the holding of the meeting or the provision of records.

- [23] There is no evidence before me to show that the Respondent has a reasonable excuse for not providing the Financial Statements. The Respondent agreed to provide records in a negotiated agreement and failed to meet the terms of the agreement. The evidence before me is that the Respondent attended the meeting, presented incomplete records, then did not take any further action until the case to enforce the Settlement Agreement was filed with the Tribunal. Once the case was submitted, the Respondent offered to schedule another Turn-over Meeting but did not actively participate in these proceedings. No evidence has been provided indicating that the Respondent has, at any point, offered a reasonable excuse for withholding the records.
- [24] I find that the Respondent has without reasonable excuse refused to permit the Applicant to examine or obtain copies of records they are entitled to under s.55(3) of the Act. Therefore, a penalty is appropriate.
- [25] I must next consider the amount of the penalty.
- [26] The Applicant requested a penalty in the range of \$500-\$1000. They cited previous Tribunal cases, with particular reference to *Terence Arrowsmith v Peel Condominium Corporation* No. 94, 2018 ONCAT 10. In that case, the Tribunal awarded a \$500 penalty. I accept that Arrowsmith is a good comparator based on the number and type of records in question.
- [27] In determining the amount of the penalty, I have also considered that the Respondent did not meaningfully participate in this hearing process despite being notified several times that this hearing was happening. The Respondent did not participate in the case and failed to meet the terms of the Settlement Agreement. The non-participation in the hearing was an ongoing refusal to provide the record.
- [28] The Respondent met some of the terms of the Settlement Agreement but failed to provide several years of Financial Statements. In these circumstances, I find that a penalty of \$750 is appropriate.

Issue 3: Will the Tribunal order an award of costs to the Applicant?

- [29] Rules 32.1 and 33.1 of the Tribunal’s Rules of Practice speak to the recovery of fees and expenses, with legal fees generally not being recoverable unless there are exceptional reasons.
- [30] The Applicant has requested costs of \$5597 against the Respondent, citing the terms of the Settlement Agreement which states:

If all requested documents are not provided at this juncture YRSCC#1302 also agrees to pay all costs incurred by 1507451 Ontario Ltd. (including legal) through the process.

[31] The Applicant provided invoices to support costs of \$5597. The invoices were for a paralegal to represent the Applicant in communication with the Respondent before the case was submitted to the Tribunal, and throughout the Tribunal Decision process. These costs are reasonable for the amount of work involved in conducting the case.

[32] The Respondent did not make any submissions related to costs.

[33] The Applicant was successful in this case. The Settlement Agreement is clear that the Respondent would pay legal costs. Therefore, in this case, I find that this is an exceptional reason that justifies an order for costs, including legal fees, in the amount requested by the Applicant.

ORDER

[34] The Tribunal orders that:

1. The Respondent provide audited financial statements since 2015 to the Applicant within 90 days of this order. The form of the financial statements must meet the requirements of s.66 of the Act.
2. Within 30 days of this order, the Respondent must pay the Applicant a penalty of \$750.
3. Within 30 days of this order, the Respondent is to pay the Applicant's costs of \$5597.
4. In the event that the penalty or costs are not provided to the Applicant within 30 days of this Order, the Applicant is entitled to set-off this amount against the common expenses attributable to the Applicant's unit(s) in accordance with Section 1.45(3) of the Act.
5. In order to ensure that the Applicant does not have to pay any portion of this cost award, the Applicant shall also be given a credit toward the common expenses attributable to the Applicant's unit(s) in the amount equivalent to the Applicant's proportionate share of such costs.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: July 25, 2019