

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 13, 2020

CASE: 2020-00034R

Citation: Surinder Mehta v. Peel Condominium Corporation No. 389, 2020 ONCAT 10

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

Member: Nicole Aylwin

The Applicant

Surinder Mehta

Self-represented

The Respondent

Peel Condominium Corporation No. 389

Hearing: February 21, 2020 to March 16, 2020, Written Electronic Hearing

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Mr. Mehta, is a unit owner in Peel Condominium Corporation No. 389 (“PCC 389”). On December 27, 2019, Mr. Mehta submitted a Request for Records to the Respondent, PCC 389. In his request, Mr. Mehta asked for a series of board meeting minutes, several sets of financial records and the agreements between PCC 389 and the persons and/or companies contracted to do a number of specified renovations to the condominium. He also requested copies of the bids related to these renovation projects. The request was made on the prescribed form as per the Condominium Act, 1998 (the “Act”).
- [2] According to Mr. Mehta, PCC 389 never responded to his request formally as required by s. 13.3(6) of Regulation 48/01 (“the Regulation”), or informally by any other means. This lack of response prompted Mr. Mehta to file a case with the Tribunal.
- [3] Mr. Mehta has asked the Tribunal to order that he be provided with all of the records he requested, and that PCC 389 pay a penalty for refusing to provide the records without a reasonable excuse.

- [4] Mr. Mehta notified PCC 389 of this proceeding by registered mail on January 30, 2020. A second Notice of Case was dropped in the condominium office mailbox on February 6, 2020. PCC 389 was also sent an invitation from the Tribunal via its online platform to participate in this proceeding. The invitation was sent to the email address listed Condominium Authority of Ontario's public registry. I am satisfied that PCC 389 had proper notice of this case and therefore have proceeded in their absence.
- [5] As PCC 389 did not respond to the Notice of Case, no Stage 1- Negotiation or Stage 2 – Mediation took place. This case proceeded directly Stage 3 – Tribunal Decision. At no time did PCC 389 join or participate in the Stage 3 – Tribunal Decision proceeding. They have not provided any evidence or submissions on the issues.
- [6] I have identified the issues as follows:
- I. Is Mr. Mehta entitled to the records he has requested as per s. 55 of the Act?
 - II. Should PCC 389 be assessed a penalty under s.1.44(1) of the Act for refusing to provide the requested records without a reasonable excuse?
- [7] At the outset of the hearing it was not clear what records Mr. Mehta was requesting. In some instances, Mr. Mehta seemed to be asking the Tribunal to order access to information rather than a record that contains information, which it cannot do. After reviewing the Request for Records form as submitted by Mr. Mehta to PCC 389 and receiving clarification from Mr. Mehta, I understand that the following records are the subject of this hearing:
- a) Minutes of board meetings for the period of May 2014 though to September 2018 and October 2019 though to December 2019.
 - b) Monthly financial statements from January 2015 through to December 2019
 - c) Contracts between PCC 389 and the persons and/or companies that carried out the following renovations:
 - d) The painting of the interior and exterior of the building.
 - e) The replacement of the carpets in the building.
 - f) The replacement of the locks in the building including the locks on all the condominium units.
 - g) The replacement of the lights in the building including the lights in the parking area.
 - h) Copies of all of the bids that PCC 389 received for the projects as listed above.

- [8] Although Mr. Mehta also requested the record of owners and mortgagees in his Request for Records, he indicated that he was no longer seeking this record, so it was not included as a record at issue in this hearing.
- [9] For the reasons set out below, I find that Mr. Mehta is entitled to examine and obtain copies of the minutes, financial statements and the contracts for the renovations as specified. However, as explained later in this decision, while I order PCC 389 to provide copies of the financial statements and the contracts, I do not, order that they provide copies of the minutes, since these minutes likely do not exist. In regard to the requested bids, I find that there is not enough evidence to determine entitlement to these records.
- [10] As no reasonable excuse has been provided by PCC 389 for refusing Mr. Mehta the records he is entitled to, I find a penalty of \$1500 is warranted in this case.

B. ISSUES & ANALYSIS

Issue 1: Is Mr. Mehta entitled to the records he has requested as per s. 55 of the Act?

- [11] In deciding if Mr. Mehta is entitled to receive copies of the records requested, I have considered two questions. First, is the record requested one that the corporation is required to keep under the Act. Second, if so, is Mr. Mehta entitled to the records and are there any exceptions that apply.
- [12] I deal first with the minutes, financial statements and contracts for the specified renovation projects.
- [13] Section 55(1) of the Act provides a list of the types of records that a condominium corporation is required to keep in order for a corporation to meet a minimum standard of adequate record keeping under the Act. Although not exhaustive, this list includes many of the records requested by Mr. Mehta, namely: minutes of board meetings, the financial records of the corporation, and a copy of all agreements entered into by or on behalf of the corporation.
- [14] As these records are to be kept by the corporation, as an owner, Mr. Mehta is entitled to examine or obtain copies of these records, subject to any appropriate redactions, under s. 55(3) of the Act. While s. 55(4) of the Act does provide some exceptions to this entitlement, there is no evidence before me to indicate that any of the exceptions would apply in this case.

- [15] However, while Mr. Mehta is entitled to these records, I will not be ordering that PCC 389 provide Mr. Mehta with copies of the minutes. This is because, I find, that on the balance of probabilities, these records likely do not exist.
- [16] In his testimony, Mr. Mehta stated that he believes that the minutes that he requested do not exist because the Board of PCC 389 is not holding regular board meetings and thus are not keeping minutes as required by the Act. He testified that this belief was confirmed for him during his participation in another recent Tribunal case between him and PCC 389 where a different set of board meeting minutes was at issue. This case to which Mr. Mehta refers is, *Surinder Mehta v. Peel Condominium Corporation No. 389*, 2020 ONCAT 9 for which I was the adjudicator and found that that PCC 389 was not keeping adequate minutes of board meetings as required by the Act.
- [17] While *Surinder Mehta v. Peel Condominium Corporation No. 389*, 2020 ONCAT 9 deals only with a year's worth of minutes (September 2018-2019), the findings in the decision, do accord with Mr. Mehta's testimony that board meeting minutes are not being and have not been properly maintained as required by the Act. Since no evidence has been put before me in this case to suggest that records of board meeting minutes have been adequately maintained for the period, or any part of the period, requested by Mr. Mehta, I accept that, on the balance of probabilities, Mr. Mehta's belief is reasonably held and that the minutes requested likely do not exist. Since I cannot order access to a record that does not exist, nor can I order that a record be created by a corporation, I will not be ordering that PCC 389 provide copies of the board meeting minutes to Mr. Mehta.
- [18] This leaves Mr. Mehta's request for the bids for the specified renovation projects. Bids, or more broadly records relating to the procurement process, are not expressly listed as a type of record that the corporation must maintain. However, this does not necessarily mean that a corporation does not need to keep them. The lists of records a corporation must keep under s. 55(1) of the Act and s. 13.1(1) of the Regulation, are not intended to be exhaustive. A corporation may reasonably be expected to keep other records, depending on the specific activities and circumstances of the condominium, in order to be found to be keeping adequate records, which is the fundamental point of s. 55(1) of the Act.
- [19] In this instance, I have no evidence before me detailing the procurement processes of PCC 389. More importantly, I have no evidence before me that would allow me to determine if PCC 389 was required to solicit bids for the specific

projects listed by Mr. Mehta. Thus, I cannot determine if these records exist or ought to exist. Even if they did exist, I have no submissions from the parties on which to determine whether or not the principle of “adequacy” in s. 55(1) of the Act would require the condominium to keep all of the records from its bidding process, regardless of the lack of mention of it in the Act, Regulation or by-laws of the corporation. I am not inclined to make a determination on this point without such submissions. Therefore, there is no basis on which I can conclude, in this case, that Mr. Mehta is entitled to receive a copy of the bids for the renovation projects he has requested.

Issue 2: Should PCC 389 be required to pay a penalty under s. 1.44(1) of the Act for refusing to provide the records without a reasonable excuse?

- [20] Under s. 1.44(1) the Tribunal may order a condominium corporation “to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under s.55(3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.
- [21] As PCC 389 did not participate in this hearing, no reasons have been provided for refusing the records requested by Mr. Mehta, reasonable or not. Given that Mr. Mehta is entitled to many of the records he requested, and no reasonable excuse has been provided, I find he is entitled to a penalty under the Act.
- [22] In determining the amount of the penalty awarded, factors such as the type of records refused, and the number of records refused have been considered by the Tribunal. In this case, PCC 389 has refused Mr. Mehta, without a reasonable excuse, a large number of records which are required to be maintained by the Act and Regulations. These include several years’ worth of meeting minutes; five years’ worth of financials statements; and, four contracts.
- [23] However, there are additional circumstances specific to this case that must be considered when determining the amount of the penalty awarded. Specifically, circumstances relating to the request for minutes of board meetings.
- [24] As noted above, as part of his testimony Mr. Mehta indicated that he was aware that the Board was not holding regular board meetings and thus that the meeting minutes he requested did not exist. The responsibility to keep adequate records under s. 55(1) of the Act and to provide owners with the opportunity to examine these records as per s. 55(3) of the Act remains squarely on the shoulders of the

PCC 389. However, I must acknowledge that in making a request for records that he had good reason to believe didn't exist due to his participation in another Tribunal proceeding, and in asking for PCC 389 to be penalized the failure to provide these records, Mr. Mehta has effectively requested that PCC 389 be penalized twice, in a very short amount of time, for its failure to keep proper board meeting minutes.

- [25] Part of the purpose of the penalty is to impress upon corporations the need to take seriously their record keeping responsibilities under the Act and to encourage corporations to change their practices to meet these responsibilities. It follows that corporations, in some circumstances, may be given time to adjust their practices when they are found not to align with these responsibilities. The length of time that a corporation needs to change its practices will likely be different in each situation. In some instances, corporations may choose not to change their behavior in response to a decision from this Tribunal and thus further penalties for the same record keeping infractions may be warranted. However, the prior decision between these parties cited in paragraph 16 and 17, which ought to have alerted PCC 389 to its failure to keep proper minutes of board meetings under the Act, is very recent. In this instance, PCC 389 has not had a reasonable amount of time to change the practices when it comes to keeping adequate minutes.
- [26] Moreover, I note that when a penalty is ordered by the Tribunal it is not the individual board members that must pay the penalty, it is the corporation. That is, all owners share in paying the penalty for a Board's failure to meet its legal requirements under the Act. In this case, it would not be fair to ask owners to pay for the same infraction twice, particularly given that PCC 389 has not had adequate time to adjust its record keeping practices to bring it in line with the Act.
- [27] Thus, the refusal to produce the meeting minutes of the board will not be factored into the penalty awarded. To be clear, this finding is not meant to excuse the conduct of PCC 389, or to open the door for other corporations to assume that having already been penalized for an infraction by the Tribunal, that they will not be further penalized. PCC 389 should be keeping proper board meeting minutes and they should provide owners with proper access to them as per the Act. However, in this unique case, not factoring the failure to provide minutes into the penalty seeks to balance the need to rightly encourage corporations to take seriously their legal responsibility to maintain and provide access to records, with the need to be fair by ensuring that owners are not overly penalized as a result of their board's action or inaction.

[28] The other set of records that do not factor into the penalty awarded are the bids requested by Mr. Mehta. Given my finding that in this case there is not enough evidence to determine entitlement to these records, I cannot find that PCC 389 refused them without a reasonable excuse.

[29] Putting the minutes and the bids aside, PCC 389 still refused Mr. Mehta a significant number of records without a reasonable excuse, i.e. several years' worth of financial statements and several contracts for common elements renovation projects.

[30] While the entitlement to both of these types of records is clear in this case, it is worth noting that financial statements play a particularly important role in the governance of the Corporation as they allow owners to keep informed about the financial health of the corporation. They are so important that the Act lists these records as a "core-record" under the Regulation. The entitlement to the financial statements is unquestionable and they should have been provided to Mr. Mehta. Additionally, the contracts for the renovations as listed should not have given the corporation pause. The contracts requested are for renovations to common elements, and there is no evidence that s. 55(4) exceptions would apply.

[31] Thus, I find that a penalty of \$1500 is appropriate in this case. The penalty is awarded as PCC 389 has without reasonable excuse refused to permit Mr. Mehta to examine or obtain copies of the requested financial statements and contracts.

ORDER

[32] For the reasons set out above, the Tribunal orders that:

1. PCC 389 shall provide Mr. Mehta with the following records within 30 days of this decision:
 - a. Monthly financial statements from January 2015 thorough to December 2019.
 - b. Contracts between PCC 389 and the companies that carried out the following renovations:
 - i. The painting of the interior and exterior of the building.
 - ii. The replacement of the carpets in the building.
 - iii. The replacement of the locks in the building including the locks on all the condominium units.

- iv. The replacement of the lights in the building including the lights in the parking area.
2. These records will be provided in electronic format where available. If not available electronically, the records will be provided in paper copy. There will be no cost to Mr. Mehta for the records.
3. PCC 389 will pay a penalty in the amount of \$1500 to Mr. Mehta within 30 days of this decision.
4. In the event that the penalty is not provided to Mr. Mehta within 30 days of this Order, Mr. Mehta will be 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 Mr. Mehta does not have to pay any portion of the penalty and cost awards, he will also be given a credit toward the common expenses attributable to his unit in the amount equivalent to his proportionate share of the penalty and costs awarded.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released On: April 13, 2020