

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 29, 2020

CASE: 2019-00252R

Citation: Syed Razi Haider Naqvi v. Peel Condominium Corporation No. 389, 2020 ONCAT 11

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

Adjudicator: Mary Ann Spencer, Member

The Applicant

Syed Razi Haider Naqvi

Self-represented

The Respondent

Peel Condominium Corporation No. 389

Azza Nefzaoui, Agent

Hearing: February 11, 2020 to March 16, 2020 and April 6, 2020 to April 21, 2020,
Written electronic hearing

REASONS FOR DECISION

A. OVERVIEW

- [1] Syed Razi Haider Naqvi (the “Applicant”) is the owner of a unit of Peel Condominium Corporation No. 389 (the “Respondent”). On September 19, 2019, he submitted a Request for Records asking for an electronic copy of the Record of Owners and Mortgagees. In the Board Response to Request for Records dated October 22, 2019, the Respondent advised that it would not provide the requested record.
- [2] The Applicant requests an Order from the Tribunal directing the Respondent to provide the Record of Owners and Mortgagees. He asks the Tribunal to assess a penalty to the Respondent for refusing to provide the record and he requests his costs in this matter.
- [3] The Respondent’s position is that the Applicant is not entitled to receive the requested record because he has a history of circulating private information on social media. Further, the corporation was acting in accordance with the provisions

of the Personal Information and Protection of Electronic Documents Act (PIPEDA) with respect to the release of owners' information.

- [4] I find that the Applicant is entitled to examine or obtain a copy of the Record of Owners and Mortgagees. I also find that the Respondent refused to provide the record without reasonable excuse and I assess a penalty of \$500. I award the Applicant costs of \$200.

B. PROCEDURAL MATTERS

- [5] The Stage 3 proceeding in this matter began on February 11, 2020 as a written hearing on the Tribunal's CAT-ODR system.
- [6] Mr. Naqvi and Ms Nefzaoui were the only witnesses in this matter. To simplify the hearing process, I instructed them to combine their opening statements with their witness testimony. On March 16, 2020, during the period when they were preparing cross-examination questions, Ms Nefzaoui requested an adjournment to April 6, 2020 due to the provincial announcements of closures with respect to the COVID-19 situation.
- [7] I granted the adjournment. I advised Ms Nefzaoui that she could access the CAT-ODR system from any device connected to the Internet and I modified the method of posting cross-examination questions to the system to ensure she would not need to access office equipment in order to participate when the hearing resumed.
- [8] Ms Nefzaoui did not re-join the proceeding on April 6, 2020. She subsequently failed to respond to multiple messages posted on the CAT-ODR system or to telephone messages left by Tribunal staff who, at my request, attempted to contact her. Further, Mr. Naqvi advised that Ms Nefzaoui had been present in the Respondent's office during the adjournment period.
- [9] On April 17, 2020, the hearing continued without Ms Nefzaoui's participation. As a result, no cross-examinations took place. Therefore, this decision is based on the opening/witness statements of both parties and on the closing submissions of Mr. Naqvi.

C. ISSUES

- [10] The issues to be addressed are:

- a. Is the Applicant entitled to examine or obtain a copy of the Record of Owners and Mortgagees?
- b. Is the Applicant required to provide reasons to support his request for the Record of Owners and Mortgagees in order to access the record?
- c. Should the Respondent be assessed a penalty for refusing to provide the Record of Owners and Mortgagees?
- d. Is the Applicant entitled to an award of costs?

D. EVIDENCE AND ANALYSIS

Issue 1: Is the Applicant entitled to examine or obtain a copy of the Respondent's Record of Owners and Mortgagees?

Issue 2: Is the Applicant required to provide reasons to support his request for the Record of Owners and Mortgagees in order to access the record?

[11] The Act establishes an owner's right to examine or obtain a copy of the Record of Owners and Mortgagees unless it is not solely related to the owner's interests having regard to the purposes of the Act.

[12] Section 55(1) of the Act requires a condominium corporation to keep adequate records and sets out a list of those records, which includes "the records required under subsection 46.1(3)." Section 46.1(3) requires a corporation to keep a record of owners and mortgagees which includes the unit number, the name of the owner or mortgagee, and their address for service in Ontario.

[13] The right of an owner to examine or obtain copies of the corporation's records is set out in Section 55(3) of the Act:

55(3) The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4).

[14] Section 55(4) of the Act sets out exemptions to an owner's right to examine or obtain copies of records. While one of these exemptions is records "relating to specific units and owners", this does not apply to the Record of Owners and Mortgagees. Section 55(5)(c) states that the exemption does not prevent an owner

“from examining or obtaining copies of the record that section 46.1 requires the corporation to maintain.”

- [15] Ms Nefzaoui testified that Mr. Naqvi has a history of “not safeguarding private information” and stated that he had circulated information on social media platforms and shared information with other individuals who would not safeguard it. She indicated that there was a possibility that the information might be inappropriately used by others for commercial or criminal activities. However, she provided no details to support this testimony.
- [16] Section 13.3(1) of Ontario Regulation 48/01 (the “Regulation”) states that an owner’s right to examine or obtain a copy of a record only applies if the request “is solely related to that person’s interests as an owner, a purchaser or a mortgagee of a unit, as the case may be, having regard to the purposes of the Act.” However, section 13.3(2) of the Regulation states that the individual requesting records “is not required to provide the corporation with a statement of the purpose of the request.” This apparent dichotomy is addressed on the prescribed Request for Records form which asks the requester to affirm that their request is solely related to their interests under the Act. Mr. Naqvi affirmed that his request was solely related to his interests as an owner on the Request for Records form he submitted to the Respondent.
- [17] Ms Nefzaoui further testified that the majority of owners and residents do not want their information to be released without their consent and submitted that the Respondent was acting in accordance with the provisions of the Personal Information and Protection of Electronic Documents Act (PIPEDA) when it refused to provide the requested record.
- [18] I reject Ms Nefzaoui’s argument that the corporation’s refusal to provide the record to Mr. Naqvi was in accordance with PIPEDA. The purpose of PIPEDA includes “to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information.” Section 4(1)(a) states that PIPEDA applies to organizations in respect of personal information that “the organization collects, uses or discloses in the course of commercial activities.” There is no evidence before me to indicate that the Respondent is engaged in commercial activities. And, even if it could be argued that the Respondent was engaged in commercial activities, section 7(3)(i) states that the organization may disclose information without an individual’s knowledge or consent if it is required by law. As noted above, section 55(3) of the Act states that the corporation “shall” permit an owner to examine records.

[19] I find that Mr. Naqvi is entitled to receive the Record of Owners and Mortgagees. The Act sets out a clear entitlement to the record. A requester is not required to provide reasons for their request. And, the consent provisions of PIPEDA do not apply to Mr. Naqvi's request.

Issue 3: Should the Respondent be assessed a penalty for refusing to provide the Record of Owners and Mortgagees?

[20] Section 1.44(1)6 of the Act provides that the Tribunal may order a penalty to be paid if it finds that the corporation has, without reasonable excuse, refused to permit a person to examine or obtain records.

[21] In this case, I find that the Respondent's reasons for refusing to provide Mr. Naqvi with the requested Record of Owners and Mortgagees to be without merit. Ms Nefzaoui provided no detail to support her testimony that Mr. Naqvi had inappropriately circulated and/or failed to safeguard personal information. And, by failing to return to the proceeding after its adjournment, she denied Mr. Naqvi the opportunity to cross-examine her on these allegations. That the Respondent's owners might not wish their information to be released is not a relevant consideration; the Respondent and its owners must comply with the legislated requirements. And, while Ms Nefzaoui submitted that the Respondent was acting in accordance with the provisions of PIPEDA, I have found that the provisions of PIPEDA do not apply. Therefore, I find that the Respondent has no reasonable excuse for refusing to provide Mr. Naqvi with the record and a penalty is appropriate.

[22] Mr. Naqvi requested that the maximum penalty of \$5,000 be awarded and referred me to the decision in *Surinder Mehta v Peel Condominium Corporation 389*, 2020 ONCAT 9 (CanLII). I note that while the Tribunal may refer to its previous decisions for guidance, it is not bound by them. Each case before the Tribunal is decided on its own merits.

[23] One of the purposes of assessing a penalty is to deter future similar action. In determining the amount of the penalty, I have considered that the entitlement of an owner to examine or obtain a copy of the Record of Owners and Mortgagees is clearly set out the Act and that a corporation's board of directors is required to understand and comply with its provisions. However, while I have found that the Respondent's reasons for refusal do not comprise a reasonable excuse under the Act, I do consider the Respondent's apparent

misunderstanding of the requirements of PIPEDA to be a mitigating factor. Therefore, I assess a penalty of \$500.

Issue 4: Is the Applicant entitled to an award of costs?

[24] Mr. Naqvi requests that the Tribunal award him costs of \$200 representing the fees he paid to participate in each of the Tribunal's three stages. Because Ms Nefzaoui did not participate in the latter part of this proceeding, I received no submission on costs on behalf of the Respondent.

[25] Rule 32.1 of the Tribunal's Rules of Practice (effective July 1, 2018) states that the Tribunal may order a User to pay any reasonable expenses related to the use of the Tribunal, including any fees paid to the CAT by the other User. Mr. Naqvi was required to apply to the Tribunal in order to receive the record which the Act entitles him to and therefore I award him \$200 in costs.

E. CONCLUSION

[26] I find that the Applicant is entitled to examine or receive a copy of the Record of Owners and Mortgagees. I also find that the Respondent shall pay a penalty of \$500 to the Applicant because it refused to provide this record without reasonable excuse. The Respondent shall also pay the Applicant \$200 in costs.

ORDER

[27] For the reasons set out above, in accordance with s. 1.44 of the Act, the Tribunal orders:

1. Within 30 days of the date of this decision, the Respondent shall provide the Applicant with an electronic copy of the Record of Owners and Mortgagees. If an electronic copy is unavailable, the Respondent shall provide a paper copy. There shall be no fee charged to the Applicant for this record.
2. Within 30 days of the date of this decision, the Respondent shall pay a penalty of \$500 to the Applicant.
3. Within 30 days of the date of this decision, the Respondent shall pay costs of \$200 to the Applicant.

4. To ensure the Applicant does not pay any portion of the costs or penalty awards, the Applicant shall be given a credit towards the common expenses attributable to his unit in the amount equivalent to his unit's proportionate share of the above costs and penalty.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released On: April 29, 2020