

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 24, 2020

CASE: 2020-00029R

CITATION: Tahseen v Metropolitan Toronto Condominium Corporation No. 818, 2020 ONCAT 22

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

Adjudicator: Marc Bhalla, Member

The Applicant

Michael Tahseen

Self-represented

The Respondent

Metropolitan Toronto Condominium Corporation No. 818

Michael Solomon, Paralegal

Hearing: March 17, 2020 to June 9, 2020, written online hearing

REASONS FOR DECISION

A. **INTRODUCTION**

- [1] The Stage 3 hearing started on March 17, 2020. The same day, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The Condominium Authority Tribunal's (the "Tribunal") online process allowed the hearing to proceed. Despite the pandemic, this case generally fell within the typical timeline of cases before this Tribunal. I commend both parties for their active and responsive participation.
- [2] The Applicant is a unit owner of Metropolitan Toronto Condominium Corporation No. 818, the Respondent. On December 11, 2019, the Applicant emailed the Respondent a Request for Records form requesting electronic records. The records requested were the Respondent's Record of Owners and Mortgagees (the "Owners' List"), copies of 46 proxies used at the Respondent's December 9, 2019 Annual General Meeting (the "Proxies") and the List of Owners/Representatives who attended the December 9, 2019 Annual General Meeting (the "AGM Attendance List"). The Applicant claims that the Respondent has refused to provide the records requested and seeks penalties of \$15,000, punitive damages of \$25,000 and costs from the Respondent.

- [3] The Respondent is willing to provide both the Owners' List and the Proxies in a redacted format. It suggests the Applicant did not make payment of the cost estimate for the records requested and is not entitled to the records until they do. The Respondent claims that the Applicant is vexatious and asks that the Applicant be reprimanded for making a frivolous claim. The Respondent seeks costs and \$5,000 from the Applicant in punitive damages.
- [4] The Respondent's Representative had COVID-19-related office closures. They did not let such delay the hearing much. When it seemed the Applicant would not make a deadline, the Respondent's Representative suggested an extension was appropriate. This is how parties before this Tribunal should treat one another, respectfully.
- [5] The material facts of this case are not in dispute. The Respondent's witness corroborated the Applicant's evidence surrounding the timeline, nature and content of email communications between the parties.
- [6] I find the Applicant is entitled to the three records requested. No fee is payable for the Owners' List. The Respondent may require the Applicant to pay the \$120 cost estimate for redaction before providing the Proxies and the AGM Attendance List to the Applicant. If the Respondent's actual redaction costs exceed \$120, it may charge the Applicant an extra fee of up to \$12 after providing the Applicant the records. The Applicant is awarded costs of \$200 and a penalty of \$750 for the Respondent's refusal to provide the Applicant the Owners' List and the AGM Attendance List.

B. ISSUES & ANALYSIS

- [7] Based on the evidence before me, I identified four issues to be decided:
- 1: Is the Applicant entitled to the Owners' List, the Proxies and the AGM Attendance List (collectively, the "Requested Records")?
 - 2: What is the appropriate fee, if any, for the Requested Records?
 - 3: Is the Applicant permitted to share information in the Requested Records with others?

4: Is the Applicant entitled to a penalty under section 1.44(1)6 and/or compensation under section 1.44(1)3 of the *Condominium Act, 1998* (the “Act”) and/or costs from the Respondent? Is the Respondent entitled to costs and/or damages?

1: Is the Applicant entitled to the Owners’ List, the Proxies and the AGM Attendance List?

- [8] Within three hours of the Applicant sending their December 11, 2019 email with the Request for Records form, the Respondent’s Office Administrator replied. Though not in the form required by section 13.3(6) of Ontario Regulation 48/01, the response stated the Respondent would provide the Applicant with the Owners’ List and the Proxies for a fee. A cost estimate of \$120 was given. The Respondent claimed the Applicant was not allowed the AGM Attendance List.
- [9] The Applicant responded the next day. They accepted the cost estimate and asked why the AGM Attendance List was denied. The Applicant has yet to make payment.
- [10] More than once in the hearing, the Respondent’s submissions likened the situation to someone ordering a latte at Starbucks and not paying for it. The Respondent claimed payment was needed for the Applicant to be entitled to receive the Owners’ List and the Proxies.
- [11] With the Owners’ List, the Starbucks analogy fails. The Applicant is not a customer and the Respondent is not a coffee merchant. The Applicant is a unit owner and the Respondent is a condominium corporation. It is a different relationship. The Applicant has rights and the Respondent has responsibilities to its unit owners. Requesting records is not a commercial transaction. The Act does not call for owners to pay a fee for every record they request. When fees apply, they must be reasonable and represent actual costs of the condominium.
- [12] The Owners’ List is a record required by section 46.1(3) of the Act and section 1(1)7 of Ontario Regulation 48/01. Several decisions released by this Tribunal address this record. *Syed Razi Haider Naqvi v Peel Condominium Corporation No. 389, 2020 ONCAT 11 (CanLII)* (“Naqvi”), *Tharani Holdings Inc. v Metropolitan Toronto Condominium Corporation No. 812, 2019 ONCAT 3 (CanLII)* and *Susan Ruuska v Brant Condominium Corporation No. 35, 2019 ONCAT 28 (CanLII)* all confirm that a Record of Owners and Mortgagees is a record that condominium owners are entitled to. The Applicant is entitled to the Owners’ List.

- [13] There was no dispute before me about the Applicant's entitlement to the Proxies, redacted.
- [14] On December 31, 2019, the Respondent's Office Administrator replied to the Applicant's ask for an explanation in denying the AGM Attendance List. They stated "... under the Privacy Act most owners would not allow to dispose their privacy to other owner." In the hearing, the Respondent clarified that it felt the Personal Information Protection and Electronic Documents Act ("PIPEDA") allowed it to refuse the Applicant the AGM Attendance List.
- [15] This Tribunal's decisions in *Naqvi and Patricia Gendreau v Toronto Standard Condominium Corporation No. 1438*, 2020 ONCAT 18 (CanLII) considered if PIPEDA applies to condominiums; specifically, in relation to requests for records. In those cases, the Tribunal found that PIPEDA does not apply to requests for records made under Section 55(3) of the Act. I agree.
- [16] In *Naqvi*, the Tribunal found that:
- "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."
- [17] The case of *Charlene Aquilina v Middlesex Standard Condominium Corporation No. 823*, 2019 ONCAT 21 (CanLII) ("*Aquilina*") involved a similar request to the Applicant's for the Proxies and the AGM Attendance List. In that case, a request for unredacted records was denied. The applicant was entitled to redacted records to "protect the identities of other condominium owners". In *Aquilina*, it was decided that owners are entitled to a redacted copy of an Annual General Meeting attendance list. The same reasoning applies in this case. The Applicant is entitled to the AGM Attendance List in a form that does not identify owners or their units. The Applicant is entitled to copies of the Proxies and the AGM Attendance List, redacted under section 55(4)(c) of the Act.

2: What is the appropriate fee, if any, for the Requested Records?

- [18] Section 13.3(8)4 of Ontario Regulation 48/01 states that no fee is to be charged for providing a core record in electronic form. Section 13.3(8)6i of Ontario Regulation 48/01 states that no fee applies when a core record is requested electronically, even if it is provided in paper form. The Applicant's Request for Records asked for the record electronically. The Applicant is not required to pay a fee for the Owners' List.
- [19] In Aquilina, the condominium corporation was allowed a fee for redaction. Similar circumstances also existed in Janet Cangiano v Metropolitan Toronto Condominium Corporation No. 962, 2018 ONCAT 7 (CanLII). The same applies here. The Respondent is allowed a fee for the cost of redacting the Proxies and the AGM Attendance List.
- [20] A condominium corporation claiming a fee for records should offer a cost estimate in the legislated form when replying to a request for records. In this case, the first cost estimate, of \$120, came by email from the Respondent's Office Administrator, on December 11, 2019.
- [21] On January 20, 2020, the President of the Respondent emailed the Applicant to revise the cost estimate. It increased to \$317.50 for legal advice and redaction.
- [22] Section 13.12(2)10 of Ontario Regulation 48/01 speaks to when the actual cost for a record exceeds the cost estimate provided in a reply to a record request. It confirms that extra amounts may apply after the condominium complies with section 13.12(2)9 of Ontario Regulation 48/01 and provides the record. Actual costs need to be disclosed. Extra costs are limited to the lesser of the actual cost difference, 10% of the cost estimate provided or 10% of the payment the condominium has received.
- [23] While nothing before me suggests the Respondent used the required form to reply, I find that the \$120 cost estimate qualifies as the cost estimate in section 13.12(2)4ii of Ontario Regulation 48/01 in this case. Section 13.12(2)10 of Ontario Regulation 48/01 limits how much more the Respondent can ask for, beyond the \$120 cost estimate. It can be no more than \$12.
- [24] The Applicant must pay the Respondent the cost estimate of \$120 for redaction before they can receive the Proxies and the AGM Attendance List. If the

Respondent's actual costs for redaction exceed the \$120 cost estimate, the Respondent can claim up to \$12 of extra costs from the Applicant. Extra costs can only apply after the Respondent provides the records to the Applicant and if the Respondent reveals its actual costs.

3: Is the Applicant permitted to share information in the Requested Records with others?

[25] The Applicant asked this Tribunal for direction on if they can share information contained in records they receive with other owners. The Applicant stated the community should "know the facts", "to provide awareness" to those who have invested life savings in the property. The Respondent agreed "that it is in the best interest of the community to know the facts". The facts referred to surround the election of directors at the Respondent's 2019 Annual General Meeting.

[26] In *Shelley Dubois v Algoma Condominium Corporation No. 17*, 2019 ONCAT 47 (CanLII) ("Dubois"), the Tribunal stated:

"The Applicant ... desires only to share with other owners the information contained in the records. As unit owners have a general right to communicate with one another in regard to matters and information of concern relating to their shared property and interests, I find that the Applicant is entitled to share with other unit owners the information..."

[27] The submissions of the parties on this issue in this case were minimal. In *Dubois*, the Tribunal allowed for the sharing of information from records with other owners. As no objection has been raised to suggest that the Applicant should be prevented from sharing information contained in the Requested Records in this case with other owners, I find that the same reasoning applies. The Applicant is allowed to share information contained in the Requested Records with other owners.

4: Is the Applicant entitled to a penalty under section 1.44(1)6 and/or compensation under section 1.44(1)3 of the Act and/or costs from the Respondent? Is the Respondent entitled to costs and/or damages?

[28] Both the Applicant and the Respondent sought a financial consequence for the other. The Applicant asked for \$15,000 in penalties and \$25,000 as punitive damages, along with costs, and the Respondent requested costs and \$5,000 in penalties. All requests are excessive.

[29] The Respondent is not entitled to a penalty. Section 1.44(1)6 of the Act limits the Tribunal to ordering penalties against a condominium corporation which are to be paid to a person entitled to examine or receive records. There is no authority before me that allows me to penalize the Applicant.

[30] Section 1.44(3) of the Act states that the maximum penalty awarded shall be no greater than \$5,000. The Applicant's attempts to have this case qualify for three \$5,000 penalties, as they requested three records, fail.

[31] The Tribunal has ordered a \$5,000 penalty only once, in *Surinder Mehta v. Peel Condominium Corporation 389*, 2020 ONCAT 9 (CanLII) ("Mehta"). In Mehta, this Tribunal stated:

"As has been noted in many of the Tribunal's decisions, the purpose of a penalty is to impress upon condominium corporations that they must be aware of their responsibilities under the Act, understand what is involved in meeting these responsibilities, and take these responsibilities seriously."

...

"Entitlement is clear. This is also not a situation where only one or two records have been refused. Nor, is it a situation where a reasonable excuse has been provided for the refusal. Large numbers of records, spanning many years, have not be kept as per the Act. Given the number of records refused without a reasonable excuse and the foundational nature of these records, I find the maximum penalty of \$5000 appropriate."

[32] In this case, the Respondent replied to the Applicant's Request for Records within three hours of receiving it. It sought legal advice and communicated with the Applicant about the records requested. The Respondent took the Applicant's request seriously. This case does not come close to justifying the high penalties sought.

[33] The Respondent claims it did not deny the Applicant the Owners' List. The Respondent requested a fee to redact the Owners' List. While section 55(4)(c) of the Act excludes an owner from receiving records about a particular owner or unit, section 55(5)(c) of the Act excludes records kept under section 46(1) of the Act from applying to this exclusion. The Owners' List is part of section 46(1) of the Act. It is a record that an owner can receive or examine even as it has information about particular units or owners. The Applicant has a right to the Owners' List without redaction of the names of owners, their units and addresses for service.

- [34] Section 46.1(3) of the Act states that the Owners' List should list each owner's name, unit and address for service provided by the owner, if the address is in Ontario. It should also list this information for any mortgagee on record. The information in this record is provided by owners and mortgagees under the Act. The Respondent was wrong to ask the Applicant to pay a fee for the Owners' List or to suggest the record needed redaction to remove the names of owners and their units. By only agreeing to provide the Applicant with a redacted version of the Owners' List, the Respondent refused to provide the core record to the Applicant. A penalty is appropriate.
- [35] In Naqvi, this Tribunal ordered a \$500 penalty against a condominium corporation that refused to provide a Record of Owners and Mortgagees. I find this case to be similar and award the same penalty.
- [36] Regarding the Proxies, section 13(3)(11) of Ontario Regulation 48/01 confirms payment is required before the record is provided. The Respondent does not have to provide the Proxies to the Applicant until the Applicant pays the \$120 cost estimate. I accept the Respondent's position about the Proxies.
- [37] The Applicant suggests that they accepted the \$120 cost estimate and that the Respondent has their bank account details. This is not making payment. The Applicant did not authorize a withdrawal by the Respondent for the cost of redaction, nor did the Respondent offer that form of payment method. The Respondent's President asked for certified funds. At all material times, it was clear to the Applicant that they did not make payment. Responsibility to pay is the Applicant's. I find that the Respondent did not refuse the Applicant the Proxies and no penalty is warranted.
- [38] The Respondent refused to provide the AGM Attendance List without a reasonable excuse. In considering an appropriate penalty for this refusal, I acknowledge that the Respondent expects its actual costs to exceed the \$120 cost estimate. The revised cost estimate of \$317.50 did not consider redacting the AGM Attendance List. While it considered redaction of the Owners' List which is not necessary, it remains that the Respondent's costs are expected to exceed both the \$120 cost estimate and the up to \$12 of extra fees that the Respondent may pursue after delivering the redacted Proxies and the AGM Attendance List to the Applicant. As a result, the Respondent is already facing a cost penalty as it is unable to recover all of its actual costs for redacting the records. With that in mind, I limit the Respondent's penalty for refusing to provide the AGM Attendance List to \$250.

[39] The Applicant seeks \$25,000 in compensation which is the maximum that the Tribunal may order for damages listed in section 1.44(1)3 of the Act. Section 1.44(1)3 of the Act states that this Tribunal may order “compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed.” The Applicant has not offered evidence that convinces me they incurred any damages as a result of the Respondent’s refusal to provide the Owners’ List or the AGM Attendance List.

[40] Regarding the Respondent’s claim for costs, Rule 46.1 of the Tribunal’s Rules of Practice is clear:

“The CAT will not order a User to pay to another User any fees charged by that User’s lawyer or paralegal, unless there are exceptional reasons to do so.”

The Respondent has not offered evidence that convinces me that exceptional reasons apply to this case. The Respondent’s request for costs is denied.

[41] The Applicant paid a total of \$200 in filing fees to bring this case to Stage 3. Rule 45.2 of the Tribunal’s Rules of Practice states:

“If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful User will be required to pay the successful User’s CAT fees and reasonable dispute-related expenses, unless the CAT member decides otherwise. This does not include legal fees.”

[42] As has also been consistent with other decisions of the Tribunal where an applicant has been refused records they are entitled to, I order the recovery of the Applicant’s \$200 of filing fees.

ORDER

The Tribunal Orders that:

1. The Respondent provide the Applicant with the Owners’ List within 30 days of the date of this Order.
2. The Respondent provide to the Applicant the Proxies and the AGM Attendance List in a format that removes the identities of the owners and their units within 30 days of the Applicant paying the Respondent the \$120 cost estimate.

3. The Respondent pay the Applicant costs of \$200 and penalties of \$750, for a total of \$950 within 30 days of the date of this Order.
4. If the full amount of \$950 is not provided to the Applicant within 30 days of this Order, the Applicant can set-off remaining amounts due against the common expenses attributable to the Applicant's unit(s) under section 1.45(3) of the Act.

Marc Bhalla
Member, Condominium Authority Tribunal

RELEASED ON: June 24, 2020