

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 16, 2020

CASE: 2020-00166R

CITATION: Mehta v Peel Condominium Corporation No. 389, 2020 ONCAT 32

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

No one appearing

Hearing: Written hearing – August 8, 2020 to August 31, 2020

REASONS FOR DECISION

A. **INTRODUCTION**

- [1] The Applicant, Mr. Mehta, is a unit owner in Peel Condominium Corporation No. 389 (“PCC 389”). On June 6, 2020, Mr. Mehta submitted a request for records to the Respondent, PCC 389, wherein he requested a number of different records on the prescribed form as per the *Condominium Act, 1998* (the “Act”).
- [2] According to Mr. Mehta, PCC 389 never responded to his request as required by s. 13.3(6) of Regulation 48/01 (“the Regulation”), or informally by any other means.
- [3] Mr. Mehta has asked the Condominium Authority Tribunal (the “CAT” or “Tribunal”) to order that he be provided with copies of all of the records he requested, and that PCC 389 pay a penalty for refusing to provide the records.
- [4] PCC 389 did not participate in this hearing and has provided no evidence or submissions on the issues. Nonetheless, I am satisfied that PCC 389 had proper notice of this case and therefore have proceeded in its absence.

[5] For the reasons set out below, I find that Mr. Mehta is entitled to the records he requested and a penalty of \$200 is warranted.

B. PRELIMINARY MATTERS

[6] At the outset of the hearing Mr. Mehta identified several records that he wished the Tribunal to address, including:

- Minutes of board meetings for the period of 2016 - to date. In particular, he requested minutes that addressed specific Board decisions such as the decision to demolish the whirlpool and lobby water fountain, close the building's garden, tennis court, table tennis room, squash facilities, billiard room and the party hall and to halt of the cleaning of condominium windows and exhaust vents.
- All agreements that PCC 389 has had with any condominium management company for the period of 2015-2020.
- A record of a cheque deposit in the amount of \$200 that Mr. Mehta alleges was given to a member of the Board for the rental of the party room.
- A copy the condominium by-laws with any amendments.
- The most recent auditor's report.
- The current plan for the future funding of the reserve fund.

[7] There appeared to be some similarities between this records request and those that had been previously decided on by this Tribunal in two other cases between Mr. Mehta and PCC 389. Those two cases being *Surinder Mehta v. Peel Condominium Corporation 389*, 2020 ONCAT 9 (“2020 ONCAT 9”); and, *Surinder Mehta v. Peel Condominium Corporation No. 389*, 2020 ONCAT 10 (“2020 ONCAT 10”). To avoid duplication and ensure that the Tribunal supports a “fair, focused and efficient processes” (CAT Rule of Practice 2.1(d)), Mr. Mehta was asked to provide written submissions on how his current requests differed from those addressed in previous cases.

[8] After careful review of Mr. Mehta's submissions, I determined the records to be addressed in this hearing are as follows:

- **Minutes of board meetings for the period of January 2020 - June 2020.** Although this request for four months' worth of minutes is a slight variation on previous requests for minutes that have already been addressed by the Tribunal, this time period has not yet been dealt with at the Tribunal. Thus, I

determined this set of board meeting minutes would be addressed in this hearing.

- **Copies of all agreements that PCC 389 has had with any condominium management company for the period of January 2015 - September 2018 and October 2019 - June 2020.** Although Mr. Mehta requested agreements for the period between January 2015 - June 2020, inclusive, the Tribunal has already ruled on the question of entitlement to such agreements for the period of September 2018 - September 2019. For this reason, only the request for agreements covering the periods of January 2015 - to September 2018 and October 2019 - June 2020 are included in this hearing.
- **Monthly financial statements for the period of September 2014 - December 2014.** In his submissions, Mr. Mehta was very specific about this time period. This is because he believes that it is during this time period that a deposit of a specific \$200 cheque should appear in the financial statements. This request is, again, a slight variation on a previous request that has already been addressed by this Tribunal. Mr. Mehta was previously found to be entitled to the monthly financial statements for the period of January 2015 through to December 2019 and PCC 389 was ordered to provide them. However, the request for monthly financial statements for the period of September 2014 - December 2014 has not been decided on so they are included as records at issue in this hearing.

[9] The following records are not included as issues to be determined by the Tribunal in this hearing.

- **Minutes for the period of May 2014 – December 2019.** These are not included as an issue in this hearing because previous Tribunal decisions have already addressed these minutes and determined Mr. Mehta's entitlement. The Tribunal has also already imposed a penalty on PCC 389 for unreasonable refusal of the minutes. In his submissions, Mr. Mehta notes that his request for these minutes is unique because they deal with particular decisions made by the Board and that PCC 389 was "not supposed to provide all the records and the minutes of everything taking place in our two buildings." Asking for minutes that deal with specific decisions when those decisions appear to fall within the same time period of previously adjudicated requests does not, in this case, make the request unique. Mr. Mehta is correct that in 2020 ONCAT 9 and in 2020 ONCAT 10 PCC 389 was not ordered to provide copies of requested minutes to him. This is because it was

determined that these records likely did not exist, and the Tribunal cannot order a corporation to produce a record that does not exist.

- **Condominium by-laws with any amendments.** In 2020 ONCAT 9, the Tribunal determined that Mr. Mehta was entitled to these by-laws including amendments. Mr. Mehta provided no evidence that any additional amendments had been made to the by-laws since his last request and no evidence that this is a substantially different request. Thus, I have determined that this request has already been dealt with by the Tribunal and is not included as a record at issue in this hearing.
- **The most recent auditor's report and the current plan for the future funding of the reserve fund.** Despite having requested these on his records request form, Mr. Mehta indicated in his submissions he was not seeking these records, so they are not included as a record at issue in this hearing.

[10] As noted above, several of Mr. Mehta's records requests have previously been addressed by this Tribunal. At various points in his submissions, Mr. Mehta argued that PCC 389 had not complied with orders issued by CAT that deal with those requests. He submits that they have not provided him with the records that he is entitled to. At times he pointed to this as a reason for his current requests. While Mr. Mehta may rightly be frustrated if he has not received the records, bringing issues to the Tribunal that have already been decided will not change this fact. The Tribunal cannot assist users in enforcing an order from a previous case. It is enforced through either Small Claims Court or the Superior Court of Justice, a fact that Mr. Mehta is clearly aware of based on his submissions. Making these duplicate requests has only served to unnecessarily complicate this case and consume the Tribunal's time and resources. This conduct is not encouraged.

[11] At various points in the hearing, Mr. Mehta also raised issues regarding the honesty and transparency of the Board, improper condominium governance and management and made allegations of fiscal impropriety against the Board. He also provided evidence that he believes supports these claims. These allegations and issues have been raised in each of Mr. Mehta's previous cases and, as was noted in those cases, these issues are beyond the jurisdiction of the Tribunal. Mr. Mehta's continued attempt to have these issues addressed at this Tribunal is, again, behavior that cannot be encouraged. Nonetheless, I have reviewed all of the evidence provided to me. I will only address the evidence relevant to the records issues before me.

C. ISSUES & ANALYSIS

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

- **Minutes of board meetings for the period of January 2020 - June 2020.**
- **Copies of all agreements that PCC 389 has had with any condominium management company for the period of January 2015 - September 2018 and October 2019 - June 2020.**
- **Monthly financial statements for the period of September 2014 - December 2014.**

[12] Section 55(1) of the Act lists 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 and to which an owner is entitled. Although not exhaustive, this list includes the records requested by Mr. Mehta, specifically, the 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, which would include the requested agreements between the corporation and any management company.

[13] I find that Mr. Mehta is entitled to the agreements and the financial statements and I will order PCC 889 to provide copies of these to him.

[14] However, regarding the minutes. These are records to which an owner is, in the usual course, entitled and which the Tribunal would order that a condominium corporation provide. However, as was clear from the previous two cases between these parties and from the evidence before me in this case, these minutes do not likely exist. Therefore, I will not make an order that they be provided to Mr. Mehta.

[15] Mr. Mehta notes in his submissions that his current request for board meeting minutes for the period of January 2020 - June 2020 has been made as a means to verify that the Board has 'begun functioning as laid down in the rules and regulations.' He also submits that "they [the Board] have not yet started functioning as assured ..." noting that they have "not held any AGM, monthly board meetings, or sent any monthly letters to the residents or timely prepared financial reports and so many other important issues have not been done to date."

[16] The Act does not require Mr. Mehta to disclose his reasons for seeking records so long as 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” (O. Reg. 48/01 13.3(1)(a)). So, while Mr. Mehta’s reasons for the request have no bearing on his entitlement to records in this case, the fact that the that these records may not exist because meetings are not taking place has an impact on what I can order. I cannot order access to a record that does not exist, nor can I order that a record be created by a corporation. There is no evidence before me to indicate that adequate records of board meeting minutes have been maintained for the period requested by Mr. Mehta. His own submissions indicate that he does not believe the Board is holding monthly meetings. If this is the case, there would be no minutes to provide. Whether the Board is, is not, or should, be holding monthly meetings is a question of condominium governance. Questions of condominium governance are beyond the jurisdiction of the Tribunal at this time.

[17] Addressing the records issue before me, minutes, such as those requested by Mr. Mehta, are a record to which an owner is entitled. However, I find that on the balance of probabilities the minutes requested likely do not exist and I will not order that PCC 389 provide them.

Issue 2: Should PCC 389 be required to pay a penalty under s. 1.44(1) of the Act?

[18] 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.”

[19] As PCC 389 did not participate in this hearing no excuses, reasonable or not, have been provided for refusing Mr. Mehta’s request. As I have determined that Mr. Mehta is entitled to the records, and no excuse has been provided for the refusal, I find he is entitled to a penalty under the Act.

[20] The question before me then becomes what is the appropriate amount for the penalty?

[21] In his submissions, Mr. Mehta argues that the maximum penalty should be imposed on the Board because they are allegedly acting illegitimately, unprofessionally and generally in way that is making life “difficult and miserable” for the residents. He points to numerous deficiencies in the maintenance of the condominium as evidence of poor conduct, such as lights out in the parking level and the poor state of repair of the boardroom. He also notes that he has had to

spend his own time and money to take PCC 389 to court to enforce recent orders of this Tribunal.

- [22] While I acknowledge Mr. Mehta's frustration with the Board is very real, as is his concern with the governance of the condominium, I cannot address these concerns – regardless of how many records requests are made. Moreover, they are not reasons for which the Act indicates a penalty is awarded. The amount of the penalty awarded is based on facts related to the refusal of records.
- [23] In determining the amount of the penalty, I have considered that the entitlement to these records is clear and the request by Mr. Mehta should not have given pause to PCC 389.
- [24] However, I have also considered that the requests made by Mr. Mehta are not substantially new requests. They are variations on previous records requests already addressed by this Tribunal, for which, just this past April, Mr. Mehta was awarded a combined penalty in the amount of \$6500. The only difference between Mr. Mehta's previous requests and his current requests is the time periods for which he requests the records; these have been altered slightly. The types of records he requested are the same, i.e. minutes, monthly financial statements and agreements with condominium management companies.
- [25] Mr. Mehta is well within his rights to request copies of such records, and his entitlement is clear. PCC 389 should have provided Mr. Mehta with these records. However, given that the request is a variation on two previous recent requests, I do not consider PCC 389's refusal to be the refusal of a substantially new request and have factored this in my decision in the amount of the penalty to be awarded.
- [26] Finally, the Tribunal has often pointed to the purpose of penalty when considering the appropriate amount to be awarded. In *Terence Arrowsmith v Peel Condominium Corporation No. 94*, 2018 ONCAT 10 it is noted that the penalty may operate "to sanction conduct that is considered undesirable" and to "communicate to the class of interested people and organizations that some conduct is unacceptable."
- [27] It was made clear in 2020 ONCAT 9 and 2020 ONCAT 10 that Mr. Mehta is entitled to minutes, financial statements, condominium management agreements. The Tribunal also imposed significant penalties on PCC 389 for refusing such records, making clear to PCC 389 that its conduct, i.e. refusing these records to Mr. Mehta, is undesirable.

[28] PCC 389's conduct remains unacceptable. However, in this case, the purpose of sanctioning conduct must be balanced against the impact of continued penalties on owners. In *Shaheed Mohamed v. York Condominium Corporation No. 414*, 2018 ONCAT 3 the Tribunal stated:

While there is no specific or clear direction in the legislation as to the purpose intended for the penalty that may be imposed, this Tribunal is committed to operating in a way that focuses on its users, resolves disputes in a way that is fair and convenient, and promotes healthy condominium communities. The penalty should at least be imposed by the Tribunal for reasons that represent those commitments.

[29] In this case, imposing another large penalty on PCC 389 would not penalize individual Board members, which is what Mr. Mehta suggests in his submissions. It would penalize the owners. It is all owners who ultimately pay the penalty through their common expense fees. Individual Board members do not pay this penalty directly. In this case, Mr. Mehta has requested the maximum penalty to be awarded for the refusal of what amounts to a variation on records requests that he has made twice before, and for records, i.e. the minutes, that he strongly suspects do not exist. Asking owners to bear the cost of continued penalties for similar records requests, made by the same owner, in a relatively short period of time, does not, in my opinion, promote a healthy condominium community, in this case.

[30] Weighing all such factors, I have determined that a penalty in the amount of \$200 is appropriate.

ORDER

The Tribunal Orders that:

1. PCC 389 provide Mr. Mehta with paper copies of the following records within 30 days of the date of the Decision:
 - Copies of the agreements that PCC 389 has had with any condominium management company for the period of January 2015 - September 2018 and October 2019 - June 2020.
 - Monthly financial statements for the period of September 2014 - December 2014.

2. These records are to be provided at no cost to Mr. Mehta.
3. PCC 389 will pay a penalty in the amount of \$200 to Mr. Mehta within 30 days of the date of this Order.
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.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: September 16, 2020