

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 8, 2020

CASE: 2020-00076R

CITATION: Ravells v. Metropolitan Toronto Condominium Corporation No. 564, 2020 ONCAT 36

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

Member: Mary Ann Spencer, Member

The Applicant,
Shelley Ravells
Self-represented

The Respondent,
Metropolitan Toronto Condominium Corporation No. 564
Represented by Victor Yee, Counsel

MOTION DECISION

A. INTRODUCTION

- [1] Shelley Ravells (the “Applicant”) has brought a motion that the board of directors of Metropolitan Toronto Condominium Corporation No. 564 (the “Respondent”) does not have quorum and therefore does not have authority to direct a representative in the ongoing Stage 3 hearing on an application she submitted to the Tribunal with respect to a records related matter. The Tribunal received submissions from both parties on this issue.
- [2] The Applicant submits that certain of the Respondent’s board members have been disqualified from acting as directors because they failed to complete the training prescribed in the *Condominium Act, 1998* (the Act) within the prescribed time, with the result that the board does not have quorum. The Applicant also raised some ancillary issues including concerns related to the electoral practices of the Respondent and the Respondent’s alleged failure to produce prescribed Periodic Information Certificates.
- [3] The Respondent’s representative, Victor Yee, submits that the Tribunal does not have jurisdiction over those sections of the Act which set out the duties and constitution of a corporation’s board and the Applicant is “attempting to end-run the Superior Court’s jurisdiction by shoe-horning her objections to the Board’s constitution, quorum and other governance issues into this CAT proceeding by way

of Motion.” He further submits that the Respondent’s board has authorized his firm, Elia Associates, to represent the Respondent in this matter and that in accordance with s. 37(2) of the Act, the acts of a director are valid despite any defect that may afterwards be discovered in his/her election, appointment or qualifications.

B. ANALYSIS

- [4] Section 27(1) of the Act states that a board of directors “shall manage the affairs of the corporation.” In accordance with s. 27(2) of the Act, a board shall consist of a minimum of three directors. Section 32(1) states that a board shall not transact any business except at a meeting of directors at which a quorum of the board is present. A quorum is a majority of the directors. In the case of the Respondent’s five member board, three directors would comprise a quorum.
- [5] When this motion was filed, Ontario Regulation 179/17 limited the Tribunal’s jurisdiction with respect to s. 136(1) and (2) of the Act to disputes relating to s. 55 of the Act, that is, to records-related disputes. The proceedings of the Tribunal are governed by the *Statutory Powers Procedure Act* and the Tribunal’s Rules of Practice. Rule 7.2 of the Rules of Practice states that all Users must “have enough information and instructions to effectively participate in the Case, and have the authority to make agreements or settle any issues.” The question raised by the Applicant’s motion is whether the Tribunal can accept submissions from the Respondent’s board or its representative in the matter before it. The Tribunal does not have jurisdiction to address the ancillary concerns the Applicant raised about the Respondent’s electoral practices or Periodic Information Certificates.
- [6] The Applicant submits that certain of the Respondent’s board members were disqualified under s. 29(2)(e) of the Act which states a person “immediately ceases to be a director” if they have “not completed the prescribed training within the prescribed time.” Section 11.7 of Ontario Regulation 48/01 (O. Reg. 48/01) sets out that directors elected or appointed after November 1, 2017 must complete the training within six months of the date of their election or appointment.
- [7] The Applicant relies on the CAO Public Registry as of September 16, 2020 and on documents uploaded to the Tribunal’s ODR system by Megan Molloy, the Respondent’s previous representative, with respect to the composition of the Respondent’s board and the status of the board members’ training. With respect to the status of directors’ training, the document uploaded to the ODR system is a screen shot from the CAO website dated July 17, 2020.

- [8] Mr. Yee did not dispute the accuracy of the Applicant's documents and analysis. The CAO Public Registry indicates that there are currently four directors on the Respondent's board. My review of the documents submitted by the Applicant indicates that one member's term began in August, 2020. That member is not required to complete the director's training until February, 2021. One member, whose term began before the training requirements came into force, is not required to complete the training until six months after they are re-elected. However, the remaining two members, whose terms began in July 2018 and June 2019, failed to complete the training within six months of the date of their election or appointment. In accordance with s. 29(2) of the Act and s.11(7) of O. Reg. 48/01, these two individuals immediately ceased to be directors when they failed to complete the mandatory training within the prescribed time with the result that the Respondent's board does not have its required three person quorum.
- [9] Mr. Yee noted that pursuant to s. 31(2) of the Act a director continues to act as a board member until their successor is elected. Section 29(2)(e) is very clear that the failure to complete director training results in the *immediate* termination of an individual's directorship. I note that if s. 31(2) took precedence over s. 29(2)(e), a director could theoretically remain on a board for a matter of months or even years until an election was held, thereby nullifying the purpose of mandatory training. The CAO's position is set out on its website:

If a director is appointed, elected or re-elected on or after November 1, 2017, and does not complete the mandatory director training within six months of their appointment, election or re-election date, **they are immediately and automatically disqualified and cease to be a director** under clause 29(2)(e) of the Act and 11.7(1)(4) of Ontario Regulation 48/01. This means that the person:

- Can no longer attend board meetings as a member of the board.
- No longer counts towards quorum of the board.
- Cannot vote on matters before the board.
- Cannot be indemnified by the corporation against liability and costs as set out in section 38 of the Act.

- [10] Mr. Yee further noted that even if a director was removed from the Board due to failure to complete training that a quorum of the Board could reappoint that individual. I note that the Act is silent on whether individuals who were disqualified due to failure to complete training can subsequently be appointed or elected to the board. However, in this case, the evidence submitted by the Applicant indicates there is no quorum on the Respondent's board and therefore no appointments could be made.

[11] Mr. Yee submits that Elia Associates, has “received written assurance from the corporation that there is sufficient quorum on the Board (i.e. at least 3 directors out of the 5 member Board) and that the Corporation has authorized us to represent it in this CAT proceeding...” He also noted that s. 37(2) of the Act sets out that “the acts of a director or officer are valid despite any defect that may afterwards be discovered in the person’s election, appointment or qualifications.”

[12] I acknowledge that the reported composition of the Respondent’s board has changed during the course of the Tribunal’s proceedings. The information submitted by the Applicant indicates that the Respondent previously had five Board members, two of whom are no longer listed as directors on the CAO Public Registry. However, I note that the submitted training information indicates that only one of these former directors had completed the mandatory training within the prescribed time.

[13] Mr. Yee did not provide the date the Respondent authorized his firm to represent it in this matter and therefore I cannot determine whether the Respondent’s board had quorum at that time which, in accordance with s. 37 (2) of the Act, would allow the Tribunal to accept submissions from the Respondent’s representative.

C. CONCLUSION

[14] I cannot accept submissions from the Respondent’s board or the board’s representative if the board itself is not validly constituted unless the representative was authorized and instructed by a validly constituted board. Given the uncertainty with respect to the current and past constitution of the Respondent’s board raised by the Applicant’s motion, I am ordering the Respondent, by no later than October 22, 2020, to provide the Tribunal with documentation that confirms either that its board is properly constituted and has quorum in accordance with the provisions of the Act or that it was properly constituted and had quorum when it authorized Elia Associates to represent it in this matter. If the Respondent requires additional time to obtain the documentation, I will consider a request for extension of the due date. If the documentation is not received by the due date, the Stage 3 hearing in this matter will continue without the participation of the Respondent.

ORDER

[15] The Tribunal Orders that:

1. By no later than October 22, 2020, the Respondent shall provide the Tribunal with written documentation which demonstrates either that (a) its board of directors is currently constituted in accordance with the provisions of the Act, that is, has quorum and is in a position to make or to instruct a representative to make submissions to this Tribunal on the Respondent's behalf or (b) had quorum when it authorized its current representative to represent it in this matter.
2. Case 2020-00076R is adjourned pending receipt of the documentation as set out above.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released On: October 8, 2020