

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 15, 2021

CASE: 2020-00213R

Citation: Abou El Naaj v. Peel Standard Condominium Corporation No. 935, 2021 ONCAT 4

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

Member: Mary Ann Spencer, Member

The Applicant,

Mohamad Abou El Naaj
Self-Represented

The Respondent,

Peel Standard Condominium Corporation No. 935
Represented by Salahuddin Saeed

Hearing: Written Online Hearing – October 28, 2020 to December 29, 2020

REASONS FOR DECISION

A. INTRODUCTION

- [1] Mohamad Abou El Naaj (the “Applicant”) is the owner of a unit of Peel Standard Condominium Corporation No. 935 (the “Respondent”). He alleges that the Respondent failed to respond to Requests for Records in the prescribed manner; delayed the provision of some of the requested records; and, refused to provide other records which he is entitled to receive. He also alleges that the fees the Respondent estimated would be payable for the provision of certain records are unreasonable. He further alleges that some of the records the Respondent provided are inadequate because they are inaccurate.
- [2] The Applicant requests that the Tribunal order the Respondent to provide properly completed Board Response to Request for Records forms and, at no cost, the records it refused to provide and corrected versions of certain records it did provide. He also requests that the Tribunal assess a penalty to the Respondent for its alleged refusal to provide records. Finally, he requests his costs and compensation in this matter.
- [3] The Respondent did not participate in the Tribunal’s Stage 3 hearing.

- [4] For the reasons set out below, I find that the Respondent refused to provide certain records to the Applicant without reasonable excuse and I assess a penalty of \$1,500 be paid. I order the Respondent to provide the outstanding records to the Applicant at no cost. I also order the Respondent to pay the Applicant \$440 in costs.

B. BACKGROUND/PROCEDURAL MATTERS

- [5] The Applicant filed three applications with the Tribunal in respect of eight Requests for Records which were submitted to the Respondent between July 4, 2020 and August 19, 2020. On October 19, 2020, with the consent of the parties, the Tribunal ordered that the three cases be joined.
- [6] Two of the eight Requests for Records at issue in this matter were signed by the Applicant and six were signed by Reem Jubain. The Applicant advised that he and Ms Jubain jointly own a unit of the Respondent and that all eight of the Requests for Records had been submitted to the Respondent on both their behalves. At my request, Ms Jubain provided an affirmed statement confirming she had authorized the Applicant to file the Tribunal applications on her behalf and to represent her in this proceeding.
- [7] The hearing in this matter began on October 28, 2020. However, a representative of the Respondent failed to join the proceeding and I asked Tribunal staff to contact Salahuddin Saeed, the Respondent's property manager and its representative on record. On November 9, 2020, after being contacted by staff, Mr. Saeed advised me that the Respondent intended to have either a board member or legal counsel represent it. On November 11, 2020, he further advised that the Respondent's board was aware of this proceeding and was requesting additional time to retain its new representative. However, Mr. Saeed did not respond to my inquiry with respect to the amount of time the Respondent needed. Therefore, on November 12, 2020 I adjourned the hearing and advised that, subject to any request for extension, the hearing would resume on November 23, 2020. The Respondent failed to respond and the hearing proceeded on November 23, 2020 without its participation.
- [8] At the outset of the hearing, the Applicant requested that the date range of the requested records be expanded to include current documents. I advised that the Tribunal would only address the records requested in the eight Requests for Records which had been submitted to the Respondent. The Respondent must have the opportunity to respond to a properly submitted Request for Records.

C. ISSUES & ANALYSIS

[9] The Applicant confirmed the issues to be addressed in this hearing are:

1. Is the Applicant entitled to receive copies of the records that have not yet been provided, and, if he is entitled to receive the records, what fee, if any, is the Respondent entitled to charge for them?
2. Are the records the Respondent provided to the Applicant complete?
3. Is the Respondent entitled to charge the fees it estimated for production of certain of the requested records and what should the amount of those fees be?
4. Should a penalty be assessed against the Respondent?
5. Should an award of costs be assessed?

Issue 1: Is the Applicant entitled to receive copies of the records that have not yet been provided, and, if he is entitled to receive the records, what fee, if any, is the Respondent entitled to charge for them?

[10] The records at issue are set out below by the date of the Request for Records. Where the requested records are related, I have grouped them together. My analysis is based on the documents submitted and the testimony of the Applicant and of Reem Jubain. Only the evidence most relevant to the issues to be decided is set out in this decision.

July 4, 2020 Request 1: copies of chiller contractor visit reports for the period from May 2019 to July 9, 2020;

July 22, 2020 Request 1: chiller/HVAC related insurance claims in 2018, 2019 and 2020 and chiller/HVAC invoices booked against reserve fund in 2018, 2019 and 2020

[11] The evidence is that on July 31, 2020 the Respondent replied to the Applicant's July 4, 2020 Request for Records, by e-mail, stating "upon consultation with the Condominium Authority of Ontario we have been advised that fulfillment of this request is up to the discretion of the Board of Directors. We have decided that we will not be releasing these records." The Applicant testified that he subsequently asked the Respondent to complete a Board Response to Request for Records form which was received on August 4, 2020. On that form, the Respondent added the information that the chiller and HVAC equipment are components shared with two other condominium corporations and that the records could not be released without their consent. In its September 1, 2020 Response to the Applicant's July

22, 2020 Request for Records, the Respondent provided the same reason for refusing to release the chiller/HVAC records sought in that request.

- [12] The Applicant testified that there are no by-laws or shared facility agreements which indicate the consent of the other two condominium corporations is required in order for the Respondent to release the requested records. He further testified that while the Respondent and the other two corporations have a shared facilities committee which oversees the management of their shared facilities, there is no distinct corporation established for this purpose.
- [13] Without testimony from the Respondent, I have no context for the advice it may have received from the Condominium Authority of Ontario (the "CAO"). However, s. 55 (3) of the *Condominium Act, 1998* ("the Act") is very clear that the provision of requested records is not discretionary:

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).

The exceptions set out in s. 55 (4) of the Act include records related to employees, to actual or contemplated litigation, and to specific units or owners. There is no evidence that the chiller/HVAC system related records would fall under any of these exceptions.

- [14] Section 55 (1) of the Act states that the corporation must maintain adequate records including "a copy of all agreements entered into by or on behalf of the corporation." Further, mutual use agreements are defined as a core record in s. 1. (1) of Ontario Regulation 48/01 ("O. Reg. 48/01"). An owner is entitled to examine or receive a copy of mutual use agreements and it stands to reason that they are also entitled to receive copies of records associated with a mutual use agreement. I note that in this case, the requested record of reserve fund expenditures with respect to the chiller/HVAC system is one the corporation is required to keep as a financial record under s. 55 (1) of the Act. Neither of the two Board Responses for Records sent to the Applicant indicates that the Respondent is not in possession of the requested records. Therefore, I will order the Respondent to provide the requested records to the Applicant.
- [15] The Respondent is entitled to charge a fee for each of the requested records as they are not defined as core records. However, because the Respondent did not participate in this hearing, I have no information on which to determine a reasonable fee. Therefore, I will order the Respondent to provide these records to

the Applicant at no cost.

July 22, 2020 Request 2: The Paragon Security contract for 2018 and 2019; quotes for new security contracts in 2019; invoices for contract services concierge in 2018, 2019 and 2020; and, contract for PLPS (new security company) in 2019

[16] The Applicant testified that he received the Board's Response to Request for Records on September 2, 2020. The Response states: "Upon consultation with the Larlyn Property Management Ltd and Condominium Authority of Ontario we have been advised that fulfillment of this request is at the discretion of the Board of Directors. We (PSCC 935) have decided that we will not be releasing the [above-noted] records."

[17] I find that the Applicant is entitled to receive the requested records; there is no evidence that they fall under the exceptions to an owner's right to examine or obtain copies of records set out in s. 55 (4) of the Act. As previously noted, s. 55 (1) sets out that a corporation must maintain copies of the agreements it enters into. Financial records, which would include the invoices for concierge services, must also be maintained. I note that there is no specific requirement for the corporation to maintain records of the quotes it obtained for the new security contract; however, there is no indication in the Respondent's Response that it is not in possession of these records and the Applicant is entitled to receive a copy of them if they exist.

[18] None of the requested records are core records as defined in O. Reg. 48/01 and therefore the Respondent is entitled to charge a fee for their provision. However, as noted above, there is no information before me on which to determine a reasonable fee. Therefore, I will order the Respondent to provide the requested records to the Applicant at no cost.

August 19, 2020 Request: income receipts from advertising on illuminated notification and advertising board installed at P1, P2 & P3, October 2019-Sept 2020; all submitted requests for advertising on "illuminated notification and advertising board" installed at P1, P2 & P3; Property Manager monthly reports submitted to the board 2019 & 2020

[19] The evidence is that the Respondent replied to the Applicant's August 19, 2020 Request on October 2, 2020. With respect to the records relating to the illuminated notification and advertising board, the Board Response to Request for Records states:

The advertising on illuminated notification board p1, p2, p3 is available based on the donations to the corporation, no fee charged neither applied against the

advertisements, Board of the directors donated printing papers to the corporation to cover printing for approx one years. The material can be examined by visiting our office during the operation hours. Approved invoice (Expense) for installing and designing the illuminated notification is attached for your review.

- [20] It is the Applicant's position that the Response only indicates that board members advertised at no fee and does not specify whether the Respondent received other requests or whether other advertisers, a number of whom he named, have been charged a fee. He testified that he did not attend at the office to examine the material because "the board statement did not offer any records to examine and therefore it was clear that the "material" they are referring to is the "donated printing paper."
- [21] There is insufficient information before me to determine whether the Respondent's offer to the Applicant to examine "the material" would be responsive to the Applicant's request or whether the Respondent does in fact maintain the requested records. Therefore, I will order the Respondent either to provide the records or to provide a written statement confirming they do not exist.
- [22] The Board Response to Request for Records did not address the request for the property manager's monthly reports and the Applicant confirmed that he received no other response. The Applicant testified that the reports are provided to the board at its meetings and the documentary evidence confirms that the Respondent's board minutes refer to these reports.
- [23] Section 55 (1) of the Act does not list condominium management reports as one of the records a corporation must keep. However, I am persuaded that the corporation does maintain records of these reports based on the following statement in its minutes which indicates a file of the reports is kept:
- The Board of Directors received, for their information only, a detailed written Management Report that was prepared by Property Management. This Report is filed separately and only those items requiring discussion at the meeting are documented below.
- I find that the Applicant is entitled to receive copies of these records and I will order the Respondent to provide them. However, I note that these records may require redaction to comply with the exceptions set out in s. 55 (4) of the Act.
- [24] The Respondent is entitled to charge a fee for the preparation and delivery of both the records relating to the illuminated advertising board and the property manager's reports. However, as previously noted, I have insufficient information before me to determine a reasonable fee. Therefore, I will order the records be

provided at no cost to the Applicant.

Issue 2: Are the records the Respondent provided to the Applicant complete?

July 4, 2020 Request 2: The record of owners and mortgagees

- [25] The Applicant testified that although he did not receive a response to his request in the form of a Board Response to Request for Records, he received two versions of the record of owners and mortgagees. The first, provided on July 28, 2020, did not include postal codes. On August 4, 2020, Mr. Saeed e-mailed a second copy which included the postal codes. In this e-mail, Mr. Saeed indicated that the Respondent does not change addresses unless they receive notification from owners.
- [26] Both the Applicant and Ms Jubain testified that the record of owners and mortgagees is not complete because it contains errors which they discovered when going door-to-door to enlist support for an owners' meeting. Ms Jubain testified that she discovered that some units which listed the Respondent's address as the owner's address for service were in fact occupied by tenants.
- [27] The Applicant submitted a number of exhibits, including screen shots of owner information from the City of Mississauga's property tax data base and property sales/leasing records from the realtor.ca website as well as a spreadsheet he compiled to highlight inconsistencies in the record of owners and mortgagees. The Applicant also highlighted differences in the information contained in the two copies of the record he received.
- [28] The record of owners and mortgagees is one of the records which s. 55 (1) of the Act requires a corporation to maintain. Section 46.1 (3) of the Act states this record must include the unit number, the owner or mortgagee's name, and the address for service in Ontario.
- [29] Section 83 (1) of the Act places the onus on an owner to notify the corporation if they lease their unit. The corporation cannot be held responsible if an owner fails to notify the corporation and does not provide an updated address for service. I also note that the record of owners and mortgagees is a date sensitive document. That there were differences between the records provided on July 28 and August 4, 2020 does not mean that either record was incorrect; the differences may simply reflect changes resulting from sales or leases of units that took place in that period. While I acknowledge that the record should list all owners where there is joint ownership of a unit, I find that the Applicant has received the complete record he requested and that the record is adequate.

July 16, 2020 Request 1: The budget for the corporation's current fiscal year, including any amendments

[30] The Applicant testified that he received the requested budget for the corporation's current fiscal year, but he cannot determine if the record is complete because the Respondent did not send the "accompanying statements" required by s. 13 (8) of O. Reg. 48/01. These statements are to include the reason for any redaction of a provided record and the actual cost of producing it.

[31] The Applicant asked me to order the Respondent to provide a new Board Response for Records form and accompanying statements. I do not find this necessary. The evidence is that the Board Response form indicates the requested budget record was provided at no fee. There is no evidence that the record was redacted. The Applicant has received the complete record he requested and that the record appears to be adequate.

July 16, 2020 Request 1: The minutes of board meetings held within the last 12 months

[32] The evidence is that on August 14, 2020, the Applicant received the minutes of seven board meetings held between July 4, 2019 and February 27, 2020 and those held on June 24 and July 22, 2020. He testified that he believes the records are incomplete and/or inaccurate. He alleges that "in the period between March, April, May 2020, I have reasons to believe that decisions were made by the board which were not properly documented. The board can only conduct corporation business in a board meeting where quorum happens." The Applicant acknowledged that board meetings in this period may not have been held in a traditional in-person format.

[33] There is no evidence to support that the Respondent's board held meetings between March and May, 2020. While the minutes of its February 27, 2020 meeting indicate the next meeting was scheduled to take place on March 30, 2020, the minutes of the June 24, 2020 meeting include an item approving the "previous minutes" of the meeting of February 27, 2020.

[34] The Applicant referred me to written announcements about carpet replacement, lobby cleaning and electronic communication as evidence of board decisions made between March and May, 2020. I do not find these announcement documents to be evidence of un-minuted board meetings. I note that the minutes of the January 21, 2020 and February 27, 2020 board meetings document the board's approval of carpet replacement. With respect to the notices of lobby cleaning and electronic communication, there is no evidence to suggest that these announcements, both of which refer to efforts being made to ensure safety during the COVID 19

pandemic, do not reflect operational decisions.

[35] The Applicant also testified that he did not receive any “confidential” board meeting minutes other than a document entitled “Addendum to the [July 22, 2020] Minutes – Restricted Records.” The evidence is that the minutes provided to the Applicant document the board’s approval of what is described as either “confidential” or “restricted” minutes of meetings held on August 7, September 10, October 23, November 21 and December 19, 2019 and on January 21, February 27 and June 24, 2020. The Applicant is entitled to receive appropriately redacted copies of “restricted” minutes and I will order the Respondent to provide these. I note that the addendum to the July 22, 2020 board meeting was provided to the Applicant in an un-redacted format and I remind the Respondent that the “confidential” or “restricted” minutes must be redacted to ensure compliance with s. 55 (4) of the Act.

[36] The Applicant further testified that he did not receive copies of documents which are referred to in the board minutes the Respondent provided. Among others, these include a summary of reserve fund investments and the reports of the Respondent’s property manager. I note that these documents do not form part of the minutes themselves and therefore there was no requirement for the Respondent to provide them to the Applicant. If the Applicant wishes to obtain copies of documents referred to in the minutes, he must submit a further Request for Records. However, with respect to the reports of the Respondent’s property manager, these were requested in the Applicant’s August 19, 2020 Request for Records which I have already addressed.

[37] The Applicant also alleges that some decisions made by the Respondent are not properly documented in the minutes he did receive. Both he and Ms Jubain testified that they believed the Respondent’s board minutes are incomplete and therefore inadequate because they do not document decisions made with respect to an inspection of the HVAC system in their unit.

[38] As noted above, s. 55 (1) of the Act requires a corporation to maintain “adequate” records. The word “adequate” is not defined in the legislation. Cavarzan J. provides some guidance in *McKay v. Waterloo North Condominium Corp. No. 23*, 1992 CanLII 7501 (ON SC):

The Act obliges the corporation to keep adequate records. One is impelled to ask – adequate for what? An examination of the Act provides some answers. The objects of the corporation are to manage the property and any assets of the corporation (s. 12 (1)). It has a duty to control, manage and administer the common elements and the assets of the corporation (s. 12 (2)). It has a duty to effect compliance by the

owners with the Act, the declaration, the by-laws and the rules (s. 12 (3)). Each owner enjoys the correlative right to the performance of any duty of the corporation specified by the Act, the declaration, the by-laws and the rules. The records of the corporation must be adequate, therefore, to permit it to fulfil its duties and obligations.

- [39] In its decision in *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33, a case addressing the accuracy of the minutes of a board meeting, the Tribunal determined that accuracy of a record is a component of adequacy. The Tribunal noted that owners should be “entitled to expect that the minutes correctly described the procedures followed by the board of directors” and, based on undisputed evidence, ordered the corporation to correct minutes that inaccurately documented a board decision. In the case before me, the issue is the completeness rather than the correctness of the Respondent’s board minutes. The principle, however, is the same: that owners are entitled to expect that the minutes accurately reflect the decisions made at a board meeting.
- [40] Ms Jubain testified that the president of the board advised her in June, 2020 that an inspection of the HVAC system in the Applicant’s unit would take place. However, on July 2, 2020, the Respondent’s property manager advised her that he was awaiting a board decision with respect to scheduling the inspection, which did take place on July 10, 2020. She believes these decisions should be documented in the minutes of the board’s June and July, 2020 meetings. Notwithstanding what Ms Jubain was apparently told by the property manager, I find that the evidence does not support that the inspection decisions were made at a board meeting.
- [41] The Applicant also alleges that the board failed to properly document a decision that board members would be allowed to advertise on the “illuminated advertising and notification board” with no fee charged. He referred me to the minutes of the Respondent’s board meetings, to an August 8, 2020 e-mail he sent to the property manager requesting information about the cost and process to advertise to which he testified he received no response, and to the Board’s response to his August 19, 2020 Request for records relating to the advertising boards.
- [42] The evidence does not persuade me that the Respondent’s board made a decision with respect to advertising on the bulletin boards which is not documented in its minutes. The January 21, 2020 minutes indicate that a “straw dog” outline for the bulletin boards was tabled at the meeting. It does not indicate any decision with respect to that outline other than stating under “Action” that management was “to provide pictures of staff.” And, while the Board Response to the Applicant’s August 19, 2020 Request for Records indicates that the Respondent has some form of policy with respect to the advertising, I cannot determine that this policy is the

result of an undocumented board decision.

[43] Finally, the Applicant testified that a conflict of interest was not properly recorded in the October 23, 2019 board meeting minutes. The Applicant submitted evidence that the Respondent's property manager was a member of the board of a firm the Respondent was considering retaining. I note that the property manager is not a voting board member and therefore may not have been required to disclose a conflict. However, the salient consideration is not whether the conflict was disclosed which appears to be the Applicant's primary concern; the only issue before me is whether the minutes are accurate in recording what transpired at the meeting. The evidence presented by the Applicant is insufficient to indicate the board minutes are inaccurate in this regard.

July 16, 2020 Request 2: Disclosure of Conflict of interest of all directors and property manager (written) for the period Jan 2019 – July 16th 2020

[44] The Applicant testified that he received the conflict of interest forms completed by the Respondent's directors when they ran for election as required by s. 29. 1 (f) of the Act. However, he indicated that he was asking for "the ongoing written conflict of interest for the board and the property manager" and referred me to the minutes of the Respondent's February 27, 2020 board meeting in which the disclosure of a board member's conflict of interest is recorded in an item where three bids for a corporation contract were being considered.

[45] I find the Applicant has received the records he requested. There is no evidence to indicate that the Respondent has refused to provide any written conflict of interest statements it maintains in its records. Further, there is no requirement set out in the Act for the disclosure of conflicts by a condominium manager. With respect to the conflict disclosure the Applicant highlighted, Section 11.10 (11) (c) (i) of O. Reg. 48/01 states that a director is required to disclose conflict at "the meeting of the directors at which the contract or transaction or the proposed contract or transaction is first considered, if the director is, as of the date of the meeting, interested in the contract or transaction or the proposed contract or transaction." The February 27, 2020 minutes indicate that the director in question disclosed the conflict as required.

July 22, 2020 Request 2: electronic copy of rules

[46] The Applicant testified that he received a copy of the Respondent's rules on September 2, 2020; however, he later learned that he had not been provided with a copy of the rules which apply to the amenities shared by the Respondent and another condominium corporation. I note that he submitted as evidence a copy of

the notice sent to owners advising of a proposed amendment to the shared amenity rules and a copy of the rules themselves, both dated March 3, 2020, thereby indicating that he possesses the record. The Applicant characterized the record he did receive as “inadequate” because the shared amenity rules were not sent. The fact that the Respondent did not provide a copy of the shared amenity rules, which I note the Applicant did not specifically request, is not evidence that it is not keeping adequate records of its rules as required by s. 55 (1) of the Act.

Issue 3: Is the Respondent entitled to charge the fees it estimated for production of certain of the requested records and what should the amount of those fees be?

July 22, 2020 Request No. 1: superintendent repair and maintenance requests, and reported building deficiencies in 2019 and 2020; and, all residents’ complaints by unit and complaint type in 2019

[47] The evidence, as set out in the Board’s Response to Request for Records, is that the Respondent is prepared to provide the above-noted records at the estimated fee of \$75. The Applicant submits that this fee is unreasonable; he believes the requested records can be prepared easily because the Respondent compiles maintenance information using an automated system.

[48] The Respondent is entitled to charge a fee for these non-core records. However, I cannot determine whether the estimated fee is reasonable because the prescribed breakdown of its calculation is not provided in the Response and the Respondent did not participate in this hearing to provide any detail. Therefore, I will order the Respondent to provide the records at no cost to the Applicant. I note that s. 55 (4) (c) of the Act requires these to be redacted for information “specific to units or owners” which precludes the provision of the records “by unit” as the Applicant requested.

July 16, 2020 Request 1: the most recent approved financial statements

[49] The Applicant is disputing the fee of \$165 that the Respondent indicated would be charged for a copy of the most recent approved financial statements which he requested as a core record in the Request for Records dated July 16, 2020.

[50] There appears to have been some misunderstanding between the Applicant and the Respondent’s property manager with respect to the Applicant’s request. The evidence is that Ms Jubain wrote in an August 17, 2020 e-mail to Mr. Saeed: “what was received is the fiscal year budget ending August 31st 2019 and the financial statement of the same period which was already shared during the recent AGM

2020. This is not the most recent board approved financial statement.” Mr. Saeed’s August 22, 2020 reply indicates the financial statements comprise 90 pages, the first 15 of which contain what he described as “core information” with the balance being supporting detail, some of which he noted would require redaction. The estimated fee of \$165 was quoted.

[51] I asked the Applicant to clarify the record he was requesting. He confirmed that he was seeking the most recent audited financial statements and stated “I have not requested any of the additional information and I was surprised by the fact it has been included with the core record I requested.” I note that the Applicant’s testimony is inconsistent with the e-mail sent by Ms Jubain which indicates the most recent audited financial statements had been received.

[52] The Tribunal addressed the issue of what comprises the “most recent approved financial statements” in its decision in *Mellon v Halton Condominium Corporation No. 70*, 2019 ONCAT 2 (CanLII):

Item 4 in the list of core records and the corresponding phrase, “most recent approved financial statements,” under the heading “Request for core records” in the statutory Request for Records form, clearly references the financial statements approved by the board under subsection 66(3) of the Act;

Those are the financial statements that a condominium corporation is required to submit to the unit owners at the annual general meeting along with the auditor’s report (item 5 in the list) under subsection 69(1) of the Act;

Ms Jubain’s e-mail indicates that the Applicant received the most recent approved financial statements, that is the statements submitted at “the recent AGM 2020.” Therefore, notwithstanding what appears to be the Respondent’s willingness to provide additional records for a fee, I find that the Applicant’s request has been fulfilled and there is no need to assess the disputed fee.

August 10, 2020 Request: all PSCC 935 rules, bylaws or declaration’s violations or Contravention Notices sent to owners by date and violation type, January 2019 – September 2020

[53] The Applicant testified that he received the Board Response to his request for copies of violation and contravention notices on September 1, 2020. The Response states the notices would not be provided “to secure the privacy of owners and tenants in the building” and quotes a fee of \$50 for copies of the rules, bylaws and declaration. The Applicant disputes the fee and submits that the

reason for refusal of the notices is inadequate, arguing they should be provided in redacted format.

- [54] I agree with the Applicant's submission. I note that both sections 55 (4) (b) and (c) of the Act, which exclude records relating to "actual or contemplated litigation" and to "specific units or owners" from those which a requester is entitled to examine or to obtain a copy of, might apply to this request. However, the records can be provided in redacted format, provided the redaction removes not only the owner's name or unit number but also any other information that might identify them. I note that the Respondent did not refuse the Applicant's July 22, 2020 request for "all residents' complaints by unit and complaint type" which would also require significant redaction to ensure compliance with s. 55 (4) (c) of the Act.
- [55] No fee should be charged for a copy of the Respondent's rules, bylaws and declaration, all of which are core records. However, it is clear that the Applicant was only requesting copies of the notices sent to owners of violations or contraventions of the governing documents and not the documents themselves. The Respondent is entitled to charge a fee for providing access to the notices. Because I have insufficient information on which to determine a reasonable fee, I will order the redacted records be provided at no cost to the Applicant.
- [56] The Applicant requested that the records of notices be organized by date and violation type. Unless the Respondent maintains the records in this manner, provision of redacted copies of the notices will suffice. I also note that the Applicant requested records "to September, 2020". Only records from January 1, 2019 to August 10, 2020, the date of the Applicant's request, are to be provided.

Issue 4: Should a penalty be assessed against the Respondent?

- [57] 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. The Applicant requests that the maximum penalty of \$5,000 be assessed to the Respondent for unreasonable delays in providing its responses to Requests for Records, for denying access to records and for its lack of participation in the Tribunal's proceedings. I note that the Act does not provide for the assessment of a penalty for failure to participate in a Tribunal proceeding and I have addressed this by ordering the provision of records, some of which may require considerable time and effort to review and appropriately redact, at no cost to the Applicant.
- [58] The evidence is that there was a slight delay in the Respondent's provision of some of its responses to the Applicant's Requests for Records; the responses to

the two requests made on July 22, 2020 were received on September 1 and 2, 2020 and the response to the August 19, 2020 request was received on October 2, 2020. While the Tribunal has determined that a delay in the provision of records can equate to an effective refusal to provide records, I find the above-noted delays are not significant, particularly in the circumstances where the Applicant and Ms Jubain had submitted eight requests to the Respondent over an approximate six-week period.

[59] However, the evidence is that the Respondent did refuse to provide some of the requested records. The question before me is whether these refusals were without reasonable excuse. Because the Respondent did not participate in this hearing, the only reasons for refusal before me are those set out on the Respondent's Board Responses to Records and in its e-mails to the Applicant.

[60] I find that the Respondent did fail to permit the Applicant to examine or obtain copies of records without reasonable excuse. While reasons were provided in the case of the chiller/HVAC related records, the security contracts and concierge invoices and the notices of violations of rules and by-laws, I have found those reasons to be without merit.

[61] The Applicant is entitled to access the records related to the chiller/HVAC system notwithstanding it is shared with another corporation. And, while the Respondent referred to advice it received from the CAO with respect to having discretion to release records related to the chiller/HVAC system, the security contracts and concierge services invoices, s. 55 (3) of the Act sets out an owner's clear entitlement to access a corporation's records.

[62] In the case of the requested notices of violations of the Respondent's rules and by-laws, the Respondent refused to provide the records "to secure the privacy" of its owners. Because the Board Response did not cite the Act, it is unclear whether the Respondent fully understands its obligations under s. 55 (4) of the Act. I have found that the records can be provided in redacted format. I note that in an apparent inconsistency, the Respondent was prepared to provide the requested records of owners' maintenance complaints by unit at a fee, although it is unknown if that fee included a cost for redaction.

[63] The Respondent also did not provide the Applicant with the requested property manager reports to the board, the "restricted" portion of the Respondent's board minutes or its shared amenities rules, In the case of these records, no reasons were provided for withholding them. It is possible that the Respondent believed the "restricted" board minutes were exempt documents and that the request for rules only applied to those rules specific to the Respondent alone. However, with no

testimony from the Respondent, I conclude that all of these records were refused without reasonable excuse.

[64] With respect to the amount of penalty, the Applicant referred me to a number of cases including *Surinder Mehta v. Peel Condominium Corporation 389, 2020 ONCAT 9*, (“*Mehta*”) a case where the maximum penalty of \$5000 was assessed and which he indicated was similar to this case. While the Tribunal may look to its previous decisions for guidance, each case before it is decided on its own merits. I have reviewed the cases cited by the Applicant. I find that *Mehta* can be distinguished from the current case. In *Mehta*, the Tribunal noted that the reasons provided for the refusal to provide records were largely because the records did not exist due to the failure of the corporation to properly maintain them.

[65] I assess a penalty of \$1500 to be appropriate in this case. In determining this amount, I have considered that the Respondent did respond to the Applicant’s requests within the prescribed time or with only an insignificant delay and either provided or quoted a fee for the provision of many of the requested records. And, while I have found them to be without merit, the Respondent did provide some reasons for its refusal to provide the chiller/HVAC related records, the security contracts, the concierge invoices and the notices of violations of rules and by-laws. I also recognize that the Respondent made some effort to determine its obligations by contacting the CAO, notwithstanding that I have found that the information provided was misunderstood.

Issue 5: Is the Applicant entitled to an award of costs?

Rule 45.1 of the Tribunal’s Rules of Practices states that the Tribunal may order a User to pay to another User or the CAT any reasonable expenses or other costs related to the use of the CAT. Rule 45.2 states that 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.

[66] The Applicant requests costs of \$440 in respect of Tribunal fees for the three cases he filed and associated delivery costs and \$1000 for the time he spent on this matter. The Applicant was successful in this application and I award him \$440 in costs. I note that the Applicant should reasonably expect to spend some time participating in a hearing process. While the Respondent’s failure to participate in this proceeding caused a delay of three weeks in this hearing, this delay did not increase the applied time the Applicant was required to spend on this matter.

D. CONCLUSION

[67] I find that the Respondent has refused to provide records to the Applicant without reasonable excuse and I assess a penalty of \$1500. With the exception of the shared amenity rules, a copy of which the Applicant indicated he already possesses, I am ordering the Respondent to provide both the refused records and the records he did not receive because he disputed the estimated fee. I am also ordering the Respondent to clarify the existence of records relating to advertising boards on its p1, p2 and p3 levels and to provide the Applicant with copies of these records if they exist. All records are to be provided to the Applicant at no cost. Finally, I award the Applicant \$440 in costs.

[68] I note that the Applicant requested that I order the Respondent to provide revised Responses to Records and accompanying statements for all of the Requests for Records. I do not find this necessary as I am ordering the records be provided at no cost to the Applicant.

E. ORDER

[69] The Tribunal Orders that:

1. Within 30 days of the date of this decision, the Respondent shall provide the Applicant with electronic copies of the records listed below. If the records are not kept in electronic form, the Respondent shall provide paper copies. The records shall be redacted as required in accordance with the provisions of s. 55 (4) of the Act and are to be provided at no cost to the Applicant:
 - (a) chiller contractor visit reports for the period from May 2019 to July 9, 2020;
 - (b) chiller/HVAC related insurance claims in 2018, 2019 and for the period January 1 to July 22, 2020;
 - (c) chiller/HVAC invoices booked against reserve fund in 2018, 2019 and from January 1, to July 22, 2020;
 - (d) the Paragon Security contract for 2018 and 2019;
 - (e) quotes for new security contracts in 2019 or a written statement confirming these records do not exist;

- (f) invoices for contract services concierge in 2018, 2019 and from January 1 to July 22, 2020;
 - (g) the contract for PLPS (new security company) in 2019;
 - (h) either a written statement confirming that the records do not exist or the income receipts from advertising and all submitted requests for advertising on the illuminated notification and advertising board installed at P1, P2 & P3, October 2019 to August 19, 2020;
 - (i) the property manager monthly reports submitted to the board in 2019 and from January 1, 2020 to August 19, 2020;
 - (j) the “confidential” or “restricted” minutes of meetings held on August 7, September 10, October 23, November 21 and December 19, 2019 and on January 21, February 27, 2020 and June 24, 2020;
 - (k) superintendent repair and maintenance requests, and reported building deficiencies in 2019 and from January 1 to July 22, 2020 and all residents’ complaints by complaint type in 2019; and,
 - (l) notices of violations or contraventions of PSCC 935 rules, bylaws or declaration sent to owners by date and violation type sent from January 1, 2019 to August 10, 2020.
2. Within 30 days of the date of this decision, the Respondent shall pay a penalty of \$1500 to the Applicant.
 3. Within 30 days of the date of this decision, the Respondent shall pay costs of \$440 to the Applicant.
 4. To ensure the Applicant does not pay any portion of the penalty or costs 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 penalty and costs.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: January 15, 2021