

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** January 25, 2021

**CASE:** 2020-00352SA

**Citation:** Abdurahman v. Wellington Condominium Corporation No. 7, 2021 ONCAT 6

Order under section 1.47 of the *Condominium Act, 1998*.

**Member:** Keegan Ferreira, Vice-Chair

**The Applicant,**

Abdurahman Abdurahman

Self-Represented

**The Respondent,**

Wellington Condominium Corporation No. 7

Represented by Jamie Poodry, Condominium Manager

**Hearing:** Written Online Hearing – November 3, 2020 to December 28, 2020

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] Aburahman Aburahman (the “Applicant”) is the owner of a unit in Wellington Standard Condominium Corporation No. 7 (the “Respondent”). The Applicant and Respondent were previously involved in another Condominium Authority Tribunal (CAT) case – namely, Case No. 2020-00170R – which the parties agreed to resolve by way of Settlement Agreement.
- [2] The Applicant filed this application because he argues that the Respondent has not complied with the terms of that Settlement Agreement.
- [3] Under section 1.47 (3) of the *Condominium Act, 1998* (the “Act”), a party to a settlement agreement who believes that the other party has contravened the settlement can file an application with the CAT. If the CAT determines that a party has contravened the settlement, then it may make an order to remedy the contravention.
- [4] Accordingly, the questions before me in this case are:

1. Did the Respondent fail to comply with the terms of the settlement agreement?
2. If so, what order (if any) should I make to remedy the contravention?

**B. RESULT**

[5] While I find that the Respondent has complied with the terms of the Settlement Agreement, I order the Respondent to reimburse the Applicant \$150 for the cost of his CAT related fees.

**C. BACKGROUND**

[6] As noted above, these parties were previously involved in another CAT case, No. 2020-00170R. That case dealt with a dispute regarding access to certain correspondence between the members of the Respondent's board of directors and the Respondent's condominium manager regarding repairs to cracks in the foundation of the Applicant's unit.

[7] The Applicant experienced a leak in his basement in January of 2018. Some repairs were made, but the problem persisted. The Applicant and the Respondent disagreed on the manner in which repairs were to be carried out. Unfortunately, it appears that dispute escalated and led to the Respondent sending the Applicant a cease-and-desist letter in the summer of 2019.

[8] The Applicant requested copies of email correspondence between the condominium board of directors and the condominium manager regarding this issue. He was advised by Jamie Poodry, the Respondent's condominium manager, that correspondence between the board members and the condo manager is not saved after the board makes its decision, and that the decisions are noted in the meeting minutes. Teri Poodry, the Manager of Operations with MF Property Management (being the Respondent's condominium management services provider), also told the Applicant much the same thing, advising him that there was no correspondence between himself and the board members which could be provided.

[9] Dissatisfied with this response, the Applicant then filed CAT Case No. 2020-00170R.

[10] On July 30, 2020, while that case was still in Stage 2 – Mediation, the Respondent provided the Applicant with printed copies of some emails from 2019, which the Applicant alleges have been manipulated and contain omissions. The Applicant was also sent emails from 2018, which he had not requested.

[11] On September 24, 2020, the parties agreed to resolve CAT Case No. 2020-00170R, and the CAT issued the Settlement Agreement which is at issue in this case. The Settlement Agreement contains two terms (provided verbatim below):

- **Term #1:** The Respondent will review all email communications between members of the Board of Directors and the Property Manager, Mr. Wilson, for the calendar year 2019. The email communication will be categorized as to whether it related to the person's role as a Board member or his / her role as a unit owner. The Respondent agrees to provide the records of any email communication related to the person's role as a Board member to the Applicant no later than October 9, 2020.
- **Term #2:** The Respondent agrees to arrange a meeting between the Applicant and the current Board of Directors at a mutually agreeable time to discuss the other outstanding issues. The meeting will either be in-person with appropriate public health restrictions or through a videoconference application such as Zoom. The meeting will be scheduled to happen no later than October 15, 2020. The Respondent understands that the Applicant has proposed mediation with a private mediator as a possible way to assist in the discussion of issues.

[12] After agreeing to these terms and during the week of October 5, 2020, the Respondent's counsel reviewed the additional emails in their possession. In all, the Respondent's counsel reviewed a total of 24 emails comprising approximately 33 pages.

[13] The Respondent's counsel advised them that none of the emails should be released. Acting on advice of counsel, the Respondent then notified the Applicant by email on October 9, 2020 that the corporation had determined that no further emails would be released.

#### **D. ISSUES & ANALYSIS**

##### **Did the Respondent fail to comply with the Settlement Agreement?**

[14] As noted above, the Applicant received printed copies of some emails from 2018 and 2019 on July 30, 2020. It should be noted that these emails were provided while CAT Case No. 2020-00170R was still in Stage 2 – Mediation. As such, these emails were not provided to satisfy the terms of the Settlement Agreement.

[15] The Applicant argues that the Respondent has failed to comply with the Settlement Agreement because they did not provide him with any additional emails.

[16] The Applicant further submitted that the emails that he did receive appear to have

been manipulated and that messages were missing or omitted. The Applicant provided several examples (e.g., he received emails that refer to other emails which he has not been provided).

[17] In response, the Respondent argued that it had complied with the terms of the Settlement Agreement.

[18] With respect to the issue of the missing emails, the Respondent advised that they do not save all of the emails that come into their office, especially if they do not relate to board business. They also advised that formal direction is typically given at board meetings and recorded in the minutes. As that is their practice, they do not typically save the original emails. I find that this is consistent with what the Applicant was advised by both Jamie Poodry and Terry Poodry.

[19] With respect to the issue of whether the emails they provided had been manipulated, the Respondent acknowledged that they had manipulated them to redact the email addresses of the board members and any other personal information about individual units and unit owners. They deny manipulating the emails in any other way.

[20] The Applicant asks that I find that the Respondent has failed to comply with the terms of the Settlement Agreement. As noted above, the Respondent had agreed in the Settlement Agreement to review its correspondence, and to provide copies of any emails between the condo manager and the board that relate to the sender's role as a board member. Accordingly, for me to conclude that the Respondent had failed to comply with the Settlement Agreement, I would have to find either:

1. That the Respondent had not reviewed the emails as it committed to doing; and/or,
2. That the emails, contrary to the Respondent's interpretation, do in fact relate to the sender's role as a board member, and ought to have been provided.

[21] Based on the evidence before me, I cannot make either conclusion.

[22] First, based on the evidence before me, I find that the Respondent reviewed the emails as they agreed to do. While I appreciate that the Applicant may be dissatisfied with the scope and outcome of that review, I find that the Respondent has complied with the Settlement Agreement.

[23] Second, there is no evidence before me that suggests that these emails are related to the sender's role as a board member. The Respondent noted that there

has been significant personal conflict between the Applicant and members of the board. The Respondent confirmed that all of the 24 emails that they had reviewed relate to this dispute between the Applicant and two other unit owners. The Respondent also confirmed that all of the subject emails were sent to the corporation's condo manager individually, and that none of the other board members were copied or involved.

- [24] Therefore, I find that the Respondent has complied with the terms of the Settlement Agreement
- [25] However, I find that the Respondent did not clearly explain to the Applicant why it was that it would not be providing any additional emails.
- [26] In their communication to the Applicant on October 9, 2020, the Respondent did not advise the Applicant that they were refusing to provide the emails because the Respondent had determined that they were not related to the sender's role as a board member. In fact, the Respondent did not cite that as a reason for refusing to provide the emails until the Stage 3 hearing.
- [27] At the outset of the Stage 3 hearing, I asked the Respondent to clarify why it was that they had refused to provide the emails. The Respondent informed me that it was their position that these emails cannot be released because they are related to individual units / owners, and that it would be impossible to redact the emails so as to avoid violating the prohibition against releasing such records set out in section 55 (4) of the Act.
- [28] Since the first term of the Settlement Agreement required the Respondent to provide all emails related to the sender's role as a board member, and since the Respondent had acknowledged that they had not provided the emails, this seemed to me to be an admission that the Respondent had not complied with the terms of the Settlement Agreement. I advised the parties that such was my interpretation.
- [29] In response, the Respondent then clarified that it is their position that the Respondent has complied with the terms of the Settlement Agreement. They also clarified that they had determined that none of the emails were related to the sender's role as a board member (and, further, that they could not be redacted in such a way as to protect the identity of the sender). The Respondent said that this was and always had been the reason that they refused to provide the emails at issue and apologized for any miscommunication.
- [30] I find that the Respondent did not give the Applicant an adequate explanation of why they were refusing to provide the emails. Had he known that the Respondent

was refusing to provide them because the Respondent had determined that they did not relate to the sender's role as a board member, he would likely not have filed this application.

[31] Accordingly, I order the Respondent to reimburse the Applicant \$150 for the fees that he has paid to the CAT (i.e., \$25 to file the application, and \$125 to bring it to Stage 3 - Tribunal Decision).

#### **E. CONCLUSION**

[32] For the reasons above, I find that the Respondent has complied with the Settlement Agreement. However, since the Respondent did not clearly articulate their reasons for providing the emails, I order that the Respondent reimburse the Applicant for his CAT related fees.

#### **F. ORDER**

[33] The Tribunal Orders that:

1. The Respondent has complied with the Settlement Agreement and CAT Case No. 2020-00325SA is closed.
2. Within 30 days of the date of this decision, the Respondent shall reimburse the Applicant \$150 for his CAT related fees.
3. To ensure that the Applicant does not pay any portion of this amount, the Applicant shall be given a credit towards the common expenses attributable to her unit equivalent to the proportionate share of the above penalty and costs.

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Keegan Ferreira  
Vice-Chair, Condominium Authority Tribunal

Released on: January 25, 2021