

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** February 8, 2021

**CASE:** 2020-00336R

**Citation:** Kalinitchenko v. York Region Common Elements Condominium Corporation No.1219, 2021 ONCAT 10

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

**Member:** Janice Sandomirsky, Member

**The Applicant,**

Kirk Kalinitchenko

Represented by David Barrett

**The Respondent,**

York Region Common Elements Condominium Corporation No. 1219

Represented by Denise Blake

### **MOTION DECISION**

**A. INTRODUCTION**

- [1] Mr. Kalinitchenko (the “Applicant”) brought an application to the Tribunal concerning access to records. As a preliminary issue, he argues that the Board of Directors of York Region Common Elements Condominium Corporation No. 1219 (the “Respondent”) has lost its quorum and does not have the authority to retain representation to act on its behalf in these proceedings.
- [2] The Respondent takes the position that it has the capacity, and has the intention, to appoint a representative, but has not provided any submissions or evidence in support of this position.

**B. BACKGROUND**

- [3] The Respondent’s Board of Directors consists of three members. The Applicant submitted copies of notices of resignation from two members of the Board, one dated November 14, 2020, and one dated January 9, 2021. The Applicant notes that section 32(1) of the *Condominium Act, 1998*, (the “Act”) states that “the board of a corporation shall not transact any business of the corporation except at a meeting of directors at which a quorum of the board is present.” The Applicant

argues that retaining and directing a representative is a business transaction that can only be authorized by a quorum of the Board. And, given the resignations, the Board does not have the right to enter such a transaction.

- [4] The Applicant notes that the Respondent indicated in various communications that board vacancies will be dealt with at the next Annual General Meeting, but no date has been set for that meeting. In any event, the Applicant submits that this position is contrary to section 34(4) of the Act that stipulates that, “If a vacancy arises in the board and there are not enough directors remaining in office to constitute a quorum, the remaining directors shall, within 30 days of losing the quorum, call and hold a meeting of owners to fill all vacancies in the board.”

### **C. ANALYSIS AND CONCLUSION**

- [5] Section 27(1) provides that a “board of directors shall manage the affairs of the corporation.” As noted by the Applicant, section 32(1) states that the corporation cannot transact any business except at a meeting of the board where a quorum is present. I find that retaining and directing a legal representative is a business matter that requires a decision of a quorum of the board of directors.
- [6] A similar conclusion was reached in *Ravells v. Metropolitan Toronto Condominium Corporation No. 564, 2020 ONCAT 36* and *Geissler v. Toronto Standard Condominium Corporation No. 2045, 2021 ONCAT 9*. These two cases also confirmed that the Tribunal has the jurisdiction to consider the issue of whether a representative is authorized to act on behalf of the corporation. As noted in *Geissler*, that conclusion is supported by the general provision that a tribunal may control its own processes and by Rule 7.2(b) of the Condominium Authority Tribunal Rules of Practice, which provides that each party in a hearing must “have enough information and instructions to effectively participate in the Case and have the authority to make agreements or settle any issues.” I agree with the comments in *Geissler* that, “If the CAT were unable to confirm that someone purporting to have the authority to act did in fact have that authority, then the CAT would run the risk of issuing decisions that are not binding on the parties.”
- [7] Based on the submission and evidence of the Applicant challenging the quorum of the Respondent Board of Directors, and with no evidence from the Respondent to contradict that position, I conclude that the best course of action is to adjourn the hearing to provide sufficient time for the Respondent to either demonstrate it has quorum, or if not, to take the necessary steps to remedy the situation.
- [8] I will give the Respondent up to 45 days from the date of this decision to provide

the Tribunal with documentation that confirms that its board is properly constituted and has quorum in accordance with the provisions of the *Act*. If the documentation is not received within 45 days, the Stage 3 hearing in this matter will continue without the Respondent's participation.

**D. ORDER**

[9] The Tribunal Orders that, within 45 days of the date of this decision, the Respondent shall provide documentation that confirms its board of directors is constituted in accordance with the provisions of the *Act* and has the capacity to instruct a representative to participate in this hearing.

[10] The Respondent is directed to upload the ordered documentation under the Documents tab in this hearing.

---

Janice Sandomirsky,  
Member, Condominium Authority Tribunal

Released on: February 8, 2021