

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 18, 2021

CASE: 2020-00387R

Citation: Reid v. York Condominium Corporation No. 279, 2021 ONCAT 23

Order under section 1.41 of the *Condominium Act, 1998*.

Member: Mary Ann Spencer, Member

The Applicant,
Stephen Reid
Self-Represented

The Respondent,
York Condominium Corporation No. 279
Represented by John De Vellis, Counsel

DISMISSAL ORDER

OVERVIEW

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 3 – Tribunal Decision on February 1, 2021. At issue is the adequacy of the minutes of the meeting of the board of directors of York Condominium Corporation No. 279 (the “Respondent”) held on April 22, 2020.
- [2] The Applicant’s position is that the minutes he received in response to a Request for Records are inadequate because they do not include any reference to a failed motion relating to the Respondent’s Board Governance and Ethics by-law and do not attach a supporting document which the Applicant describes as the “full motion”.
- [3] The Respondent brings this motion to dismiss this matter before hearing evidence on the grounds that “the issues are either outside of the CAT’s power or so minor that it would be unfair to continue with the proceeding” and that “the purpose of this proceeding is not to obtain the document but rather some other purpose that is inconsistent with the Act.”
- [4] Rule 17.1 of the CAT’s Rules of Practice states that the CAT can dismiss a case at any time in certain situations. These include if the CAT determines that a case is about issues that are so minor that it would be unfair to make the Respondent go

through the CAT process to respond to the Applicant's concerns. Under Rule 41.1 of the Rules of Practice, the CAT will end Stage 3 and close the case if the CAT Member dismisses the case.

- [5] I have considered the submissions made by both parties and find that the issue in dispute is so minor that it would be unfair and disproportionate to require the Respondent to respond. Accordingly, I order that this case be dismissed.

BACKGROUND

- [6] On November 1, 2020, the Applicant submitted a Request for Records in which, under "Core Records", he requested the minutes of the Respondent's board meeting of April 22, 2020. Under "Non-Core Records" he also requested a document he described as "Minutes of Meeting for board meeting for April 22, 2020 mentioned a motion and document that was tabled which needs to be attached to the minutes to be a complete record." The motion the Applicant refers to was made by a former board member to conduct an investigation under the Respondent's Board Governance and Ethics by-law.

- [7] The Respondent provided the Applicant with a copy of the requested April 22, 2020 minutes. This copy contains no reference to the motion made by the former board member. Further, the version the Applicant received differs from a version he obtained from the former board member which does include an item referencing the motion. That reference includes the subject of the motion and indicates that the motion was not seconded and therefore was not considered. Both versions of the minutes, uploaded by the Applicant to the Tribunal's CAT-ODR system, are signed. Neither version indicates it was amended.

ANALYSIS

- [8] Rule 17.1 of the Tribunal's Rules of Practice states that the Tribunal "can dismiss a case at any time in certain situations", including, among others:
- (a) Where a Case is about issues that are so minor that it would be unfair to make the Respondent(s) go through the CAT process to respond to the applicant(s)'s concerns;
 - (b) Where a Case is about issues that the CAT has no legal power to hear or decide;
 - (c) Where the Applicant(s) is using the CAT for an improper purpose (e.g., filing vexatious Applications);

Rule 17.1(a): Are the issues so minor that it would be unfair to make the Respondent go through the CAT process?

- [9] The only issue to be decided in this case is whether the minutes of the Respondent's April 22, 2020 meeting, which include no reference to a motion submission related to the Respondent's Board Governance and Ethics by-law, are adequate in accordance with section 55 (1) of *the Condominium Act, 1998* (the "Act").
- [10] Counsel for the Respondent submits that the issue before the Tribunal is minor and it would be unfair to continue with the hearing. He submits that the Applicant is already in possession of not only the "official" copy of the April 22, 2020 minutes (that is, the copy the Respondent provided to the Applicant), but also copies of the "disputed" minutes and the motion's supporting document (that is, the documents the Applicant indicates he obtained from the former board member who made the motion). Counsel indicated that the Respondent sent the "disputed" minutes to the former board member in error. He submits that the minutes the Respondent provided to the Applicant are "clearly adequate" and that the motion's supporting document is not a corporate record.
- [11] The Applicant's position is that not only should the "official" minutes include reference to the motion, but they also should append the full documentation that the presenting board member prepared to support it. The Applicant indicated that he is not in possession of all of that documentation. He submitted that "adequate meeting records require that all proceedings and motions be recorded – even the ones that fail to pass."
- [12] Section 55 (1) of the Act states "the corporation shall keep adequate records" and sets out a list of the records which must be kept. Those records include "a minute book containing the minutes of owners' meetings and the minutes of board meetings." The word "adequate" is not defined in the Act. 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.

[13] In *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, 2020 ONCAT 33* (“*Yeung*”), the Tribunal determined that accuracy of a record is a component of adequacy. That case dealt with an error in board minutes which was not disputed by the parties and the Tribunal ordered the corporation to amend its minutes. The Tribunal wrote:

In the present case, the issue is not about a document, like a reserve fund study, that looks forward into an uncertain future, but about the minutes of a meeting, which is an historical record, one that looks back upon facts that, to the parties preparing and approving the record, ought to be a matter of certain and immediate knowledge. The purpose of the record is, as the Respondent submitted in this case, “to document a board’s business transactions and how the Corporation’s affairs are ‘controlled, managed and administered’.”

[14] The Applicant submits that the “official” minutes of the Respondent’s April 22, 2020 board meeting should include reference to the motion even if it “failed to pass”. The salient point to be taken from *Yeung* is that the board’s business transactions should be accurately documented. In the case before me, there was no business transacted with respect to the motion; the “disputed” version of the minutes includes a brief description of the motion and indicates that it was not seconded and that no vote took place.

[15] Counsel for the Respondent referred me to *Ronald Smith v Metropolitan Toronto Condominium Corporation No. 773, 2019 ONCAT 24*, a case in which the Applicant “wished to ‘see what management recommended...that was not acted on’.” The Tribunal wrote:

I accept the submission of the Respondent that the management reports are drafts or notes and only become a record of the corporation to the extent that they are accepted by the Board and reflected in the minutes of a Board meeting. It may be helpful going forward, for the Board to append or fully include the agenda and other items approved by the Board, as segments in the Board minutes.

In the case before me, the “disputed” version of the minutes contains no reference to the supporting document which the Applicant seeks a full copy of and which he refers to as the “full motion”. The Applicant indicated that this document is 39 pages in length but that he is in possession of only 4 pages which he uploaded to the CAT-ODR system. I note that that this document sets out only one paragraph under the heading “Motion” with the following heading being “Background”. There is no basis on which to conclude that a background document for an item that was not on the board’s agenda, as the documents disclosed by the Applicant reveal, was not discussed and therefore was not accepted by the board, should either

form part of the minutes or be retained as a corporate record. Therefore, the only issue for the Tribunal to consider if this matter proceeded to hear evidence would be which of the two versions of the minutes should be kept by the corporation in accordance with s. 55 (1) of the Act.

[16] If the motion in question had been seconded and discussed, and the “disputed” minutes indicate it was not, the issue of accuracy and therefore the adequacy of the “official” version of the minutes provided to the Applicant by the Respondent would merit hearing evidence. However, in this case, no business was transacted and I conclude that the substance of the difference between the two versions, that is the recording of a motion that was not seconded, comprises a minor issue which does not warrant making the Respondent go through the hearing process. Whether every item raised at a board meeting that results in no transaction of business and no decision on any action should be recorded in its minutes is a decision for the board to make. Therefore, I dismiss this case.

[17] I do, however, find it troubling that there appear to be two signed versions of the Respondent’s board meeting minutes of April 22, 2020 in circulation. I advise the Respondent to rectify this by indicating in its records, as appropriate, that an amendment was made.

[18] Because I have decided to dismiss this matter on the basis of Rule 17.1 (a), there is no need to consider the parties’ submissions relating to Rules 17.1 (b) and (c).

ORDER

[19] The Tribunal orders that:

1. This case is closed in Stage 3 - Tribunal Decision pursuant to Rules 17.1 and 41.1 of the CAT’s Rules of Practice.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: March 18, 2021