

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 13, 2021

CASE: 2020-00055R

Citation: Harrison v. Toronto Standard Condominium Corporation No. 2714, 2021 ONCAT 30

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

Member: Brian Cook, Member

The Applicant,

Angelo Harrison
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 2714
Represented by Justin McLarty, Counsel

Hearing: Online Hearing: September 14, 2020 – March 4, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] Angelo Harrison and Anne Marie Marchand are owners and occupiers of a unit in Toronto Standard Condominium Corporation No. 2714 (“TSCC #2714”). Mr. Harrison is the Applicant in this case. The Respondent corporation is represented by Justin McLarty.
- [2] The Applicant filed a series of Requests for Records from December 2019 to March 2020. According to the Respondent, there were 17 Requests in this period, sometimes several on one day. The Applicant identified 101 records that were requested. It is relevant that the condominium “turn over” meeting occurred in November 2019 and so the requests were filed soon after the corporation started to operate under an owner-elected board of directors.
- [3] Many of the requests were resolved between the parties and during mediation at the Tribunal. The Applicant was not satisfied with the result regarding some of the requests and the matter proceeded to the adjudication stage of the Tribunal’s process, or Stage 3.

B. Clarification of records in dispute and hearing process

- [4] Throughout the Stage 3 process, a challenge has been to understand what records are in dispute. In part, this has evolved as, during the hearing process, the Respondent has provided a number of the records that had not previously been provided.
- [5] A case conference hearing was held on October 22, 2020 to try to clarify the records that were in dispute to that point. On December 9, 2020, following further submissions and discussions with the parties, I identified the list of records that were in dispute. Neither party had an issue with the identified list of records.
- [6] A video conference was held on December 18, 2020. At the hearing, I heard evidence and submissions from Mr. Harrison and Ms. Marchand. Mr. McLarty represented the Respondent and Kevin Cousins and Francesca Scala were present as witnesses. Mr. Cousins is the condominium manager and Ms. Scala is a member of the board of directors and has been on the board since the time of the turnover in August 2019.
- [7] The video conference hearing focussed on the records identified as in dispute. During the hearing, the Respondent undertook to provide some of the records on the list and to investigate to determine if certain records do exist.
- [8] At the hearing it was determined that there was a category of records that had been requested and not provided because the Applicant had not paid the amount identified by the Respondent as the anticipated cost of producing the records. The Applicant did not dispute that the Respondent was entitled to ask for this payment and did not dispute that the amount requested was reasonable. Another category of records that do not exist was also identified.
- [9] On December 18, 2020, I established a timetable for the parties to make further submissions on the issues discussed at the videoconference hearing and also on the issues of penalty and costs. That process was completed by January 13, 2021. However, I determined that I was still not completely clear about the status of various records. As well, I was uncertain as to the relevance of some of the approximately 75 documents the Applicant had filed in the case.
- [10] On February 2, 2021, I asked the Applicant to clarify if there were still records that had been requested and not provided and to identify what those records are. I also asked the Applicant to explain the purpose of the documents he had filed.
- [11] The Applicant provided an explanation for the documents, which were mostly intended to show that the board had access to documents that they did not provide at the time they were requested. The Applicant did not identify any other records

that had been requested and not received.

[12] On February 19, 2021, I identified a list of the records that had been requested and not yet addressed in the hearing process. These were identified as follows:

- 1) Belanger Engineering contract
- 2) The Performance Audit Designate Agreement
- 3) Carrier service contract, page 16
- 4) The Del property management agreement for Limited Licence Manager.
- 5) "As is" HVAC ventilation for the building duct work and shafts
- 6) "As is" plumbing for the building

[13] I asked the Respondent to provide submissions on these records. In addition, I identified records that the Respondent had agreed to provide but had not yet provided and asked for an update regarding them. These were:

- 1) Unaudited financial records for the period May to August 2019
- 2) Unaudited financial statements for February, March and April 2020
- 3) Annual Risk Management Measures Report

[14] I also asked the Applicant to review the documents I had identified and to indicate if there were other records that had not yet been addressed.

[15] The Applicant then filed a lengthy point-form submission. It includes further comments on records that had been the topic of previous submissions, identification of redactions in various board minutes, and a list of redactions made to the unaudited financial statements. These submissions will be addressed below. The records that the Respondent agreed to provide were provided.

C. ANALYSIS - RECORDS IN DISPUTE

Minutes of the board of directors from 2019

[16] The Applicant requested minutes of the board for May, June, July and August 2019. The parties agree that the turnover date – the date the developer turned over the condominium – was in August, 2019. Mr. Harrison and Ms. Scala were present at that meeting. Minutes of this meeting were taken and have been provided to Mr. Harrison. At the meeting, the board of directors was elected and they held their first meeting in September 2019.

[17] Prior to the turnover meeting, the declarant should have established a board and there should be a record of any resolutions passed by that board, which should have been turned over to the new board at the time of the turnover. However, the

Respondent states that it does not have any record of any meeting or resolutions of the declarant board.

- [18] I agree with the Applicant that if there are minutes of any meeting of the board established by the declarant, these should be in the possession of the corporation. The Respondent is directed to contact the declarant to ask for any minutes or resolutions from the board established by the declarant. If the declarant advises that these records are not available, the Respondent shall advise the Applicant accordingly. If records are received, the Respondent shall provide a copy to the Applicant or provide an explanation for why the records will not be provided.

Board of directors meeting minutes for February 3, 2020 meeting

- [19] There is some uncertainty about a meeting that may have occurred on February 3, 2020. The Applicant asserts that there must have been a meeting on that date because documents were signed on that date by board members and the condominium rules provide that the board can only do business at a meeting. Ms. Scala testified that she believes that there was a “budget meeting” on February 3, 2020 because she has emails about it although she was not present. In written submissions, Mr. McLarty advised that there was no board meeting on February 3, 2020. In his submissions, Mr. Harrison pointed out that this seems to contradict the evidence of Ms. Scala.
- [20] There are minutes of a January 2020 meeting of the board which indicate that the next meeting will be on February 27, 2020. There are minutes of the February 27, 2020 meeting, and they reference the minutes for the January meeting and do not reference a February 3, 2020 meeting.
- [21] On the basis of the evidence before me, I conclude that there may have been a meeting of some board members on February 3, 2020 to discuss the budget. Given that there is no mention of any meeting in the minutes of the January meeting or the February 27 2020 meeting, it would appear that any meeting on February 3, 2020 was an informal discussion which would not require minutes because no business was transacted. I accept the Respondent’s assertion that there are no minutes of any meeting that may have occurred on February 3, 2020.

Notice and minutes of first AGM

- [22] The Applicant notes that there was a meeting of the owners in August 2019, which they attended. The Applicant questions whether there was also an AGM in 2019, and if so, where are the Notice and Minutes from that meeting? This seems to be a semantical problem. The turnover meeting was the same as the first AGM. There

is no evidence to indicate there may have been another AGM for which the Applicant did not receive notice.

Redaction

[23] The Applicant notes that many of the minutes of the board that have been received are redacted. As well, some of the entries note that there was an in camera discussion in regard to various issues.

[24] For example. The minutes for the March 26, 2020 meeting include the following, as summarized by the Applicant:

- 5.2.1 Noise Complaint

The discussion was redacted as per Section 55 (4)(c) of the Condo Act , as it pertained to a specific unit and unit owner.

- 5.2.2 Enterphone Issues

A portion of the discussion was redacted as per Section 55 (4)(c) of the Condo Act , as it pertained to a specific unit and unit owner.

- 5.4.2 CAT Case

The discussion was redacted as per Section 55 (4)(c) of the Condo Act , as it pertained to a specific unit and unit owner.

- 5.4.3 Request for Records

The discussion was redacted as per Section 55 (4)(c) of the Condo Act , as it pertained to a specific unit and unit owner.

- 6.0 Correspondence from Owners

The discussion was redacted as per Section 55 (4)(c) of the Condo Act , as it pertained to specific unit owners.

- ADDENDUM - Portions of the minutes were redacted as per Section 55 (4) of the Condo Act and were attached as an addendum.

[25] The Applicant suggests that when he requested copies of the minutes, the Board was required to provide a separate statement to him, explaining the redaction.

[26] Section 13.8.(1)(b) of Ontario Regulation 48/01 (the Regulation) provides as follows:

13.8 (1) Each copy of a record that the corporation makes available for examination or delivers under any of sections 13.4 to 13.7 shall be accompanied by,

...

(b) if the board has determined that the corporation will redact the record to remove any part that the board has determined that the corporation will not allow the requester to examine or of which it will not allow the requester to obtain a copy, a written statement of the board's reason for its determination and an indication on which provision of section 55 of the Act or this Regulation the board bases its reason;

- [27] The minutes in question here do provide a statement about the reasons for any redactions and also indicate if there was an in camera discussion. In my view this conforms with the requirement of section 55(4) of the *Condominium Act, 1998* (the Act). Since the requirements of section 55(4) of the Act had already been met, the Board was not required to provide another statement when the minutes were provided to the Applicant.
- [28] There are some records that have been provided in this case to which section 13.8(1)(b) of the Regulation would apply because the record was redacted before it was given to the Applicant, for example, the superintendent contract and some of the financial records that were provided during the hearing process. The Respondent advised that these would be redacted prior to producing them because they included personal information about an employee or unit owner. In these circumstances I find that an additional written explanation was not necessary.

Financial reports for the period May to August 2019 and for February, March and April 2020.

- [29] The Applicant requested the audited financial reports for the period May to August 2019 and these were provided. At the hearing, the Applicant explained that they should have asked for *unaudited* reports.
- [30] Mr. McLarty advised that the Respondent was not sure if there were unaudited reports for May to August 2019 but would check and provide them if they do exist.
- [31] The Applicant requested unaudited financial reports for February, March and April 2020.
- [32] The unaudited financial reports for May to August 2019 and February, March and April 2020 were disclosed on February 26, 2021. In submissions, Mr. McLarty advised:

These records will be uploaded to the Documents tab [of the Tribunal ODR system].
The Financial Statements are in the form provided to all owners (as they are

uploaded to a web portal maintained by the Corporation) and contain redactions for information relating to specific units, owners and employees of the Corporation, pursuant to Sections 55(4)(a) and (c) of the Act.

- [33] In his final submissions dated March 4, 2021, the Applicant confirms that unaudited monthly financial statements have been uploaded to “Condo Central” in a redacted form but “with no indication of redactions except for missing pages”.
- [34] The unaudited financial statements that the respondent has uploaded to the CAT-ODR all have a table of contents which lists pages that are not included in the records that have been uploaded. According to the table of contents, the part of the records that have not been disclosed are those in “part 3” which includes information about specific units, but also “bank reconciliation” “utility logs” and “general ledger”. It is not clear whether these items relate to individual units or owners or employees. There is no statement on the records indicating that they have been redacted or the reason for the redaction.
- [35] I find that the absence of a statement about redaction of the unaudited financial records is contrary to section 13.8(1)(b) of the Regulation, quoted above. The Respondent is directed to review the unaudited financial records it has disclosed to the Applicant in this case and to provide a written statement of the reason for any redaction and the applicable provision of section 55 of the Act or the Regulation.
- [36] In his submissions, the Applicant refers to other financial records that have been posted to Condo Central and asserts that these too have missing pages with no explanation for the redaction. The respondent may wish to review this practice.

Operating and Reserve Bank Statements for the month of May 2019

- [37] At the video conference hearing, the Applicant explained that they received statements for June 2019 but not for May 2019. Mr. McLarty noted that the corporation was created on May 2, 2019 and that there were no bank statements until the following month. The Applicant agreed that this resolved the issue but indicated that they had not heard this explanation previously.

4 Seasons Contract and Payment Records

- [38] 4 Seasons provides periodic duct cleaning and filter replacement for the condominium. At the video conference hearing, Mr. Cousins testified that there is no contract for service as they are used on as needed basis. Mr. Harrison indicated that he had not previously understood that there was no contract, but Mr. McLarty noted that a response indicating this was provided on March 16, 2020. Mr. Harrison agreed that this had been received, but noted that they did not receive

the record of payments that was requested. It was established that the reason for this was that the Respondent had asked for costs of \$31 to process the record of payments which the Applicant had not paid.

[39] Despite this discussion, in his final submissions, the Applicant states that the 4 Seasons contract and the record of payments from 4 Seasons has not been provided.

[40] I find that it is more probable than not that there is no contract with 4 Seasons. The Applicant is not entitled to the record of payments from 4 Seasons because he did not pay the requested fee.

City Wide Door and Hardware, Johnson Controls, and Magnum Protective Services Contracts

[41] Mr. Cousins testified that these companies all provide services on an as needed basis and that there are no contracts for service. Mr. Harrison was satisfied with this explanation.

LNR Security System Contract

[42] This company monitors security alarms and conducts periodic tests of security systems. There is no contract but there is an agreement to provide services. Mr. Cousins thought that this agreement was provided to the Applicant on October 14, 2020. However, Ms. Marchand advised that they did not receive it because they did not pay the requested fee for the production of the record. The Applicant is not entitled to the record of payments from 4 Seasons because he did not pay the requested fee.

Provident Energy – Hydro Agreement and/or Shared Savings/Terms of Energy Savings Contract

[43] The corporation has contracts with Provident Energy. There are also contracts between Provident and individual unit owners. The Applicant has received two contracts but not a Hydro Agreement and/or Shared Savings/Terms of Energy Savings Contract. Ms. Scala and Mr. Cousins testified that they have not heard of such a contract. Ms. Marchand testified that she called the Ontario Energy Board and was advised that such a contract is required. Ms. Scala offered the opinion that if there was such a contract it would likely be very long. Mr. McLarty submitted that two contracts that were signed on May 1, 2019 have been provided and that these have detailed terms and are eight to ten pages in length. These have been provided and the corporation does not have any other contracts with Provident,

although it is possible that a contract was signed prior to turn-over.

[44] The possible existence of an undisclosed contract with Provident seems to rest on information that Ms. Marchand received from the Ontario Energy Board. What is not known is whether the existing contracts that have been provided to the Applicant are in fact the types of contract identified by the Ontario Energy Board as required contracts. In any event, the evidence of the Respondent's witnesses is that the corporation has only the two contracts that have been provided. On the basis of the evidence before me, I am satisfied that the Respondent has provided the contracts involving Provident that are in its possession.

Superintendent contracts

[45] The Applicant requested copies of contracts for the building superintendent. The condominium has had two superintendents. The Applicant received a copy of the contract for the second superintendent, redacted to protect personal information. Mr. Cousins testified that a copy of the contract for the first superintendent was also provided. He recalled that it was part of a package of documents that were provided in hard copy form. Ms. Marchand testified that she scanned the hard copies that were received and did not keep the actual hard copy. During the hearing, Mr. McLarty provided the redacted contract for the first superintendent.

Adams & Miles LLP engagement letter

[46] Adams & Miles LLP is the auditor appointed by the corporation. The Applicant requested the engagement letter. Mr. Cousins testified that he provided this by email dated October 5, 2020 in a separate email. The Applicant stated that he did not receive this email. Mr. Cousins testified that he sent four separate emails to the Applicant on October 5 concerning different record requests.

[47] After the videoconference hearing, Mr. McLarty filed an email from Mr. Cousins dated October 5 but it has no subject line and it is not clear that there was an attachment. However, Mr. McLarty also filed the engagement letter.

[48] I find that the evidence is inconclusive as to whether the Adams & Miles engagement letter was sent on October 5, 2020. However, it has now been received by the Applicant.

Carrier service contract

[49] The Applicant received a copy of this contract but noticed that page 16 was missing. Mr. McLarty has confirmed that the corporation does not have a contract with a page 16 but that they will contact Carrier to request a copy of this page and

will provide a copy to the Applicant if it is obtained. I find that the Respondent has provided the record that it has regarding the Carrier service contract.

[50] In his final submissions, the Applicant refers to the Carrier Commercial Service Mechanical Preventative Maintenance Contract, and indicates that page 15 is missing from it. I find this is a new issue that was not previously raised and cannot now be raised at this stage of the case.

Del Property Management contract for Limited License Manager

[51] The Applicant has received a copy of the contract dated May 2, 2019. Mr McLarty advises that there was no subsequent contract.

Performance Audit Designate Agreement

[52] In his final submissions, Mr. McLarty confirms that this agreement has been located and it was uploaded as a document in the CAT-ODR system.

Belanger Engineering contract

[53] Mr. McLarty states that the corporation has provided the Applicant with a copy of the proposal that was submitted by Belanger to complete the Performance Audit, and the letter from the corporation accepting the proposal. Based on the evidence, it appears that there is no other form of contract.

Annual Risk Management Measures Report

[54] The Respondent submitted that it did not initially understand what this request was about. In post-hearing submissions, Mr. McLarty advised that the Respondent now understands that this is a request for a Certificate of Property Use and is now collecting the necessary information in connection with the Certificate which will be provided to the Applicant when it is available.

[55] In his final submission, Mr. McLarty indicates that a final report is still pending and that a copy can be provided to the Applicant when the necessary information from the engineer has been obtained.

“As Is” drawings

[56] The Respondent states that it has provided the Applicant with 130 digital copies of “as-built” drawings and that the Corporation is willing to make arrangements for the Applicant to review the as-built drawings in the management office with 48 hours’ notice.

[57] In his final submissions, the Applicant indicates that he has not yet examined the drawings because they do not know if the information they seek will be available from the drawings. It would seem that the Applicant should first examine the drawings. I imagine that the drawings might be difficult for a lay person to understand but this is not a problem that relates to the ability to access the records. The solution proposed by the Respondent seems reasonable under the circumstances, noting that the drawings in question are large.

Policies

[58] The Applicant requested the human rights policy, a privacy policy, a surveillance camera policy and a yoga common areas rule.

[59] Mr. McLarty advised that the board is working on a human rights or harassment policy and a privacy policy and that these will be provided to all the owners when they are finalized. He advises that there is no surveillance camera policy or yoga common areas rule.

Two additional documents

[60] In his final submissions, the Applicant identified additional documents that had not previously been requested or discussed. Given that these documents did not form part of the already lengthy requests before me, I have decided that it is not appropriate to add these to the case before me.

D. CONCLUSION

[61] The Applicant has now received the records he has requested and which he is entitled to and which exist. The exception to this are records of any minutes or resolutions of the board appointed by the declarant prior to the turnover. I have directed the Respondent to obtain these records if they exist and to provide a copy if they can be obtained or provide an explanation if they will not be provided or if they do not exist. The Respondent has agreed to permit the Applicant to examine the "As Is" drawings.

[62] Board minutes that have been redacted have been redacted in accordance with section 55(4) of the Act. The minutes include a statement of the reasons for the redactions and the provisions in section 55(4) of the Act which justify the redactions. The Respondent has not provided a statement about the redaction of the unaudited financial records it has provided and it is directed to do so.

E. COSTS

[63] The Applicant seeks reimbursement for the costs of commencing and continuing this case through the Tribunal's processes. These amount to \$200. The Respondent did not make submissions on this issue. It seems clear that this hearing process was necessary to at least clarify the issues and ensure that the Applicant received the records he is entitled to receive. I find that an order that the Respondent reimburse the \$200 in costs to the Applicant is reasonable and appropriate.

[64] The Respondent did not make a request for costs.

F. PENALTY

[65] The Applicant submits that a penalty is in order. He notes that the legislation establishes a process and a timetable for how requests for records are to be dealt with by a condominium corporation. He notes that while some of the requested records were provided in a timely way, many were not. As noted in this decision, even up to the time of the hearing, many records had not yet been provided. The Applicant submits that this shows that the Respondent does not take its legal obligations seriously and that the maximum penalty of \$5000 should be awarded. The Applicant asserts that \$500 is the lowest penalty that can be ordered. The Applicant's request for a penalty included a lengthy submission citing the results in other cases where penalties were found to be in order.

[66] The Respondent submits that no penalty should be awarded. The Respondent argues that it worked in good faith to provide records. The Respondent submits that it felt overwhelmed by the volume of requests in this case, coming in multiple and sometimes confusing ways. Some of the requests were vague and others were for records that do not exist. The Respondent found the tone of some of the requests and communications around them to be confrontational and not conducive to healthy condominium living.

[67] Section 1.44(1) of the Act provides

1.44 (1) Subject to subsection (4), in a proceeding before the Tribunal, the Tribunal may make any of the following orders:

...

6. An order directing a corporation that is a party to a proceeding with respect to a dispute under subsection 55 (3) to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under that subsection if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

[68] The Tribunal has found that a delay in providing a requested record that an Applicant is entitled to may be a form of refusing the Applicant access to the record. The issue is then where there is a “reasonable excuse” for the delay.

[69] In my view, there were a number of factors that contributed to the delay in providing many of the records. These include:

- The requests for records started within months of the turn-over meeting.
- There were 17 requests in a period of a few months, requesting over 100 records.
- Some of the requests were not at all clear and required explanation.
- There was some duplication in the requests.
- The Applicant knew that there would be a cost associated with the production of non-core records. The cost estimate was reasonable, but the Applicant then did not pay the amount in respect of many of the requested records.

[70] At the same time, some of the requests were clear and were for records the Applicant was entitled to, but which took up to the time of this hearing to resolve. In these circumstances, I agree with the Applicant that a penalty is in order. However, since the Applicant contributed to the delay in respect of many of the records, I find that a large penalty is not appropriate. The Applicant is not correct that there is a minimum penalty. Section 13.1(6) of the Regulation establishes a maximum amount of \$5,000 but there is no minimum.

[71] In the circumstances, I find that a penalty of \$350 is appropriate.

G. ORDER

[72] Within 30 days of the date of this decision the Respondent shall:

1. Pay the Applicant \$200, representing the Applicant’s costs in pursuing the case and a penalty of \$350, for a total of \$550.
2. Contact the declarant and ask for any minutes or resolutions from the board established by the declarant. If the declarant advises that these records are not available, the Respondent shall advise the Applicant accordingly. If records are received, the Respondent shall provide a copy to the Applicant or provide an explanation for why the records will not be provided.

3. Review the unaudited financial records it has disclosed to the Applicant in this case and to provide a written statement of the reason for any redaction and the applicable provision of section 55 of the Act or the Regulation.

Brian Cook
Member, Condominium Authority Tribunal

Released on: April 13, 2021