

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 10, 2021

CASE: 2020-00336R

Citation: Kalinitchenko v. York Region Common Elements Condominium Corporation No. 1219, 2021 ONCAT 40

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

Member: Janice Sandomirsky, Member

The Applicant,

Kirk Kalinitchenko

Represented by David Barrett, Agent

The Respondent,

York Region Common Elements Condominium Corporation No. 1219

Represented by Dan Barnabic, Agent

Hearing: Written Online Hearing – January 20, 2021 to April 20, 2021

REASONS FOR DECISION

A. INTRODUCTION AND PRELIMINARY ISSUE

- [1] Mr. Kalinitchenko (the “Applicant”) brought this application to the Tribunal requesting access to records.
- [2] At the outset of the hearing, the Applicant presented a preliminary issue related to the status of the board of directors of York Region Common Elements Condominium Corporation No. 1219 (the “Respondent”). The Applicant took the position that the board did not have a quorum of members and, therefore, did not have the authority to retain representation to act on its behalf or to take part in these proceedings at all.
- [3] The Applicant relied on section 32(1) of the *Condominium Act, 1998*, (the “Act”) which states that the corporation cannot transact any business except at a meeting of the board where a quorum is present. The Tribunal has found in other decisions

that retaining and directing a legal representative is a business matter that requires a decision of a quorum of the board of directors (see *Ravells v. Metropolitan Toronto Condominium Corporation No. 564, 2020 ONCAT 36* and *Geissler v. Toronto Standard Condominium Corporation No. 2045, 2021 ONCAT 9*).

- [4] The hearing was adjourned on February 8, 2021, to give the Respondent an opportunity to respond to the preliminary issue. In a motion decision (2021 ONCAT 10) I ordered the Respondent to provide documentation that confirmed its board of directors was constituted in accordance with the provisions of the Act and had the authority to retain and instruct a representative to participate in this hearing.
- [5] The Respondent uploaded many documents in response to this order. The documents show that on July 16, 2020, the two existing members of the board of directors passed a resolution to amend the by-law dealing with the composition of the board and reduce the membership from five to three members.
- [6] In August 2020, the two board members appointed a third member. Two of the members resigned between November 2020 and January 2021, and another member was appointed by the sole remaining board member. At the time the hearing began, the board consisted of two members.
- [7] Before making a ruling on the question of the constitution of the board of directors, I asked the Respondent some specific questions about the by-law change that reduced the composition of the board of directors from five to three. Section 56 of the Act states that the board of a condominium corporation may, by resolution, make, amend, or repeal by-laws. A by-law is not effective, however, until a majority of all unit owners support the amendment after a meeting is held where a quorum of owners is present.
- [8] The Respondent uploaded additional documentation. None of the documents, however, demonstrated that the board followed the steps set out in the Act to amend a by-law. As a result, I concluded that the by-law to reduce the board quorum was not amended correctly and therefore, the board did not have the authority to retain or instruct a representative to participate in the hearing.
- [9] Furthermore, even if the by-law had been properly enacted at the Board meeting in July 2020, it was clear from the list of subsequent resignations and appointments that the board lost its quorum after the resignation of the second board member in January 2021. Section 34(4) of the Act states that, the only act a board of directors can undertake without having a quorum, is to “call and hold a meeting of owners to

fill all vacancies in the board.”

[10] Having concluded that the amendment to the by-law was not properly enacted and the board did not have the authority to act, I ordered that the hearing proceed without the participation of the Respondent.

B. ISSUES & ANALYSIS

[11] This Application involves a very straightforward request for records. Section 55(1) of the Act requires a condominium corporation to keep adequate records. Section 55(3) requires that the corporation provide owners with access to corporate records, subject to certain exemptions in the Act and Regulations that do not apply to this case.

[12] The Applicant made a request for the following records using the prescribed form:

- a) Condominium corporation by-laws
- b) Record of owners and mortgagees
- c) Record of notices relating to leases on units under s.83 of the *Condominium Act, 1998*
- d) Budget for the corporation's current fiscal year, including any amendments
- e) Most recent approved financial statements
- f) The current plan for future funding of the reserve fund

[13] The Applicant states that the Respondent did not provide any response to the request for records.

[14] The Respondent did, however, upload many documents in response to the motion order including a budget for the corporation's current fiscal year, financial statements and a current plan for future funding of the reserve fund.

[15] The Applicant accepted that the reserve fund plan satisfied his request for that document. The Applicant did not accept the budget or financial statements on the basis that there was no evidence those documents were properly approved by the board.

[16] The Applicant made a specific request that there be no penalty or costs against the

Respondent.

C. ORDER

[17] The Tribunal orders:

1. The Respondent to provide the following records to the Applicant within 30 days of this decision:
 - a) Condominium corporation by-laws;
 - b) Record of owners and mortgagees; and,
 - c) Record of notices relating to leases on units under s.83 of the *Condominium Act, 1998*.
2. The Respondent to provide the following records to the Applicant as soon as it has a properly constituted board or an administrator is appointed:
 - a) Budget for the corporation's current fiscal year, including any amendments; and,
 - b) Most recent approved financial statements.
3. The records are to be provided at no cost to the Applicant.

Janice Sandomirsky
Member, Condominium Authority Tribunal

Released on: May 10, 2021