

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 4, 2021

CASE: 2021-00146R

Citation: Niekraszewicz v. York Region Condominium Corporation No. 835, 2021 ONCAT 73

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

Member: Marc Bhalla, Member

The Applicant,

John Niekraszewicz

Self-Represented

The Respondent,

York Region Condominium Corporation No. 835

Hearing: Written Online Hearing – June 7, 2021 to July 26, 2021

Live Online Motion Hearing – June 28, 2021, 10:30 am - 10:48 am

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant is a condominium unit owner seeking records from the Respondent condominium corporation. The Applicant sent the Respondent five Request for Records forms and does not think the Respondent fully addressed them. The Applicant feels entitled to records that have not been provided and also wants costs and penalties. The Respondent joined the case before the start of the hearing but did not participate in it.
- [2] When a party does not take part in a hearing, I wonder if they are aware the hearing is taking place. This Tribunal's process is primarily asynchronous and text-based. Parties here have more opportunity to take part than is traditionally offered in an in-person hearing. In this case, a live, synchronous motion hearing extended the number of courtesy attempts made to engage the Respondent. The Stage 3 hearing lasted 50 days. The Respondent missed nine participation deadlines during it. The Respondent was notified of this proceeding. I am satisfied that the Respondent was provided notice and a fair opportunity to participate in the hearing.
- [3] The Respondent did not reply to the Applicant's requests on the prescribed form. The Respondent emailed the Applicant and provided some of the records the Applicant requested but did not address all of the records the Applicant requested.

The Respondent stopped communicating with the Applicant.

- [4] The Applicant believes they are entitled to:
- a. Reserve fund banking and investment statement of December 31, 2020;
 - b. Most recent approved financial statements as of March 28, 2021;
 - c. Record of Owners and Mortgagees;
 - d. Insurance policy application;
 - e. Periodic Information Certificate due April 2021;
 - f. Minutes of Board Meetings that took place between April 10, 2020 and May 9, 2021;
 - g. Notice of insurance policy termination; and
 - h. Reconciliation of pre-paid hydro from April 2019 to May 11, 2021 (collectively, the "Records").
- [5] In this decision, I find that the Applicant is entitled to some but not all of the Records. I also find that the Respondent refused to provide records that the Applicant is entitled to without reasonable excuse. Therefore, I find that a penalty of \$3000 is appropriate and also award the Applicant their filing fees.

B. BACKGROUND

- [6] The Applicant's concerns stem from a notice of December 29, 2020. The notice advised that the Board of Directors of the Respondent would start to self-manage the condominium. The Applicant's concerns surround financial statements, insurance and the reconciliation of hydro costs.
- [7] The Applicant's first Request for Records was dated March 19, 2021. They requested:
1. The condominium's insurance certificate; and
 2. Reserve fund banking and investment statements as of December 31, 2020.
- [8] The Applicant received the insurance certificate and bank statements of March 31, 2021. The Applicant has not received the December 31, 2020 statement.
- [9] The Applicant's second Request for Records was dated March 28, 2021. They requested the condominium's most recent financial statements. The Applicant has not received them.
- [10] The Applicant's third Request for Records was dated April 22, 2021. They

requested:

1. A Record of Owners and Mortgagees;
2. An insurance application; and
3. An insurance invoice.

[11] The Applicant received a list of owners. The list did not include service addresses. The Applicant requested a Record of Owners and Mortgagees with addresses for service. Section 46.1(3)(b) of the *Condominium Act, 1998* ("the Act") requires addresses for service to be listed if an owner provides an address for service and the address is in Ontario. The Applicant confirms that they provided a local service address to the Respondent and believes other owners did as well.

[12] The Applicant received the insurance invoice but not the insurance application.

[13] The Respondent has not replied to the Applicant's two records requests of May 2021. The Applicant's fourth Request for Records was dated May 9, 2021. They requested:

1. Periodic Information Certificates from the past 12 months;
2. Minutes of Board meetings held within the past 12 months; and
3. Notice of the termination of the condominium's insurance policy.

[14] Section 11.1(4) of Ontario Regulation 48/01 requires condominiums to send Periodic Information Certificates at least twice a year, within 60 days of the condominium's first quarter and within 60 days of the condominium's third quarter. The Respondent's year end is May 31. The Respondent is required to issue Periodic Information Certificates by each April and October. The Applicant previously received a Periodic Information Certificate of October 2020. They did not receive the Periodic Information Certificate due in April 2021.

[15] The Applicant's fifth Request for Records was dated May 11, 2021. They requested a reconciliation of hydro invoices from April 2019 to May 11, 2021. The Applicant has not received this.

[16] The five requests were merged to all be addressed in this case.

C. ISSUES & ANALYSIS

Is the Applicant entitled to the Records?

Reserve fund banking and investment statement of December 31, 2020

[17] The Applicant presented an email from a director of the Respondent dated April 21, 2021. It explains that the resignation of the Respondent's Treasurer

complicated banking authorization. This delayed the investment statement requested by the Applicant being provided to them. The email promises to provide the Applicant with this statement once it is received. It is my understanding that the statement referred to is the statement that the Applicant has requested. From what is before me, there is no dispute that the Applicant is entitled to this record.

Core Records

[18] The Act sets out entitlement to core records. The following records requested by the Applicant qualify as such under Section 1(1) of Ontario Regulation 48/01:

1. Most recent approved financial statements as of March 28, 2021;
2. Minutes of Board Meetings from the last 12 months as of May 9, 2021;
3. Record of Owners and Mortgagees; and
4. Periodic Information Certificate due in April 2021.

[19] The Applicant requested these core records to be provided electronically. Section 13(3)(8)6 of Ontario Regulation 48/01 states that no fee applies when core records are requested electronically. The Applicant is entitled to these records.

Uncertain Records

[20] There is uncertainty if three of the Records requested by the Applicant should exist. This affects the Applicant's entitlement to them.

Insurance Policy Application

[21] Section 13.1(1)17 and 18 of Ontario Regulation 48/01 provide that a condominium corporation is required to keep a record of all current and past insurance policies. The legislation does not speak to insurance applications. There is nothing before me that suggests the Respondent is required to keep a copy of the insurance application. As a result, the Applicant is not entitled to what they have requested.

Notice of Termination of Insurance

[22] The Applicant points me to Section 99(9) of the Act. It states 60 days' notice must be provided by registered mail before an insurer terminates an insurance policy. The Applicant noticed the Respondent's insurer changed and requested a copy of the termination notice from the former insurer. There is not enough before me to prove that the prior insurer terminated their policy. Another explanation is the Respondent chose to switch insurers. This would not call for the notice the Applicant seeks. There is no evidence before me that this notice exists, or should exist. As a result, the Applicant is not entitled to what they have requested.

Reconciliation of pre-paid hydro from April 2019 to present.

[23] The Applicant presented meeting minutes from the condominium's 2019 Annual General Meeting. Hydro was discussed during New Business. The Applicant confirms there have been reconciliations of pre-paid hydro prepared in the past. They are uncertain if one exists for the period requested. I acknowledge the Applicant's concern surrounding hydro and encourage the parties to address this together. However, there is no evidence before me that confirms the reconciliation requested exists, or should exist. As a result, the Applicant is not entitled to what they have requested.

Is the Applicant entitled to costs?

[24] The Applicant requests their filing fees of \$200. Rule 45.2 of this Tribunal's Rules of Practice state that an unsuccessful party will pay a successful party's Tribunal fees. As the Applicant is the successful party, the Respondent shall pay the Applicant's filing fees.

Is the Applicant entitled to a penalty?

[25] From Section 1.44(1)6 of the Act, a penalty may be warranted if the Respondent refused to provide records to the Applicant without reasonable excuse. The Respondent's lack of participation in the hearing is not a refusal to provide records. Neither is the Respondent's failure to use the prescribed reply form. The lack of reply by the Respondent to the Applicant in this case equates to a refusal. The Respondent did not reply to many of the Applicant's requests, including several for records that the Applicant is clearly entitled to. Based on the evidence before me, I find that the Respondent failed to provide records to the Applicant without reasonable excuse.

[26] I appreciate that director resignations and a shift to self-management can complicate a condominium's operation. In an email message presented to me by the Applicant, a director of the Respondent states:

As volunteers, we simply don't have the time to commit as we are already spending several hours a day getting things back in order... it has never been more important with our management company having abruptly quit, to ensure we are compliant in all aspects of our record keeping.

[27] Still, a condominium corporation should not refuse to provide records to those who are entitled to them. A condominium corporation should not ignore requests for records. A condominium corporation should not fail to reply within the prescribed timeline to do so. The Respondent failed to fulfill its obligations to the Applicant. The implied reason for this, a shift to self-management, is the very reason that gave rise to the Applicant's concerns and requests for records in the first place. A penalty is warranted.

[28] The Applicant asked for a \$5000 penalty. They suggest this case is like *Brown v. Peel Condominium Corporation No. 21*, 2020 ONCAT 26 ("Brown") and *Surinder Mehta v. Peel Condominium Corporation 389*, 2020 ONCAT 9 ("Mehta").

[29] In Brown, the Tribunal assessed a \$4000 penalty. The self-managed condominium corporation refused to provide many records requested by an owner. This included a Record of Owners and Mortgagees, financial statements, Periodic Information Certificates and meeting minutes. The Tribunal stated:

Documents which the Respondent is required to maintain and to which there is a clear entitlement by the Applicant were never produced. The Respondent did not provide any response to the Applicant's Request and did not provide any written explanation for refusing to provide the documents to the Applicant. For all these reasons I award a substantial penalty to the Applicant. I find that \$4,000 is the appropriate penalty based on the facts of this case.

[30] In Mehta, this Tribunal awarded the maximum penalty of \$5000 against a self-managed condominium that refused to provide records to which the owner was clearly entitled. The Tribunal stated:

It is not the case that the records requested ... fall into a category that may have given the Board pause to consider an owner's entitlement. Entitlement is clear. This is also not a situation where only one or two records have been refused. Nor, is it a situation where a reasonable excuse has been provided for the refusal. Large numbers of records, spanning many years, have not be kept as per the Act. Given the number of records refused without a reasonable excuse and the foundational nature of these records, I find the maximum penalty of \$5000 appropriate.

[31] While there are similarities, the circumstances in this case do not justify the same penalty awarded in Brown or Mehta. There is a shorter timeline at hand and different reasons suggested for the refusal to provide records in this case.

[32] The Applicant emailed their requests to many directors. This included the email address the Applicant was instructed to use by the Respondent. The Applicant followed up on the status of their requests. While the evidence before me suggests that the Respondent struggled in the transition to self-management, this does not justify the Respondent failing to reply or fulfill their legal obligations to provide records. I find a penalty of \$3000 to be appropriate in the circumstances.

D. ORDER

[33] The Tribunal Orders that:

1. The Respondent is to pay the Applicant's costs of \$200 and a penalty of \$3000 for refusing to provide records without a reasonable excuse. A total of \$3200. If the full amount is not provided to the Applicant within 30 days of this Order, the Applicant is entitled to set-off the amount against the common expenses attributable to the Applicant's unit(s) as set out in Section 1.45(3) of the Act.
2. The Respondent is to provide the Applicant the following records at no cost to the Applicant, within 30 days of this Order:

- a. Most recent approved financial statements as of March 28, 2021.
- b. Minutes of Board Meetings that took place between April 10, 2020 and May 9, 2021. Redactions may be made to the minutes as the Act allows.
- c. Record of Owners and Mortgagees with service addresses as in Section 46.1(3)(b) of the Act.
- d. The Periodic Information Certificate due April 2021.
- e. Reserve fund banking and investment statement of December 31, 2020.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: August 4, 2021