

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** October 14, 2021

**CASE:** 2021-00189R & 2021-00243R

**Citation:** Harrison v. Toronto Standard Condominium Corporation No. 2714, 2021 ONCAT 94

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

**Member:** Ian Darling, Chair

**The Applicant,**

Angelo Harrison

Represented by Anne Marie Marchand, Agent

**The Respondent,**

Toronto Standard Condominium Corporation No. 2714

Represented by Kevin Cousins, Agent

**Hearing:** Written Online Hearing - July 27, 2021 to October 5, 2021; Online Video Conference - August 26, 2021

### **REASONS FOR DECISION AND ORDER**

#### **A. INTRODUCTION**

[1] This case deals with four records requests made by Angelo Harrison (the “Applicant”) to Toronto Standard Condominium Corporation No. 2714 (the “Respondent”). While there was no dispute over the entitlement to the records, this decision deals with the content of the records – whether they were adequate, and whether the Respondent has provided them. The decision finds that the Respondent has provided most of the records, orders corrective measures to address records that were not properly delivered and imposes a \$1500 penalty.

#### **B. PRELIMINARY ISSUES**

[2] The four requests were made on May 28, 2021, June 3, 2021, June 11, 2021, and June 28, 2021. The Applicant submitted two cases to the CAT about these requests. When case 2021-00189R reached Stage 3 – Tribunal Decision, case 2021-00243R was in Stage 2 – Mediation. The parties consented to merge both cases and this decision concludes them both.

August 26, 2021, Video Conference

- [3] On August 26, 2021, we convened a video conference to determine the issues to be resolved, and which records remained outstanding. At the conclusion of the call, the Respondent agreed to provide the following records:
1. Record of owners and mortgagees (s. 46.1);
  2. Record related to leases (s.83);
  3. Requests for unaudited financial statements for January 2021, April 2021 and May 2021; and
  4. Unredacted "resident engagement" sections of board meeting minutes from July 2020-July 2021.
- [4] During the call, other requested records were discussed. The parties agreed to the following statement of facts:
1. The Applicant requested the contract with Torbram Fire Protection. The Respondent does not have a separate contract with Torbram. The original contract was with Arthur Fire. Torbram purchased Arthur and has assumed the contract.
  2. The Applicant requested the contract with Smart Cleaning. Service is provided on a month-to-month contract following a decision of the board not to renew the contract, but to monitor their performance.
  3. The records of fire code violations for the common elements and individual units of the property have been provided.
- [5] The Respondent agreed to provide the unaudited financial statements within 30 days of the video conference. During the hearing the Applicant reported that the Respondent provided the May 2021 financial statements by email on September 2, 2021, and the January 2021 unaudited financial statements on September 24, 2021.
- [6] Although the Respondent did not object to providing the April 2021 unaudited financial statements, they were not provided during the hearing. The Respondent indicated that the records were not available because they were the year-end financial statements and are still with the auditor.
- [7] The Respondent agreed to provide the s. 46.1 record of owners and mortgagees and the s. 83 record related to leases. On August 27, 2021, the Applicant informed the Tribunal that the Respondent had provided a copy of a record that did not meet the requirements for a s.46.1 record of owners and mortgagees. This issue is dealt with below.

- [8] During the video conference, we discussed the Applicant's requests for "minutes from the past 12 months." The Applicant requested board minutes with reference to the Applicant's unit being unredacted. During the call, the Respondent indicated that they had not previously understood the request was for unredacted minutes and thought that the minutes had been provided.
- [9] After discussion, the Respondent clarified that each set of minutes have an addendum that contains discussion about individual units. The parties referred to this as "resident engagement and staff items." The addendum is used to ensure that information that would be considered confidential (relating to individual units or owners) is not part of the minutes that are provided to all owners.
- [10] The parties agreed that the Applicant is entitled to unredacted portions of the addendum related to their unit. The Respondent stated that they could provide all unredacted minutes for all board meetings from May 2020-June 2021. The Respondent noted that there were several months when the board did not meet. The Respondent stated that he would provide the unredacted minutes as soon as possible, with a maximum time of 30 days from the date of the video conference.
- [11] The unredacted resident engagement minutes from July 2020-June 2021 were provided on September 23, 2021.
- [12] The Applicant also requested minutes of the April 6, 2021 board meeting. The Respondent indicated that they did not create minutes for that meeting. The parties agree that minutes were not created for a meeting where the board discussed and approved the annual budget. The Applicant asserts that the corporation has failed to maintain adequate minutes. This issue is considered in more detail below.

### **C. ISSUES AND ANALYSIS**

- [13] Following the video conference, the remaining issues to be decided are:
1. Has the Respondent provided the requested records?
  2. Has the Respondent failed to keep adequate records related to the April 6, 2021 "budget meeting"?
  3. Has the Respondent failed to keep adequate records related to the decision not to include the "resident engagement and staff items" sections of the minutes?
  4. Is the Respondent required to follow the process requested by the Applicant?

5. Has the Respondent refused to provide records without a reasonable excuse such that the Tribunal should award a penalty?
6. Should the Tribunal Award any costs?

### **Issue 1: Has the Respondent provided the requested records?**

#### Unaudited Financial Statements.

[14] Regarding the unaudited financial statements, the Respondent agreed to provide the statements within 30 days of the August 26<sup>th</sup> video conference. The Applicant confirmed receipt of the statements from May 2021. At the time of writing the decision, the statements April 2021 remain outstanding. Since there is no dispute over the entitlement, and the 30 days has passed without the records being provided, I order the remaining financial statements to be provided within 5 days of the release of this decision.

#### Record of owners & record of leased units

[15] Regarding the record of owners and mortgagees (“owners’ list”) and the record related to leases under s.83 of the Act, the Respondent provided a document on August 27, 2021. It contained a list the units, and whether they were rented or owner-occupied. The Respondent stated that the names of unit owners and addresses for service were redacted in accordance with the Act. The Respondent is incorrect.

[16] The requirement to maintain the record of owners and mortgagees is established in section 46.1 of the *Condominium Act, 1998* (the “Act”). Section 46.1(3) indicates that the record should contain:

(a) the owner’s name and the identification of the unit, if an owner, at any time, gives notice to the corporation in writing, setting out the owner’s name and, in accordance with the regulations, identifying the owner’s unit;

(b) the owner’s address for service if,

(i) an owner who has given the notice described in clause (a), notifies the corporation in writing, at any time, of the owner’s name and address for service, including any change in the address for service, and

(ii) the owner’s address for service is in Ontario

[17] Although section 55(4)(c) allows corporations to redact “records relating to specific units or owners,” section 55(5) states that clause 55(4)(c) does not prevent “an owner, ... from examining or obtaining copies of the record that section 46.1

requires the corporation to maintain.” Stated more directly - the Act specifically exempts the owners’ list from the redaction requirements related to information about specific units or owners.

[18] Although the document does not meet the requirements of the owners’ list, it includes information on whether the unit is occupied by a tenant, so I conclude that it meets the intent of the record of notices of leased units received by the corporation.

[19] I note that the Applicant requested the owners’ list to requisition a meeting. The Applicant previously attempted to requisition a meeting but was denied because the requisition contained signatures of non-owners. The impact of the Respondent’s refusal to provide a record where there is a clear entitlement frustrates the democratic intent of the Act.

[20] The Respondent has not complied with the request and is ordered to provide an unredacted list of owners and mortgagees that complies with section 46.1(3). Due to the time-sensitive nature of the request, the Respondent is ordered to provide the records within 5 days of the release of this decision.

[21] In making this order I specifically address requests for records of owners and mortgagees - an issue that comes before the Tribunal frequently. The Act and its regulations contain clear and precise instructions regarding this record, and Tribunal decisions going back to 2018 have confirmed key points about what constitutes an adequate version of this record of owners and mortgagees. Further, such cases have clearly affirmed what the Act expressly states: that this record, which is a Core Record, is to be provided upon request without delay, without fee, and without redactions. Claims that names and addresses contained in this record cannot be provided due to “confidentiality” are inconsistent with the Act. This is an issue that has been clearly decided and there is no good reason it should come again before this Tribunal.

**Issue 2: Has the Respondent failed to keep adequate records related to the April 6, 2021 “budget meeting”?**

[22] The Applicant requested minutes for a meeting that occurred on April 6, 2021. The Respondent replied that a decision was made not to create minutes for the meeting, and that as a result the corporation does not have the record requested.

[23] The evidence before me is that the purpose of the meeting on April 6<sup>th</sup> was to finalize the corporation’s annual budget before it was presented at the Annual General Meeting where it would be adopted by the owners. The Respondent

indicated that the board considered a draft budget and made changes before finalizing the budget to be presented to owners.

[24] The Act is clear that business must be conducted during meetings, and that the corporation must keep adequate meetings of minutes. Section 32(1) of 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. Section 55(1) states that the corporation shall keep adequate records. It specifically lists a minute book containing the minutes of board meetings. A meeting to finalize a budget is conducting business. By failing to keep minutes of a meeting where the corporation transacted business (approving the budget), the Respondent has not complied with the Act.

[25] Rather than leave the matter with a finding that the corporation has not complied with the Act, I will also provide some guidance regarding adequacy of minutes. When considering the adequacy of meeting minutes in particular, CAT decisions have established a reasonably high standard and expectation for accuracy” due to the “special place and purpose in helping to ensure that ‘the affairs and dealing of the corporation and its board of directors are an open book to .... owners,’ and in helping owners protect their 'unique interest in how the corporation is managed.’” (Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, (2020 ONCAT 33)). Further, in Mawji v. York Condominium Corporation No. 415 (2021 ONCAT 72), the Tribunal summarized the adequacy principles outlined in recent CAT cases, stating that:

These decisions establish that an adequate record of a board meeting is a document with sufficient detail to allow the owners to understand what is going on in their corporation, how decisions are being made, when the decisions are made and what the financial basis is for the decisions.

[26] As I turn to the remedy, it is not appropriate to order the minutes for the meeting to be created at this late date since it is over six months after the meeting. Since memories fade, it may lead to inaccurate records. However, in the spirit of promoting compliance with the Act, I recommend that the Respondent review this decision at a board meeting and develop a plan to ensure compliance with the requirements in the Act related to keeping adequate minutes of all Board meetings and communicate the results to owners.

**Issue 3: Has the Respondent failed to keep adequate records related to the decision not to provide the “resident engagement and staff items” sections of the minutes?**

[27] In the August 26<sup>th</sup> video conference, the parties agreed that the Applicant

requested unredacted portions of the “resident engagement and staff items” that relate specifically to the Applicant or Applicant’s unit. The Respondent had already provided redacted versions of the minutes. The Respondent agreed to review the redactions and provide copies of the records.

[28] After determining that there was no dispute about the entitlement to the unredacted portions of the minutes, the Applicant raised a question about the adequacy of the minutes. They asserted that the redactions were so extensive they rendered the minutes inadequate. Both parties provided submissions on this question.

[29] The Respondent indicated that they were trying to be transparent with owners. The Respondent described the process used to create the minutes. According to the Respondent, the corporation hires a minute-taker to attend meetings. The minute taker creates draft minutes that are provided to the corporation. When matters include confidential information, the minutes contain a statement that the minutes are redacted, and the reason for the redaction. The draft minutes are then reviewed and approved at the next board meeting. The minute taker also creates a separate document for the condominium manager that contains the redacted confidential information. The manager then maintains this as a separate record. The corporation does not receive minutes containing the confidential information, they only receive minutes containing the statement explaining the redaction. In effect, the board is abdicating responsibility for their minutes to the manager and minute taker which is neither appropriate nor compliant with the Act.

[30] Section 55(4) of the Act establishes specific circumstances where corporations can refuse to provide records, or redact portions of records – stating that:

(4) The right to examine or obtain copies of records under subsection (3) does not apply to,

(a) records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation;

(b) records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation;

(c) subject to subsection (5), records relating to specific units or owners; or

(d) any prescribed records. 1998, c. 19, s. 55 (4); 2015, c. 28, Sched. 1, s. 51 (5-7).

(5) Clause (4) (c) does not prevent,

(a) an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing from examining or obtaining copies of records under subsection (3) if the records relate to the unit of the owner, the unit being purchased or the unit that is subject to the mortgage, as the case may be;

(b) an owner of a unit or an agent of the owner duly authorized in writing from examining or obtaining copies of records under subsection (3) if the records relate to the owner; or

(c) an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing from examining or obtaining copies of the record that section 46.1 requires the corporation to maintain. 2015, c. 28, Sched. 1, s. 51 (8).

[31] The Regulation establishes that corporations should consider the nature of the request, and the contents of the record when deciding if the record should be redacted. The records request process outlined in section 13.8(1) b of Ontario Regulation 48/01 also establishes that:

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.

[32] The process of redacting minutes is intended to ensure the corporation maintains complete records, while providing protection related to confidential, or otherwise restricted, information. In this case the corporation is not including any of this information in its minutes. The Respondents submitted that not even the board of directors is being provided with the unredacted minutes which means that the confidential information is excluded from the corporate record and is effectively just a report for the condominium manager. This is not appropriate. These resident engagement matters are, or should be, records of the corporation, even though they are being maintained separately by the manager, and decisions relating to their redaction should be made by the board, not independently decided upon by the contracted minute taker or condominium manager. I find that the corporation is not keeping adequate records related to the "resident engagement and staff items."

[33] Since the Respondent has provided unredacted "resident engagement and staff items" to the Applicant for the period requested, I do not need to make any further

order to provide the records – however, However, in the spirit of promoting compliance with the Act, I recommend that the Respondent review this decision at a board meeting, and review its practices with respect to omitting items from the corporate records, develop a plan to ensure compliance with the requirements in the Act, and communicate the results to owners.

**Issue 4: Is the Respondent required to follow the process requested by the Applicant?**

[34] The Applicant requested the Tribunal order the Respondent in the case that there are no references to the Applicant in the board minute “resident engagement section”, the Respondent must provide a statement that none of the redactions relate to the Applicant's unit. Further, the Applicant requested that the Tribunal order the Respondent to re-issue board response forms to indicate that certain records (or contracts) do not exist.

[35] On the request to provide an additional statement that there are no references to the Applicant in board minutes, the Respondent stated that they intend to “become more transparent...to include the nature [of the resident engagement] in the minutes while still being compliant with the Act.” The Applicant did not make any specific submissions on the matter. I understand that the Respondent’s conduct has led to mistrust – however, the requested redress is unnecessary, as I have already addressed how the Respondent should deal with redactions in the future.

[36] Regarding the request to reissue the board response forms. The Applicant asserted that the Respondent did not follow the process set out in Ontario Regulation 48/01, and that the response forms contained errors. The Applicant further asserted that the Respondent has a duty to correct errors in their responses. While it may be appropriate to caution the Respondent to ensure that their responses are complete and accurate, I will not order the Respondent take further action. The Response form is intended to be a means for the corporation to respond to the request when it is made. The Applicant is requesting redress that is not necessary in the context of the Tribunal decision. The fact that errors may have occurred on the form is reflected in this decision. Re-issuing the response form serves no purpose at this point.

**Issue 5: Has the Respondent refused to provide records without a reasonable excuse such that the Tribunal should award a penalty?**

[37] Section 1.44 (1) 6 states that the Tribunal may order the Respondent:

to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies ... if the Tribunal considers that the corporation has without reasonable

excuse refused to permit the person to examine or obtain copies under that subsection.

- [38] In this case, the Applicant has requested the Tribunal consider if the Respondent has refused to provide the records without a reasonable excuse. The Applicant did not request a specific penalty amount but cited several CAT decisions to support their assertions that a substantial penalty was appropriate.
- [39] The Respondent asserted that they did not refuse to provide records without a reasonable excuse, but that records were not available when the Applicant made their requests. They cited instances where the Applicant requested records that were not available at the date of the request but became available after they sent the Response form.
- [40] The Respondent has provided the unredacted portions of the minutes, and most of the unaudited financial statements. The Respondent did not understand the request for the resident engagement portions of the minutes – however, there were multiple opportunities where the Respondent could have sought to clarify the request, including when the request was made, and during the Negotiation or Mediation stages of this case. They failed to do so. This may not amount to a refusal, but the Respondent is responsible for the case proceeding to a hearing. The Respondent should take more care in the future to engage with owners, to understand their requests and comprehensively respond to those requests.
- [41] The Respondent has refused to provide the owners' list without reasonable excuse. During August 26<sup>th</sup> video conference, the Respondent confirmed that Applicant is entitled to it, and confirmed that it could be easily produced. The Respondent stated that it was not provided earlier because the case did not settle in mediation. While it is true that the case did not settle in Mediation, and that there were other records in dispute, the Respondent did not provide a valid reason not to provide the owners' list in a timely way.
- [42] When the owners' list was finally provided, it was incomplete. It is important to consider the context for when the Applicant made the request. They requested the list after an unsuccessful attempt to requisition an owners' meeting. The corporation refused to call the meeting because too many non-owners had signed the requisition. The Applicant requested the list of owners to ensure that any subsequent requisition was accurate. The Respondent's refusal to provide the record also had the effect of preventing the Applicant from exercising their rights as an owner having regard to the purposes of the Act.
- [43] I conclude that the Respondent has refused, without reasonable excuse, to provide the owners' list and determine that it is appropriate to order a penalty for

this reason. In determining the amount of the penalty in this case, I note Tribunal's decision in Shaheed Mohamed v York Condominium Corporation No. 414, 2018 ONCAT 3, where it was stated that a penalty should be "substantial enough to act as a reminder to the Respondent to apply more care and diligence, and especially to be more mindful of its legal obligations, when responding to unit owners' requests for records."

[44] Furthermore, other Tribunal decisions have spoken to the principle of ensuring that penalties are proportional, taking into consideration the nature of the records requested, and conduct of the Respondent which led to penalty. Although the Respondent has demonstrated a degree of carelessness or avoidance of its obligations with respect to the minutes and financial statements, this is not the most egregious conduct observed in the various cases that have come before the Tribunal. At the same time, by refusing to provide a complete and accurate owners' list, the Respondent has failed to provide records that are fundamental to the principle of transparent condominium governance and the protection and promotion of owners' rights under the Act. Considering these factors, I have determined that a penalty of \$1500 is appropriate.

#### **Issue 6. Should the Tribunal award costs?**

[45] The Applicant has paid \$275 in Tribunal fees for the two cases. Since the Applicant was successful in their cases, I order the Respondent to reimburse the fees.

#### **D. CONCLUSION**

[46] The Applicant has brought eight cases to the Tribunal. This is the second case in respect of which I have decided the matter at Stage 3. The Applicant has established that they have a clear entitlement to the records. The Respondent has agreed to provide the records. This case could easily have been resolved if the Respondent had taken care to understand the nature of the request, and to communicate with the Applicant.

[47] The Respondent has tried to use the number of CAT cases to delegitimize the Applicant's request. During this adjudication the Respondent questioned the motives of the Applicant. They portrayed the requests as unreasonable attempts to frustrate the Respondent or exert control over how the corporation conducts its business. I do not accept this assertion. The Applicant has shown a genuine and reasonable interest in how the corporation is run and to exercise their rights as outlined in the Act. The Applicant's practice of submitting a new records request on a monthly basis is inconvenient to the Respondent; however, it is far from improper

- they have a right to this information as an owner. To delay responses and not provide records that take minimal effort to compile serves to exacerbate the Applicant's concerns.

**E. ORDER**

[48] The Tribunal orders that:

1. The Respondent must deliver the following records electronically, at no cost, to the Applicant within 5 days of this decision:
  - a. The April 2021 unaudited financial statements.
2. The Respondent must deliver electronically, at no cost, to the Applicant within 5 days of this decision:
  - a. an unredacted list of owners and mortgagees that complies with section 46.1(3).
3. The Respondent to pay a penalty of \$1500 to the Applicant within 30 days of this decision.
4. The Respondent to reimburse the Applicant \$275 for their CAT fees within 30 days of this decision.

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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: October 14, 2021