

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 23, 2021

CASE: 2021-00090N

Citation: Martis v. Peel Condominium Corporation No. 253, 2021 ONCAT 110

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

Member: Laurie Sanford, Member

The Applicant,

Hariette Martis

Represented by Shawn Pulver, Counsel, and Elaine Jair, Counsel

The Respondent,

Peel Condominium Corporation No. 253

Represented by Gareth Stackhouse, Counsel

Hearing: Written Online Hearing – May 19, 2021, to November 9, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] Ms. Martis is a unit owner at Peel Condominium Corporation No. 253 (“PCC253”). PCC253 has a no pets rule (the “No Pets Rule”). The parties agree that Ms. Martis’ son, who lives with her, has a medical requirement for an emotional support animal (“ESA”) due to a disability. The issue between them is the weight of the dog which Mr. Martis has chosen. Mr. Martis has acquired a young Labrador dog which will weigh between 60 and 70 pounds when fully grown. PCC253 seeks to impose a weight restriction of 25 pounds on any animal Mr. Martis wishes to bring onto the property.
- [2] The parties disagree about whether this is primarily a case about the interpretation of PCC253’s rules and policies, as Ms. Martis argues, or primarily about an accommodation under the *Human Rights Code*, R.S.O. 1990, Chapter H.19 (the “Code”), which is PCC253’s position. However, they agree that both the PCC253 rules and the Code are relevant to this decision.
- [3] Ms. Martis submits that there was no weight restriction in effect at the time Mr. Martis requested an exemption from the No Pets Rule, whether under the No Pets

Rule itself or under a service animal policy enacted by PCC253 shortly after Mr. Martis' request (the "Service Animal Policy"). Ms. Martis submits that the Service Animal Policy is unenforceable and, in any event, irrelevant because it was passed after Mr. Martis' request for an ESA. It was too late, in Ms. Martis' submission, for PCC253 to introduce weight restrictions on the ESA after Mr. Martis had requested the exemption and had received an initial response from PCC253. PCC253 submits that the weight restriction is a reasonable condition of the accommodation under the Code.

- [4] For the reasons set out below, I find that the Service Animal Policy is invalid and unenforceable. Concerning the No Pets Rule, while PCC253 is entitled to make reasonable exceptions to the rule as a temporary measure, it may not do so in lieu of amending the No Pets Rule. PCC253 cannot use either its No Pets Rule or its Service Animal Policy to impose a weight restriction on Mr. Martis' choice of dogs. However, PCC253 is entitled to impose reasonable conditions on an accommodation under the Code. Ms. Martis produced no persuasive evidence that Mr. Martis' disability required an ESA which weighs more than 25 pounds. Despite the fact that the process by which the weight limit was chosen lacks transparency, the weight limit itself is not unreasonable. PCC253 acted reasonably in asserting a 25-pound weight limit in this case.
- [5] This was a case that demanded a quick resolution. It was not a particularly complex matter. The Labrador chosen by Mr. Martis as his ESA has not been able to enter the premises since February and the emotional toll of this situation might reasonably have been foreseen. It is particularly unfortunate that this case has been so protracted, lasting more than twice as long as the average case of this nature. Lawyers practicing before this Tribunal must accept and respect the simplified hearing process and the short time limits necessary for the Tribunal to meet its objective of quick and accessible disputes resolution.

B. BACKGROUND

- [6] Effective in December 1998, PCC253 instituted its No Pets Rule. There are no exceptions to this rule other than for dogs on the property prior to the rule, ("Legacy Dogs"). Prior to the passage of the No Pets Rule, dogs had been permitted at PCC253 if they weighed no more than 20 pounds. On February 10, 2021, Ms. Martis' son was prescribed an ESA as a result of a diagnosed disability which is recognised under the Code. On the same day, Mr. Martis wrote to Ms. Acker, the condominium manager, "I would like to know the procedure to have a support animal in the building." Two days later, on February 12th, Ms. Acker wrote to Mr. Martis. Her interpretation of Mr. Martis' request was that he was asking for "the procedure require (*sic*) to obtain an exemption to the PCC253's Pet Rules and

Regulations . . .". She set out information that PCC253 would require from Mr. Martis' doctor, including an explanation as to why only an emotional support animal would meet Mr. Martis' needs. Ms. Acker went on,

Finally, PCC253 needs details about the animal you are proposing, including the type of animal (cat, dog, fish etc. . . .), the breed, the size, the general temperament of this type of animal, and any training you would get for the animal. It's important that any animal is appropriate for our community and the expectations of all residents.

In cases where PCC253 has accommodated residents to let them keep animals, reasonable restrictions about behaviour, conduct, size, breed, and other matters are imposed as reasonable conditions of the accommodation.

- [7] Mr. Martis testified that he concluded that there was nothing in Ms. Acker's response "that indicated to me that there were any further restrictions or requirements, I reasonably believed her response to be the complete requirements for an accommodation." Mr. Martis testified that finding an appropriate ESA was difficult, given the global pandemic going on at the time of his request. He wanted an animal which was the right fit for himself and his family and one which would adapt well to a condominium. Mr. Martis testified that he had specific support requirements for the animal that went beyond emotional support. Mr. Martis testified that he "committed" to a young Labrador dog on February 16, 2021.
- [8] On February 17, 2021, Mr. Martis wrote to Ms. Acker via email attaching a note from his doctor stating that an ESA would be beneficial in this case. The note also referred to support requirements beyond emotional support. Mr. Martis' email contained details of the dog Mr. Martis was acquiring including the breed and size. Ms. Acker responded immediately citing the rule that was in place prior to the No Pets Rule and which included a 20-pound limit for dogs. She said that a Labrador dog would not be approved and asked if Mr. Martis wished to amend his request. Mr. Martis responded on the same day and noted that his dog was not a pet. He took the position that ESAs were not subject to weight restrictions. He attached a second note from his doctor, which read in part, "The ESA indication does not take into account the animal's characteristics including breed, height, size, weight etc of animal". Ms. Acker responded by saying that Mr. Martis should not confuse an ESA with a service animal and referring him to requirements of under "ESA/Human Rights accommodations" and noted that although PCC253 might be required to accept an ESA as an accommodation, the accommodation did not require PCC253 to accept any dog, regardless of size.
- [9] On February 25, 2021, Ms. Acker provided a formal response to Mr. Martis'

request, on behalf of the Board of Directors of PCC253. Ms. Acker amended her earlier email by stating that the weight restriction for the dog would be no more than 25 pounds. In support of that requirement, Ms. Acker cited a draft Service Animal Policy which she attached. Ms. Acker concludes her letter as follows:

If you would like to move forward with this request, please provide details of the animal you wish to be accommodated with and please ensure it meets all of the reasonable conditions that are in Schedule “A” to our draft Service Animal Policy.

[10] In addition to the weight requirement, the draft Service Animal Policy refers to “restrictions concerning animals at the property” which are set out in the Schedule A referred to by Ms. Acker. This was the first reference to a draft Service Animal Policy in the correspondence between Ms. Acker and Mr. Martis. In response, Mr. Martis provided a third note from his doctor which stated in part:

The request including (*sic*) requiring information regarding size and breed of dog. This is a highly unorthodox request from a medical physician. The breed of dog or service animal falls outside the scope of my medical practice. I have encouraged the patient to seek legal counsel regarding the above.

C. ISSUES & ANALYSIS

[11] The issues in this case evolved during the hearing and may now be summarised as follows:

1. May PCC253 impose a weight restriction on Mr. Martis’ choice of ESA under its Service Animal Policy?
2. May PCC253 impose a weight restriction on Mr. Martis’ choice of ESA under the exemption procedure it had in place before the Service Animal Policy?
3. May PCC253 impose a weight restriction on Mr. Martis’ choice of ESA as part of an accommodation under the Code?
4. What remedies, if any, flow from these findings?

Issue 1. May PCC253 impose a weight restriction on Mr. Martis’ choice of ESA under its Service Animal Policy?

[12] The draft Service Animal Policy was enacted by the Board of Directors of PCC253 in March, 2021. Curiously, the parties agree that the Service Animal Policy is not applicable to this situation but they disagree about why that is the case. Ms. Martis argues that the policy is not enforceable for two reasons. First, she submits that

the Service Animal Policy was enacted too late to apply. That argument will be considered in Issue 2, below. Her second argument is that the Service Animal Policy is in substance not a policy but an improperly enacted rule which is therefore not valid or enforceable. Section 58 of the *Condominium Act, 1998* (the “Act”) sets out the requirements to pass or amend a rule, which include notifying the owners of the proposed rule and having an owner’s meeting to approve the proposed rule. PCC253 has not done this.

- [13] In saying that the Service Animal Policy is in substance a rule, Ms. Martis refers to subsection 58(1) of the Act which set out the purposes of a rule. These include, among other things, to “promote the safety, security or welfare of the owners” and to “prevent unreasonable interference with the use and enjoyment of the common elements”. Ms. Martis points to provisions in the policy that she submits have the characteristics of a rule. Schedule A to the Service Animal Policy sets out 16 restrictions and includes a prohibition against pit bull type dogs, requirements that the animal be carried or transported in a cart or wagon through the indoor common elements and that the service animal not be permitted on the common elements except to enter or leave the building. There are requirements for the use of the elevator with the service animal, including the requirement to seek the consent of anyone in an elevator car to having the service animal travel in the car. There is a requirement that an animal be exercised off PCC253 property. Requirement 14 states that the animal “is not permitted to relieve itself on the condominium’s common elements. . . .”. There are requirements for how any excrement from an animal is to be carried through the common elements.
- [14] Ms. Martis also points to the testimony of a member of the board of PCC253, Mr. Michael Baskwell, who said that PCC253 asks residents to “take steps to limit a dog’s presence in common areas (like using an alternative entrance), carrying the dog indoors and checking with anyone in an elevator before taking a dog in an elevator.” Mr. Baskwell testified that PCC253 tries to accommodate people who need a dog as an ESA “with some reasonable restrictions” to balance their needs with the needs of other PCC253 residents, including “residents who object to dogs on grounds that are also protected by the Code (such as medical issues or religious reasons)”. Interestingly, there is a set of restrictions already in place in the No Pets Rule, for Legacy Dogs. PCC253 chose not to rely on those restrictions but to develop new ones, some of which partially overlap.
- [15] PCC253 has taken a number of positions on the purpose of its Service Animal Policy. In its formal reply of February 25th to Mr. Martis’ request, PCC253 cited the draft Service Animal Policy as the source for its weight restriction and referred to the other provisions in the policy that would need to be adhered to by Mr. Martis.

[16] However, in his testimony, Mr. Baskwell took the position that the Service Animal Policy was not enforced as a rule. He stated:

This Policy was developed based on previous accommodations offered (and accepted) with reference to OHRC's policy position on medical information, and to help guide residents through this sometimes-complex process. It offers residents a guide about what type of medical information is necessary to make any accommodation decisions . . . The Policy also guides residents about the type of reasonable conditions PCC253 may attach to any accommodation.. . .

Section 5 of the Policy states "A list of reasonable conditions which could be imposed is attached as Schedule 'A' to this policy and the Corporation may vary or add to these from time to time." Schedule 'A' further states that the conditions may be required. No part of the reasonable conditions in the Policy are mandatory and the Corporation tailors accommodation to the individual needs of the accommodation-seeker. Nothing about the Policy is mandatory and it is not enforced as a rule under the *Condominium Act, 1998*.

[17] I find Mr. Baskwell's response disingenuous. For example, while his testimony suggests that he is quoting the entire Section 5 of the Service Animal Policy, he has omitted the first sentence of the section, which reads, "An exception to the [No Pets Rule] will be conditional upon the Resident (and the Service Animal) following a list of reasonable conditions."

[18] Section 6 of the Service Animal Policy reads,

Please be advised that following this policy is of utmost importance as there is no 'service animal' or similar registry regulated by the Province of Ontario and any purported registration under such a registry (online or otherwise) is not sufficient for the purpose of an exception request.

[19] The Service Animal Policy is not expressed as guidance but rather as a prescriptive set of restrictions, some or all of which might be imposed. The fact that PCC253 in its reply to Mr. Martis on February 25, 2021 cited the draft Service Animal Policy in imposing a 25-pound weight restriction and asked Mr. Martis to ensure that he and his proposed dog complied with all the conditions set out in Schedule A to the draft Service Animal Policy is evidence that PCC253 intended its restrictions to be adhered to in February, regardless of what its position is now.

[20] Ms. Martis referred to the decision in *Boodram v Peel Standard Condominium Corporation No.843*, 2021 ONCAT 31. In that case, the Tribunal conducted an extensive consideration of the differences between a rule and a policy. The decision considered rules of a condominium corporation, which are regulated by section 58 of the Act, and a policy, which is not a term used, in the context of a

condominium corporation regulating itself, in the Act. The Tribunal concluded, at paragraphs 28 and 29:

I do not wish to state, as a finding, that there is no place within condominium governance for policies. For example, in each of the cases cited by the Respondent, it is evident the courts approved the notion that a board may have in place policies that provide a consistent and reliable framework to guide its conduct and conclusions in a decision-making process. One can imagine, as well, that when a board is required to enforce compliance with unit owners' obligations, it may, as a matter of policy and to the extent that the Act grants discretion for it to do so, decide on such things as the degree of strictness it will employ and the steps it will take (such as when and whether to engage legal counsel or commence legal proceedings). None of these policies are the same in character as rules as contemplated by s. 58 of the Act, and support for them does not represent authorization to side-step the formal requirements of that section, which the Respondent appeared to assume, in this case, that it is entitled to do.

Based on the evidence and submissions of the parties and my analysis set out above, I find that what the Respondent calls its visitor parking policies are improperly enacted rules of the condominium and, as such, are invalid and unenforceable. The Respondent may repair this situation by seeking to enact such policies properly as rules in accordance with s. 58 of the Act. Until it does so, however, such policies ought not to have been, and hereafter should not be, enforced against the Respondent or any other person.

[21] A policy may exist validly for a number of purposes. Without wishing to be exhaustive, two of the obvious would be to provide a framework for a rule or guidance in how to interpret it. Here, despite Mr. Baskwell's testimony to the contrary, the Service Animal Policy, on its face, was intended as a set of restrictions which would govern exemptions to its No Pets Rule. In approving the Service Animal Policy, PCC253, whether knowingly or not, was attempting to bypass the statutory requirements for the enactment of a rule. Those statutory requirements, set out in section 58 of the Act, exist to give the condominium unit owners a say in how the condominium corporation governs itself. The Service Animal Policy would have denied the owners that voice. PCC253 now takes the position that its Animal Service Policy is not being enforced. That does not go far enough. Given PCC253's shifting stances on its Service Animal Policy, there can be no certainty that PCC253 might not once again seek to enforce it as a rule. The Animal Service Policy is invalid and unenforceable against Mr. Martis. I encourage PCC253 to enact a rule to govern exemptions to its No Pet Rule for service animals and ESAs.

Issue 2. May PCC253 Impose a weight restriction on Mr. Martis' choice of ESA under the exemption procedure it had in place before the Service Animal Policy?

- [22] PCC253 has a No Pets Rule. Legacy Dogs are permitted to remain on the property but are subject to specific restrictions, set out in the No Pets Rule. There are no other exceptions. Mr. Baskwell testified that the fact that the condominium property was a no pets place was important to a number of the residents, including Mr. Baskwell, who is allergic to dog fur. In this case, the issue is not the No Pets Rule itself but whether the process by which PCC253 grants exemptions to it circumvents the need to amend the rule.
- [23] Before it introduced the Service Animal Policy, PCC253 had a procedure for considering exemptions to the No Pets Rule. Ms. Acker testified that these exemptions were granted as accommodations under the Code. Ms. Acker said she had "standing instructions" from the Board of Directors concerning requests for ESAs under the Code. She seeks information, consults with counsel and, if the accommodation is recommended by the lawyers, she takes it up with the Board. If the accommodation is approved, she writes a letter which includes "a set of reasonable conditions if the(*sic*) are appropriate for that accommodation-seeker". Ms. Acker testified that to date there are seven ESAs on the property as a result of exemptions requested. She did not testify about whether the 25-pound weight limit was insisted on in all cases or not, although PCC253 submitted that all ESAs on the property meet the weight restriction. Her testimony was that the needs of the person seeking the exemption were balanced against the needs of the community.
- [24] Ms. Martis submits that because the No Pets Rule sets no weight limit on a dog brought on the property as an exception to it, therefore no weight limit may now be imposed on the dog Mr. Martis has acquired and wishes to bring home. She advances the novel legal theory that Mr. Martis' rights to the animal of his choice crystallised at the moment he requested the exemption from the No Pets Rule and thereafter could not be infringed upon by any subsequent restrictions that PCC253 sought to impose on Mr. Martis' choice of dog. It is not clear whether Ms. Martis sets the moment of crystallisation at the time of Mr. Martis' request, on February 10th or at the time of Ms. Acker's initial reply two days later. Regardless, there are two problems with Ms. Martis' position: the proposed legal theory itself and its application in this case.
- [25] Ms. Martis was unable to cite any provision in the Act, the regulations to it or any case law in support of her position that Mr. Martis' rights to the dog of his choice crystallised on either February 10th or 12th and were thereafter inviolate. The reason that no authority for this proposition exists is that the proposition itself is

wrong. Indeed, it is antithetical to the established view of a residential condominium corporation as a living community with needs and rules that evolve over time.

- [26] The second problem with this theory is its application in this case. Mr. Martis testified that he believed Ms. Acker's response on February 12th contained all the requirements he would need to meet. Mr. Martis apparently assumed that the information Ms. Acker said would be required was for information only, not to form the basis of a decision about his request. In reading both Mr. Martis' email to Ms. Acker and her response of February 12, 2021, I conclude that Mr. Martis was clearly asking for information about the procedure to obtain an exemption and Ms. Acker provided it. Ms. Acker was providing the information that would be required, such as the species of animal, the breed, size and general temperament as well as any training given, before a request for an exemption could be considered. Ms. Acker also stated that any animal would have to be appropriate "for our community and the expectations of all residents" and she specifically mentioned "reasonable restrictions" on size. It was premature at that point to conclude that any permission had been sought or given. It was open to PCC253 to decide, based on the information Mr. Martis provided, whether to grant the exemption or not.
- [27] Although Ms. Martis' submissions were unpersuasive, there remains the question of whether PCC253 had the right, under its No Pet Rule, to impose a weight restriction on an animal as a condition for granting an exemption to the rule and to do so in lieu of amending the No Pets Rule itself. It is important to note that this is a different matter than the question of whether PCC253 had the right to impose a weight restriction as part of an accommodation under the Code. That question will be considered below.
- [28] PCC253 relies on the business judgment rule. It is not clear from its submissions whether PCC253 relies on this rule only in connection with an accommodation under the Code or in connection with its interpretation of its No Pet Rules. I will consider the business judgment rule in both contexts. The business judgement rule has been defined in a number of ways but the intent, in the context of this case, is that the Tribunal should defer to the business judgment of PCC253 in conducting its business if PCC253 has acted in good faith, has used reasonable care and if the resulting decision lies within a range of reasonable outcomes. Underlying the business judgment rule is the belief that, again in this context, PCC253 is in the best position to understand the competing needs and interests of its condominium unit owners concerning animals on the property.
- [29] A version of the business judgment rule was considered in a recent Tribunal case

of *Calderon v York Condominium Corporation No. 274*, 2021 ONCAT 101. The Tribunal concluded that the condominium corporation was entitled to deference in its decision not to enforce its pet rules provided it acted reasonably. In that case, the condominium corporation had testified that its pet rules were outdated and that it was selectively not enforcing them while it was in the process of amending them. What PCC253 wants to do here goes considerably further. It wants to grant exemptions to its No Pets Rule and impose conditions on those exemptions. Perhaps most importantly, this is not being done as a short-term measure pending the amendment of the No Pets Rule. The exemption process has been used for 19 months. Apart from the Service Animal Policy, no attempt in that time has apparently been made to amend the No Pets Rule. Mr. Baskwell testified that the subject of pets at PCC253 was raised in the June, 2021 Annual General Meeting. Ms. Martis submitted that PCC253 did not mention its Service Animal Policy at that meeting.

[30] PCC253 did not cite any case where the business judgment rule was extended as far as PC253 wants to take it. I conclude that the process that PCC253 proposes to use in this case to grant Mr. Martis an exemption from its No Pets Rule and impose conditions on his choice of ESA is an invalid attempt to use its exemption procedure in lieu of amending its No Pets Rule. It suffers from the same defect as the Service Animal Policy does in that it is an attempt to circumvent the statutory procedure for amending rules. As such, it is not an appropriate use of the business judgment rule and PCC253 is not entitled to deference under it.

Issue 3. May PCC253 impose a weight restriction on Mr. Martis' choice of ESA as part of an accommodation under the Code?

[31] As noted above, the situation is different under the Code. Subsection 47(2) of the Code provides that the Code takes precedence over other statutes unless expressly stated otherwise. It takes precedence over the Act and, by extension, over rules passed by condominium corporations pursuant to the Act. While PCC253 regards an accommodation under the Code as a matter of an exemption to its No Pets Rule, the better view is that the No Pets Rule cannot override Mr. Martis' rights under the Code. The parties agree that Mr. Martis is entitled to an ESA as an accommodation. The question is whether PCC253 may impose a weight restriction on Mr. Martis' choice of ESA as part of that accommodation.

[32] Ms. Martis submitted that PCC253 has acted in an arbitrary and non-transparent way in setting its 25-pound weight limit on ESA dogs. In testimony, Ms. Acker further amended the weight limit to say that PCC253 had some flexibility to increase the 25-pound limit slightly. Witnesses for PCC253 testified that the

recommendation about what conditions to attach to requests for accommodation were made to the Board of Directors by its solicitors and those recommendations were usually followed. The PCC253 witnesses did not provide evidence as to what policy considerations went into the setting of the weight limit other than to say that PCC253 was attempting to balance the needs of those owners who required an ESA with the rest of the community which had chosen to live in a no dog condominium corporation.

- [33] I conclude that the way in which the 25-pound limit was set and communicated lacked transparency. Mr. Martis did not learn all the restrictions that were proposed for his dog until he was well into the process and neither the exemption process nor the Service Animal Policy have apparently been published to the condominium owners. But these factors do not make the weight limit an unreasonable one. It is consistent with the 20-pound limit on dogs which PCC253 had previously used. It appears to be a legitimate attempt to balance the needs of the all the various residents. There was evidence before me that some of the needs of these other residents are themselves Code-based. The *Ontario Human Rights Commission Policy of Competing Human Rights* sets out what it describes as “Key legal principles”. Among these are that no rights are absolute and there is no hierarchy of rights. The policy states “A consistent principle in the case law is that no legal right is absolute, but is inherently limited by the rights and freedoms of others.”
- [34] Ms. Martis submits that PCC253 is attempting to substitute its opinion for the opinion of Mr. Martis’ doctor. However, I do not interpret the doctor’s notes as setting out a position as to the weight of the dog. Rather, the doctor takes the position that expressing an opinion on that subject is outside his purview. Both the doctor and Mr. Martis said that the dog would be required to perform some duties beyond emotional support. To respect Mr. Martis’ privacy, I will not detail those duties but I conclude they are not duties which would require a dog heavier than 25 pounds. There is no persuasive evidence before me that Mr. Martis needs an ESA that weighs more than 25 pounds.
- [35] The business judgment rule does have some application in considering whether PCC253 has offered a reasonable accommodation in this case. I find that there is no evidence that PCC253 has acted in bad faith in setting the weight limit. PCC253 set the weight limit in part to permit easy control of dogs moving in and out of the common areas, which is a legitimate objective. It has exercised reasonable care and the result is within the range of reasonable outcomes. PCC253 is entitled to deference in its decision as it is in the best position to assess and balance the conflicting needs within the PCC253 community regarding dogs on the premises.

[36] Mr. Martis would obviously prefer that the dog he has selected be accommodated. Both parties quoted from the *Ontario Human Rights Commission Ableism Policy* (“OHRC Ableism Policy”). The OHRC Ableism Policy contains a highly relevant distinction between a need for an accommodation and a preference for a particular outcome. At page 34 of the OHRC Ableism Policy, it states, “At the same time, human rights case law makes it clear that the purpose of the *Code* is to accommodate a person’s needs, not their preferences.” This statement is supported by the case law cited as authority for it.

[37] I accept the testimony of the PCC253 witnesses that there are those in the PCC253 who have a Code-related need to avoid dogs. I find that Mr. Martis has not demonstrated that he needs a dog which weighs more than 25 pounds. I understand that he has a strong preference for the dog he has chosen but as the OHRC Ableism Policy makes clear, PCC253 is obliged to accommodate his need; they are not obliged to accommodate his preference. In the circumstances of this case, I find that PCC253 has offered a reasonable accommodation in setting a weight limit of 25 pounds on an ESA for Mr. Martis. This case principally concerned the weight limit set for the ESA. While there were references to the other restrictions imposed, full submissions were not made by both parties on whether those restrictions were part of a reasonable accommodation under the Code and I make no findings on that question.

Issue 4. What remedies, if any, flow from these findings?

[38] Ms. Martis seeks a declaration that Mr. Martis’ dog is permitted at the condominium; a payment of \$1,500 in general damages; her costs of \$200 in fees paid to the Tribunal and further costs of \$25,000 in legal fees. PCC253 seeks no costs.

[39] I am dismissing Ms. Martis application. Therefore, she is not entitled to a payment of her fees. I do not find a basis for general damages. Under Rule 46.1 of the Tribunals Rules of Practice, parties are not entitled to be reimbursed for their legal costs unless there are “exceptional reasons to do so”. I do not find that there are these exceptional reasons in this case. No order for costs or damages will issue.

Other considerations

[40] Mr. Stackhouse, counsel for PCC253, embarked on a sharp criticism of this Tribunal’s procedures and rules of practice and of my conduct of this case in his closing submissions. He spent five pages of his closing submissions making the case that the Tribunal did not provide procedural fairness during the hearing. He submitted that there was a “lack of clarity in the CAT’s Rules of Practice

concerning questioning of witnesses”. He submitted that the timing during the hearing was “both arbitrary and procedurally unfair. The timing of some events has been difficult to meet and does not seem to account for [PC253’s] witnesses and counsel having other commitments including property management, careers, families and legal practices.” He also objected to my asking follow-on questions of one PCC253 witness and then allowing both parties to ask questions based on the questions I had raised. He referred to this as a procedural unfairness subjecting the witness to a third round of cross-examination. He also noted that I had made errors in the setting some of the deadlines and in opening some “events” in the online dispute system by which the Tribunal conducts its proceedings.

[41] There is always room for improvement and, after this case is concluded, I will both review the criticisms of my conduct of the case and pass on the criticism of the Tribunal’s Rules of Procedure to the Chair of the Tribunal for his consideration. For now, I have a different perspective to offer. This case arises under section 1 of Ontario Regulation 179/17 to the Act. Cases under this section have taken an average of 80 days to be heard by the Tribunal. By contrast, this case took 174 days. There was no need for this unduly long hearing. The issues in this case were not complex. Moreover, compassion demanded an early resolution to this matter. However, both parties raised objections which were, in their totality, disproportionate to the matters at issue. Mr. Stackhouse raised a preliminary motion disputing the jurisdiction of the Tribunal to hear the matter despite the obvious fact that PCC253 had both a No Pets Rule and a Service Animal Policy and had attempted to assert them against Mr. Martis. This was a dispute which was clearly within the Tribunal’s jurisdiction. Mr. Stackhouse also repeatedly resisted the time limits I had set and attempted to impose his own. As Counsel for Ms. Martis noted in her closing submissions, Mr. Stackhouse repeatedly waited until the last moment to raise his objections to the time limits. He repeatedly cited the demands of his legal practice as a reason he could not meet the deadlines imposed.

[42] Lawyers who choose to practice before this Tribunal must understand that the goal of the Tribunal is to provide an expeditious and easily accessible dispute resolution process. The Condominium Authority Tribunal Rules of Practice are simplified and expressed in plain English to help make the Tribunal more easily accessible by self-represented parties and to reduce the number and frequency of the sorts of procedural motions which can delay court proceedings. The Tribunal Online Dispute Resolution System operates on a 24/7 basis in order to permit people to participate in Tribunal proceedings outside regular office hours. Lawyers practicing before the Tribunal must accept that, while the elapsed time they spend on any given hearing may be substantially less than that spent in an equivalent matter in a

court setting, the response time expected of them may also be substantially less. It is only in this way that the Tribunal can meet its objectives.

D. CONCLUSION

[43] PCC253 has offered a reasonable accommodation for Mr. Martis' needs for an ESA. Mr. Martis has not established that he needs a heavier dog. PCC253 is not obliged to accommodate his preference for a specific dog when the dog exceeds the weight requirement that PCC253 has established and when that weight requirement was set to balance other Code-related needs.

E. ORDER

[44] The Tribunal Orders that this application is dismissed.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: November 23, 2021