CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 23, 2021
CASE: 2021-00040R
Citation: Martynenko v. Peel Standard Condominium Corporation No.935, 2021 ONCAT 125

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

Member: Michael Clifton, Vice-Chair

The Applicant,
Stanislav Martynenko
Self-Represented

The Respondent,
Peel Standard Condominium Corporation No.935
Represented by Jordan Cowman, Counsel

Hearing: Written Online Hearing – May 26, 2021 to December 18, 2021

REASONS FOR DECISION

[1] It would be the unusual case where a condominium unit owner's request for records under the *Condominium Act, 1998* (the "Act") is not motivated by dissatisfaction with issues relating to the governance or management of the condominium or some other ongoing dispute or antagonistic relationship with the condominium's board or management. In many cases, there are numerous such concerns that lead to multiple requests for records that, unsurprisingly, give rise to further grounds for dispute. This is another of those cases.

[2] The Applicant in this case has filed three requests for records with the Respondent. Underlying them are concerns going back to the time that he first moved into his unit of the condominium. Many of the issues, if genuine, are serious in nature, and the Applicant's frustration appears sincere; unfortunately, those issues do not fall within the Tribunal's present jurisdiction. Therefore, I deal with the matters that do, which focus upon the Respondent's handling of the Applicant's records requests and issues relating to the adequacy of some of those records;

[3] Related to this, the Respondent alleges that the Applicant's requests for records do not reflect valid concerns and are instead motivated by "spite" on account of attempted enforcement by the Respondent of its rules and declaration provisions

that it is alleged the Applicant has breached. Further, the Respondent alleged the Applicant had seriously harassed the board, the Respondent's condominium manager (who they allege required medication and leaves of absence on account of this), and other owners, and that the Applicant has used the "power" to request records "as a sword in a campaign of harassment".

[4] In this decision, I first discuss the principal facts and issues relating to each of the Applicant's requests, and then address the Respondent's claim that the Applicant's requests are made for improper purposes, including spite (as mentioned above), harassment, and a "fishing expedition". At the conclusion, I address the parties' requests for costs, and the Applicant's request for a penalty to be imposed against the Respondent for unreasonable refusal to provide requested records. I do not address every argument, or all the evidence submitted by the parties, but just those that are relevant to explain the order that results from this decision.

A. RECORD REQUESTS

Request 1

[5] On November 10, 2020, the Applicant filed a Request for Records with the Respondent requesting copies of the following records to be delivered in electronic format:

CORE RECORDS

1. Record of notice relating to leases of units under s. 83 of the Act,
2. Periodic Information Certificates ("PICs") from the past 12 months
3. Minutes of Board meetings held in August, September, October and November, 2020

NON-CORE RECORDS

4. Security cameras installation and maintenance invoices and contracts (2019-2020)
5. Life Fitness invoices and charges (2019 and 2020)
6. Income receipts and details booked and received under (other income) (2017-2020)
7. Invoices book on the account, "General repairs and Maintenance" (2017-2020)

[6] The Respondent delivered a Board Response to Request for Records form on December 14, 2020 (35 days after the request was filed), stating that copies of all the requested records would be provided within seven business days following payment of a fee of $300 by bank draft or money order.

[7] As noted, the Respondent's Response to Request for Records form was five days late. It was also not accurately completed. The $300 fee was set out as a global figure that the Respondent required to be paid before it would release either the core or non-core records that were requested, which is contrary to the requirements of Ont. Reg. 48/01 (the "Regulation"), since no fee may be required for copies of the core records and delivery of them to the Applicant should have been completed within 30 days of the request.

[8] Despite such errors, the Applicant paid the requested fee by bank draft on December 15, 2020; however, none of the promised records were delivered. As the Respondent readily admits, records included in the Applicant's November 10, 2020, request were only delivered to the Applicant on or about February 2, 2021, ten days after the Applicant filed this Application with the Tribunal. Even then, the Applicant had concerns about some of those records.

[9] The Applicant noted that no security camera installation and maintenance invoices and contracts were provided. The Respondent has submitted that this is because no such documents exist. While this is a reasonable excuse for not providing them, the Respondent should not have stated in its Board Response to Request for Records that it would provide them and only afterwards inform the Applicant that the records do not exist and therefore cannot be provided. The time granted under the Regulation (which the Respondent exceeded) for the provision of a Board Response to Request for Records should have been sufficient for the Respondent to make that determination before replying.

[10] The Applicant requested actual invoices and income receipts, and instead received a summary list of them. The Respondent states it did this because it viewed the Applicant's requests as not specific or clear enough. While this sort of unilateral reinterpretation of a request for records is generally not appropriate, on reviewing these lists, I find that they appear sufficiently detailed to satisfy the legitimate interest of a unit owner, having regard to the purposes of the Act, for general information about the expenses of the condominium corporation. Therefore, even though what was provided was not exactly what was requested by the Applicant or promised by the Respondent, I find the request for these records to be reasonably satisfied in this case and that it would have been possible for the Applicant to identify any specific invoices and receipts from those lists that he

wished to see and request them from the Respondent.

[11] The Applicant alleged that the PICs provided in response to his request for records had never, in fact, been delivered to the owners and seemed to have been created solely to answer his request after commencement of the Tribunal proceedings. This kind of complaint has come before the Tribunal in other cases, but although such non-compliance, if true, is not excusable, the Respondent's failure to comply with its duties relative to preparing and sending PICs to owners when and as required by the Act and the Regulation is outside of the current jurisdiction of the Tribunal to determine. By providing the PICs to the Applicant in respect to the Request for Records, the Respondent has satisfied the request even if the PICs themselves were only belatedly created for that purpose.

[12] The Applicant also alleges that the PICs themselves were not adequate. He notes they were undated and that they contain both erroneous information and information not relevant to the periods of time for which they were purportedly made. The Applicant notes that PICs are defined in the regulations under the Act as core records, at least for the year following their issuance, and submits that this suggests they should be subject to a higher standard for accuracy. I do not think that the temporary inclusion of PICs in the list of core records is what imposes that standard, but the fact that the purpose of the PIC is to disclose relevant, contemporary information to unit owners in a timely manner, does impose a higher expectation for accuracy and completeness. This is clearly consistent with the 'open book' principle cited by *Cavarzan J. in McKay v. Waterloo North Condominium Corp. No. 23,* 1992 CanLII 7501 (ON SC), which the Applicant cites. The Applicant also cites the decision of this Tribunal in *Horvath v. Carleton Condominium Corporation No. 89,* 2021 ONCAT 57, which found that even just the failure to date a PIC constituted inadequacy; therefore, failing to ensure that PICs contain accurate and complete information applicable to the time-period for which they are made, must (and I find that it does) constitute failure to keep adequate records as that phrase is to be understood in s. 55(1) of the Act.

[13] Lastly, I note that when it finally did provide the records requested in the November 10, 2020, Request for Records, the Respondent did not include any of the required statements under section 13.8 of the Regulation with respect to redactions. Although the Respondent offered a very basic general reason for its redactions in its submissions, it has not yet done what the Regulation requires, which states, "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," it is to provide "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" with respect to each such redaction. The Respondent has failed to comply with this requirement of the legislation.

Request 2

[14] On November 13, 2020, the Applicant filed another Request for Records with the Respondent requesting copies of the following records to be delivered in electronic format:

CORE RECORDS

1. Minutes of Board meetings held in July, 2020

NON-CORE RECORDS

2. Updated Master Maintenance plan/checklist for all systems in the building and included contractors' comments about deficiencies and malfunctioning components (examples HVAC, Ventilation, flood sensors, Backflow preventers, Boiler maintenance, etc.) (2018-2020)

3. Recording of Online/virtual AGM (July 2020)

[15] The Respondent delivered two separate Board Response to Request for Records forms on or about December 14, 2020 (32 days after the request was filed).

[16] The first Board Response to Request for Records provided that copies of "Minutes of Board meetings held in July, 2020", and the "Recording of Online/virtual AGM (July 2020)", would be provided within seven business days following payment of a fee of $200 by bank draft or money order. Once again, the response form was not accurately completed. It did not address all of the requested records, and the fee requested by the Respondent was again set out as a global amount covering provision of both core and non-core records, even though provision of core records in electronic form attracts no fee under the Regulation. The response provided no details as to how the fee was calculated.

[17] The second Board Response to Request for Records dealt with the "Updated Master Maintenance plan/checklist" category of records, which the Respondent refused to provide, stating that since most of the equipment covered by such records was subject to a shared facilities arrangement with another condominium, it could not release the documents without their consent. There was no indication, however, that consent of the other condominium was ever sought. Further, as cited by the Applicant, the Tribunal decision in *Abou El Naaj v. Peel Standard Condominium Corporation No. 935,* 2021 ONCAT 5, indicates that documents

relating to shared facilities are, nevertheless, records of the condominium and should be provided to unit owners upon request in accordance with the Act. Even if that case had not involved the same Respondent as in this case, I would agree with its reasoning and conclusion.

[18] The second Board Response to Request for Records also stated that CAO staff had informed the Respondent that "fulfillment of this request is at the discretion of the Board of Directors." I cannot speak to the context or intended meaning of the CAO staff member's comments. However, it should be noted that while CAO staff may and do provide helpful information to condominiums in Ontario, it is not appropriate for condominium boards or managers to rely on such statements as or in place of legal advice. In this case, the information allegedly given does not constitute a complete or accurate expression of the Respondent's legal responsibilities. Further, even if it was accurate to state that the decision of whether to provide the requested records is a discretionary one, the Respondent could have chosen to exercise that discretion in favour of the Applicant's request, rather than wait until some 44 days after the commencement of these Tribunal proceedings to provide some records in a belated attempt to fulfill this request.

[19] Also, during these proceedings, the Respondent's counsel submitted a new argument that the request for "Updated Master Maintenance plan/checklists" was unclear and the records would be too difficult to produce. Nevertheless, the evidence is that the Respondent did produce many records that the parties agree at least partly satisfy the request, and the Applicant – although neither a board member nor condominium manager – has been able to identify specifically which remaining records would fully satisfy the request (namely, contractors' comments about deficiencies and malfunctioning components of the roof anchor, kitchen stacks, carbon monoxide sensor and refrigerant leak detection test, pest control, pressure relief valves, elevators, HVAC mechanical equipment testing inspection, BAS monitoring equipment, overhead garage doors inspection, irrigation systems, and water boilers). I find no merit in the Respondent's submission that the request for this set of records was unclear when both parties have easily been able to identify its contents.

Request 3

[20] On December 1, 2020, the Applicant filed his last Request for Records with the Respondent requesting copies of the following records to be delivered in electronic format:

CORE RECORDS

1. Most recent approved financial statements

NON-CORE RECORDS

2. All accounts receivables invoices, receipts, checks, notes or documents that represents the total amount of receivables for the corporation (2016-2020)

3. All accounts payable and liabilities invoices, receipts, checks, notes or documents that represents the total amount of receivables for the corporation (2016-2020)

4. All reserve fund expenses (2018-2020)

5. Turn-over meeting minutes (2013)

[21] The Respondent delivered a Board Response to Request for Records form on January 25, 2021 (56 days after the request was filed, and two days after the Applicant commenced this Application). The reason provided for this late reply was that the Applicant's request was only discovered on January 25, 2021, in the Respondent's manager's "junk e-mail folder". This fact might create an opportunity for the Respondent or its manager to learn that effective communication management includes checking that folder on a more frequent basis, but it does not form a reasonable excuse for late delivery of its response. Further, again, the form was not completed properly, although this time no fee for records was requested.

[22] The Respondent provided only the first six pages (including title page and table of contents) of the most recent approved financial statements, leaving out the remaining 51 pages. The Respondent did not include any of the required statements under section 13.8 of the Regulation with respect to such significant redactions. During these proceedings, the Respondent's counsel stated that the exclusion was justified because the first six pages were "sufficient to explain the financial health of the Corporation" and because "the remaining pages would have been required to have been redacted in their entirety due to privacy reasons." Both of these explanations fail to justify the Respondent's delivery of just part of the record. First, it is not appropriate for a condominium corporation to determine for itself what portion of a record is "sufficient" to satisfy the requester's interest (which a requester is not required to disclose in any event), and to deliver only that. Their obligation under the Act is to deliver the requested record subject only to such exclusions, or redactions, as the legislation expressly permits. Second, it is well established in other Tribunal cases that blanket redactions of whole pages or sections of documents may be viewed as an excessive and inappropriate method of redaction. Third, under the Act, the Respondent's approved financial statements

are to be provided to all unit owners anyway, so it is unclear what actual privacy concerns there could be or why any redactions would be required at all.

[23] In addition, instead of providing the actual invoices, receipts, cheques, notes, etc., representing the accounts payable and accounts receivable for the condominium for the period from 2016 to 2020, the Respondent instead provided the Applicant (along with its response) a copy of its General Ledgers for the period from 2018 to 2019, with a promise to provide the 2020 records once the year-end audit was completed, by March 2021. It is not clear why a print-out of the General Ledger for 2020 could not be provided at the same time, or why the Respondent did not provide the ledgers for 2016 and 2017 as well.

Conclusions re: Record Requests

[24] The Applicant's submissions included other complaints regarding some of the records the Respondent provided. I have not addressed all of these but comment in this decision only on those complaints that I have found to be justified.

[25] In summary, based on my analysis above, I find as follows: That the Respondent did not reply to any of the Applicant's Requests for Records in a manner that was consistent with the Act; it was consistently late in replying; its response forms were incomplete or inaccurate; its fees charged were improperly expressed and determined; it was consistently late in providing records; and, it gave no proper reasons for its redactions, some of which were excessive. As a result, during these proceedings, the Respondent has been in the position of having to rely on its counsel to provide after-the-fact excuses and explanations in an effort to justify what clearly amount to both effective and actual refusals to provide the Applicant with many of the requested records as and when they were required under the Act.

[26] As many of the requested records were provided during the CAT proceedings, I will order only that the Respondent provide the Applicant, forthwith and without requiring the payment of any fee, with:

1. a complete, unredacted copy of the audited financial statements requested in the December 1, 2020, Request for Records;

2. the records identified by the Applicant as finally satisfying his request for the "Updated Master Maintenance plan/checklist for all systems in the building and included contractors comments about deficiencies and malfunctioning components," being, namely, contractors' comments about deficiencies and malfunctioning components of the roof anchor, kitchen stacks, carbon monoxide sensor and refrigerant leak detection test, pest control, pressure relief valves, elevators, HVAC mechanical equipment testing inspection, BAS

monitoring equipment, overhead garage doors inspection, irrigation systems, and water boilers; and

3. with some limitations, all other outstanding records listed in the Applicant's three Requests for Records that were not already delivered prior to the end of these proceedings, including any invoices and receipts that the Applicant can specifically identify based on the list(s) the Respondent has provided.

B. HARASSMENT & FISHING EXPEDITION

Harassment

[27] As noted in my introduction, the Respondent alleged that the Applicant's requests for records were motivated by "spite" and were part of a "campaign of harassment" arising from the Applicant's disgruntlement over attempted enforcement of condominium rules by the Respondent's board. Amongst the evidence submitted in this case is a copy of a letter from the Respondent's solicitors to the Applicant dated December 9, 2020, accusing the Applicant of breaching the rule for "Quiet Enjoyment" by "knocking loudly" on neighbours' doors when desiring to speak with them about concerns relating to the condominium's management and governance and while seeking election to the board. I note that the letter was sent after the Applicant's three record requests had been submitted. It is not possible, therefore, that the Applicant's requests for records were motivated by such enforcement efforts. (In fact, the Applicant submitted that he ceased making requests for records on account of such efforts.) It is more likely, based on the evidence before me, that the Respondent's enforcement efforts were motivated by the Applicant's requests and other efforts to demand changes or accountability with respect to the condominium's leadership.

[28] The Respondent also noted that the Applicant was a participant in a requisition for a meeting to vote on removal of the Respondent's board of directors. This, in and of itself, is not evidence of harassment, but the Respondent stated that the owners signing the requisition, including the Applicant, then sought to "inundate the Board with an unmanageable number of requests for records." However, no requests for records were identified in the Respondent's submissions other than the Applicant's and those of two other individuals who are co-owners of a unit in the condominium.

[29] Such other owners' requests were the subject of a series of Tribunal decisions, primarily including two decisions that were cited by both the Applicant and Respondent in this case, *Abou El Naaj v. Peel Standard Condominium Corporation No. 935,* 2021 ONCAT 4 and *Abou El Naaj v. Peel Standard Condominium Corporation No. 935,* 2021 ONCAT 5 (the "Abou El Naaj Cases"). In both of the Abou El Naaj Cases, penalties and costs were awarded against the

Respondent. It also does not appear from those decisions that an allegation of harassment was made by the Respondent against the applicant in those cases. It is not clear to me why the Applicant in this case is singled out for such an allegation.

[30] Based on the evidence before me in this case, I cannot find that the Applicant has been engaged in a course of harassment against the Respondent or, even if there was conduct that might fairly be called harassing, that it is in any way connected with or relevant to the Applicant's requests for records.

Fishing Expedition

[31] The term "fishing expedition" is used in law to describe a search or investigation, including demands for records or information, undertaken for the purpose of discovering facts that might be disparaging to the other party or form the basis for some legal claim against them, that the seeker merely hopes or imagines exist. Most cases where the term is used appropriately involve a person casting a wide net, as it were – such as requesting records that cover a broad period of time and/or wide range of topics – in the hopes of acquiring some fact or detail that could satisfy what is essentially an unfocussed vindictiveness or dislike for the other party.

[32] The Respondent submits that many of the Applicant's requests for records are overly broad, lack specificity, and would result in potentially thousands of records being produced, with no apparent targeted issue being addressed. The Respondent alleges that the Applicant could have no reason for requesting "thousands of unspecified documents" other than it being "an effort to monopolize the time and resources of the Respondent, or to embark on a fishing expedition in the hope that he might find something which is condemning to the Board." While some facts might make this allegation seem reasonable on its face, the evidence does not ultimately support it.

[33] I find that each request submitted by the Applicant was reasonably specific and it is likely that all of them could have been fulfilled within the time frames set out in the Regulation if the Respondent had intended to do so. I accept that some of the requests do reflect characteristics of a fishing expedition, covering several years' worth of documents in a broad or general category; however, sometimes, genuine and legitimate concerns may actually cover a broad set of records, subject matters and/or spans of time. I do not find that the Applicant's requests were unfocussed or unreasonably broad.

[34] The Respondent suggested, for example, that the Applicant's request for the

"Updated Master Maintenance plan/checklist for all systems in the building and included contractors comments about deficiencies and malfunctioning components," was unclear; however, as explained above, the parties seem to have had no difficulty in determining what specific records should satisfy this request. Ultimately, this is not a persuasive example of the kind of overly vague or unspecific request that helps to identify a fishing expedition.

[35] I also note that the Applicant indicated in his submissions that he ceased making record requests on account of the Respondent's treatment of him in relation to them. Such treatment, which is also supported by the Respondent's evidence in this case, includes the Respondent's resistance to providing the records at all, claiming fees for the records that appeared improper to the Applicant, and also imposing charge backs for legal fees against the Applicant during the Tribunal proceedings, creating the potential for a lien to be placed against his unit, all of which the Applicant perceives as harassment toward him, which he claims was intentional by the Respondent to interfere with and discourage him from continuing this case.

[36] It is not necessary for me to determine whether the Applicant in fact has more persuasive causes to allege harassment by the Respondent than the Respondent has to complain that it has been harassed by the Applicant, but it seems that both parties have credible reasons for feeling some frustration with the other. I expect, however, that if the Respondent was to have duly and responsibly answered the Applicant's requests in a manner that was consistent with its statutory duties and, as the Applicant cites, the "open book" principle, rather than resisting the requests, delaying responses, and relying on its legal counsel to justify its conduct after the fact, the frustration experienced by both parties might have been significantly diminished.

Timing

[37] Lastly, the Respondent accused the Applicant of deciding to bring this case to Stage 3 solely for the purpose of seeking personal enrichment through penalty or costs awards, emboldened by the outcomes of the Abou El Naaj Cases. The Respondent provides no evidence of this motivation other than the allegedly congruent timing of that decision and the release of those cases.

[38] I am not persuaded that seeking a penalty or costs award against the Respondent are the Applicant's sole or even primary motivations in this case. However, even if such reasons did factor into the Applicant's decision (which, in and of itself, may not diminish the validity of the Applicant's case), it seems quite evident that neither of these possibilities were factors motivating the Applicant to originally make his

requests for records, such that, again, if the Respondent had duly answered such requests without delay or difficulty, the case might never have reached the Tribunal at all.

[39] I am not persuaded by any of the Respondent's arguments alleging that the Applicant is engaged in harassment or a fishing expedition or that any of the Applicant's conduct can be relied upon by the Respondent to invalidate his entitlement to the requested records.

C. COSTS & PENALTY

Costs

[40] The Applicant has been successful in demonstrating that the Respondent failed to fulfill its statutory obligations with respect to his requests for records. The Applicant is entitled to his costs of these proceedings in the amount of $200.

[41] The Applicant seeks an additional costs award based on his allegation that the Respondent unduly delayed Stage 2 by a lack of "meaningful participation". Interestingly, the Respondent made the identical allegation against the Applicant. The Respondent accused the Applicant of "deliberately and repeatedly ignor[ing] the Respondent's efforts to settle" the case. For the purposes of determining costs at Stage 3, I cannot assess what occurred during Stage 2 and, in any event, find that the accusations of the parties appear to cancel one another out, revealing more about the antagonism between them than that either one necessarily walks a higher or more virtuous road than the other.

[42] The Applicant also alleged the Respondent was unprepared for Stage 3. I did not find this to be the case. I understand that there can be frustrated expectations during proceedings like these. Unfortunately, these do not always form a basis for a costs award or any other significant consequence. I found both parties conducted themselves appropriately and responsibly during the proceedings before me.

[43] For its part, the Respondent submitted that by "reading between the lines" it should be clear that the Applicant's motivations (in making his requests for records and in bringing this case) were selfish and improper, and that the Respondent should be entitled to its costs on a full or at least partial indemnity basis (ranging from $6,624.63 to $13,267.25).

[44] A large portion of the Respondent's submissions in support of this request were expressed as an accusation against the Tribunal for providing "no incentive for an owner to settle a dispute prior to a hearing" because of the "chance to benefit

financially by way of an award of damages, or costs, or both,". The Respondent suggested that the Tribunal effectively permits "exploitation by parties who are familiar with its costs regime" and that the Applicant "abused the Tribunal process" for such purposes. On this basis, the Respondent states it incurred "exceptional legal costs" and lamented that these will "ultimately be the responsibility of all other owners of PSCC 935 to bear." I will not address the Respondent's accusations against the Tribunal; they are irrelevant to this case and are not a useful part of these submissions. Such statements contribute no evidentiary or argumentative support for what the Respondent believes are the Applicant's intentions.

[45] I note that while the Respondent's submissions refer to "exceptional legal costs," the basis for granting a costs award relating to legal fees under the Tribunal's rules is the exceptionality of the circumstances, not the exceptionality of the fees incurred. In that regard, I do not find that there are any exceptional circumstances justifying the costs award that the Respondent seeks despite having failed to make its case against the Applicant.

[46] Indeed, it is entirely unexceptional that a dispute between unit owners and their condominium may give rise to costs. That such costs, including the costs of legal advice and proceedings, will be borne collectively by the owners of the condominium, is also true and is an inherent and ordinary aspect of the communal living regime grounded in the Act. Though this can be a relevant consideration – particularly where the condominium is found not to be at fault for the dispute or proceedings in question – it does not qualify on its own as an exceptional circumstance that justifies a costs award for legal expenses. What the Respondent's comments in this regard do bring to mind, however, is the question of whether, when the condominium clearly is at fault, it is fair for the owner who is not, to have to bear any portion of such costs. Considered from this perspective, I have determined that the Applicant in this case should not be made to bear any portion of the legal expenses that the Respondent has helpfully submitted it has incurred in relation to this case, and so order. The Applicant also requested $45 to cover "printing and other supplies" incurred for these proceedings. This is not a case in which it would be appropriate to award such additional costs to the Applicant.

Penalty

[47] The Tribunal is also empowered under section 1.44(1)6 and 1.44(3) of the Act to impose a penalty of up to $5000 on a condominium corporation that refuses, without reasonable excuse, to grant access to records in response to a valid request under section 55(3) of the Act. The Applicant requests a penalty of $3500,

citing various Tribunal cases to justify this assessment.

[48] This is not a case where the Respondent expressly refused to provide requested records. It is a case, however, of effective refusal. Several cases before this Tribunal have found effective refusal even where the records have ultimately been provided, particularly where there has been an extensive delay in the provision of records, or other issues (such as charging excessive fees or creating other barriers to delivery of the records) that suggest a negligent or resistant attitude by the condominium corporation board or management with respect to the condominium's duties under the Act relating to requests for records.

[49] In this case, I find that the Respondent did effectively refuse to provide virtually all the records requested by the Applicant. Such effective refusal is indicated by both the unjustified delays of the Respondent, and its carelessness respecting the accuracy of its responses and demands for fees for the records. Further, the Respondent excessively redacted its audited financial statements, a record that, in any event, it was required to provide to all owners in complete and unredacted form. On balance, the Respondent's reactions to the Applicant's requests for records appear to represent a simple default toward refusal rather than decisions based on reasonable consideration of either the requests or the Respondent's obligations toward them.

[50] While any willful non-compliance with legal obligations should attract censure, I believe that the facts of this case do not justify the maximum penalty that the Tribunal can impose nor, I think, the amount sought by the Applicant. I take into consideration that while the Respondent kept up its resistance regarding the Applicant's three requests for records until the Applicant felt compelled to bring this case to the Tribunal, it is evident that the Respondent then learned some of the lessons it should from the results of the Abou El Naaj Cases (notably, the penalties in those cases, being $1500 and $2500 respectively). It began to provide the Applicant with several of the requested records. However, the Respondent appears to think that such belated efforts to do the right things should exonerate it with respect to its prior faults. In addition, the Respondent can be faulted for mounting an unnecessarily aggressive defense, or counter-offensive, against the Applicant, although this latter point is only relevant in this analysis to the extent that it further extended the Respondent's refusal to provide the requested records. I take all these factors into account in assessing the appropriate penalty. I also consider that I am ordering the Respondent to provide all outstanding records to the Applicant without charging any additional fees for them. Therefore, I award a penalty of just $2500, payable to the Applicant within 30 days of the issuance of this decision.

D. ORDER

[51] I order as follows:

1. That the Respondent deliver to the Applicant within thirty (30) days of the date of this order, in electronic form and without requiring the payment of any fee:

    i. a complete, unredacted copy of the Respondent's audited financial statements requested in the Applicant's Request for Records dates December 10, 2020;

    ii. maintenance plans and checklists for the years 2018 and 2019, and the following records covering the period of 2018-2020, as identified by the Applicant with respect to the request for an "Updated master maintenance plan/checklist":

        1. roof inspection reports;
        2. kitchen stacks cleaning inspection reports;
        3. CO sensor and refrigerant leak detection test results or reports;
        4. pressure relief valve tests and replacement inspection reports;
        5. HVAC mechanical equipment testing inspection reports;
        6. BAS monitoring equipment test results or reports;
        7. overhead garage door inspection reports;
        8. irrigation system inspection reports;
        9. water boiler inspection reports; and
        10. to the extent they are not already included in the foregoing, contractors' comments about deficiencies and malfunctioning components of each of forgoing systems, including, without limitation, the roof anchor(s), pest control and elevators; and

    iii. the following records listed in the Applicant's three Requests for Records (dated, respectively, November 10, 2020, November 13, 2020, and December 1, 2020) that were not already delivered to the Applicant prior to the end of these proceedings:

        1. board meeting minutes from October 28, 2020;

2. invoices and contracts relating to security camera installations (2019-2020);

3. records representing the charges on account 6020 relating to Life Fitness (2019-2020);

4. the 2020 General Ledger;

2. That the Respondent provide to the Applicant, without fee and within thirty (30) days of the Applicant's request, such specific invoices, notices and receipts (but not cheques, notes or other documents) as the Applicant may identify by written request delivered to the Respondent within thirty (30) days of the date of this order, having reference to the list(s) of invoices and receipts provided by the Respondent in response to the Applicant's Requests for Records;

3. That the Respondent pay to the Applicant, within thirty (30) days of the date of this order:

   i. in accordance with section 1.44(1)4 of the Act, costs in the amount of $200; and

   ii. in accordance with section 1.44(1)6 of the Act, a penalty in the amount of $2500; and

4. So that the Applicant is not required to contribute to the costs or penalty payable to him, or to the legal fees that the Respondent confirms are attributable to its involvement in these proceedings, that a credit be applied against the Applicant's next regular contribution to the common expenses that is due following the issuance of this decision, in an amount equal to the Applicant's unit's proportionate share of $15,967.25.

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Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: December 23, 2021