

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 5, 2022

CASE: 2021-00096R

Citation: Missal v. York Condominium Corporation No. 504, 2022 ONCAT 2

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

Member: Stephen Roth, Member

The Applicant,

Perry Missal
Self-Represented

The Respondent,

York Condominium Corporation No. 504
Represented by Leza Blair, Condominium Manager

Hearing: Written Online Hearing – October 26, 2021 to December 13, 2021

REASONS FOR DECISION

A. OVERVIEW

- [1] Mr. Missal, the Applicant, is the owner of a unit in York Condominium Corporation No. 504 (the “Respondent” or “YCC#504”).
- [2] The Applicant emailed the prescribed Request for Records form to the Respondent on February 8, 2021, requesting the following records in electronic format:
 - (1) the Record of Owners and Mortgagees of YCC#504, and
 - (2) the General Ledger for Repairs and Maintenance (“ledger”) from January 1, 2014, to the date of his records request, February 8, 2021.
- [3] The Respondent confirmed receipt of the Request for Records form in a responding email on the same date, February 8, 2021, but provided no further response.
- [4] Having received no response from the Respondent to his records request, including the Board’s Response to Records Request form, within thirty days, the Applicant filed an application with the Condominium Authority Tribunal (“CAT”), which was accepted on or about March 22, 2021. Within a day of the

Respondent's notification of the CAT application, YCC#504 emailed the Respondent on March 23, 2021 and attached the Board's Response to Request for Records form.

- [5] In its March 23, 2021 response, YCC#504 indicated that it kept the record of owners and mortgagees in electronic format and the Applicant was entitled to access the record as requested. However, the record itself was not included with the response. Subsequently, in the Negotiation Stage of the CAT process, YCC#504 provided the Applicant with the record of owners and mortgagees, a core record, in electronic format.
- [6] In its March 23, 2021 response, the Respondent indicated that the Applicant may not examine or obtain a copy of the ledger, a non-core record. However, in its explanation, the Respondent indicated that YCC#504 "has electronic information on repairs and maintenance from 2016 to 2021 and that information is enclosed." Indeed, the Respondent attached the ledger for the period July 1, 2016 to February 8, 2021 in redacted format with its March 23, 2021 response. However, the response made neither specific reference to the missing period of January 1, 2014 to June 30, 2016 nor its reasons for redacting the ledger for the period of July 1, 2016 to February 8, 2021.
- [7] Subsequently, during the mediation stage of the CAT process, the Respondent provided a fee estimate of \$167.60 to the Applicant to provide paper copies of the ledger for the period January 1, 2014 to June 30, 2016, records that were stored in paper format at Blue Pencil, a third-party storage facility. The Applicant does not accept the fee estimate as reasonable.
- [8] The Applicant also takes the position that the ledger provided from July 1, 2016 to February 8, 2021 is incomplete, that entries that ought to be in the ledger are missing. The Applicant further requests that the ledger be provided in an unredacted form.
- [9] The issues to be decided in this case are as follows:
 - 1. What fees may YCC#504 charge for a copy of the ledger for the period January 1, 2014, to July 30, 2016?
 - 2. Should the Applicant be entitled to the ledger in an unredacted form?
 - 3. Has YCC#504 provided the complete ledger for the period July 1, 2016 to February 8, 2021?
 - 4. Should YCC#504 be required to pay a penalty under s.1.44(1)6 of the

Condominium Act, 1998 (the “Act”) for refusing to provide requested records without a reasonable excuse, and if so, in what amount?

5. Should costs be awarded?

B. ISSUES & ANALYSIS

What fees may YCC#504 claim in relation to providing access to records?

[10] Subsection 55(3.1)(c) of the Act authorizes the Respondent to “specify fees...for payment by a person who makes a request to the corporation to examine or obtain copies of records under that subsection, where the fees are for costs relating to the examination or copying of the requested records.”

[11] In accordance with Subsection 13.3(8)1 of O. Reg. 48/01,

the fee shall be a reasonable estimate of the amount required to reimburse the corporation for the actual labour and delivery costs that the corporation incurs for making the record requested available for examination or for delivering a copy of the record, which costs shall include the printing and photocopying charges established under paragraph 3 and the actual labour costs that the corporation incurs during the examination.

[12] Leza Blair, the Respondent’s condominium manager who is employed with Maple Ridge Community Management (“MRCM”), provided evidence regarding the requested fee estimate of \$167.60 to provide the ledger. She explained that the ledger for this period was stored at a third-party storage facility, Blue Pencil. Ms. Blair requested an administrator at MRCM obtain an estimate to have Blue Pencil retrieve six stored containers containing records for the January 1, 2014 to June 30, 2016 period and deliver them to MRCM’s office. The estimate was to include the eventual return of the same six containers back to the Blue Pencil facilities for further storage. Because it was not known which of the six containers covering the period January 1, 2014 to July 30, 2016 contained the ledger records, all six containers required retrieval.

[13] The Respondent referred to an estimate, in evidence, on MRCM letterhead in the amount of \$167.50 inclusive of HST, itemised as follows:

Item	# of cartons	Price per carton	Subtotal
Retrieval	6	\$4.12	\$24.72
Handling	6	\$3.37	\$20.22
Delivery			\$29.22

Retrieval	6	\$4.12	\$24.72
Handling	6	\$3.37	\$20.22
Delivery			\$29.22
		Subtotal	\$148.32
		HST	\$19.28
		Grand Total	\$167.60

[14] The Applicant objects to the fee request, essentially on two grounds. Firstly, he objects that the quote is from MRCM and not the third-party storage facility, Blue Pencil. Secondly, he objects on the basis that the fee includes the cost of searching for the records and falls outside the fees contemplated by the legislation.

[15] I find that the fee estimate is a reasonable estimate of the actual labour and delivery costs to provide the ledger. While the estimate has been put on MRCM letterhead, based on Ms. Blair's evidence, I am satisfied that the figure of \$167.60 represents the figure provided by Blue Pencil to MRCM. The Respondent has not put forth a fee estimate or specific request to search through the boxes, redact, print, or photocopy, which only strengthens my finding of reasonableness.

[16] The Applicant also objects on the basis that the fee includes the cost of searching for the records and falls outside of permissible fees contemplated by the legislation. I disagree. Condominiums have a duty to maintain records. While there may be occasions where, because of poor record keeping practices, it would be unreasonable to transfer some "search" costs to an owner, I do not find so in this matter. There is nothing objectionable with keeping the ledger records at a third-party storage facility, especially as the records sought are between five and seven years old and may be voluminous. Retrieving those records is incidental to the actual labour and delivery costs contemplated by the legislation.

Should the General Ledger for repairs and maintenance be provided unredacted?

[17] The Applicant requests the ledger in an unredacted format. Specifically, he seeks to determine what specific units had expenditures for repairs and maintenance paid for by YCC#504. In accordance with section 55(4)(c) of the Act, the right for an owner to examine or obtain copies of records does not apply to records relating to specific units or owners. Ms. Blair testified that the redactions made in the already-provided ledger from July 1, 2016 to February 8, 2021 related solely to

specific units or owners. I accept this evidence and find it appropriate.

- [18] On that basis, I find that YCC#504 is entitled to redact the ledger relating to specific units or owners. For the period January 1, 2014 to June 30, 2016, subject to the fee of \$167.60 being paid by the Applicant, the Respondent shall redact the ledger referencing specific owners and units.

Has YCC#504 provided the complete General Ledger for repairs and maintenance for the period July 1, 2016 to February 8, 2021?

- [19] Ms. Blair testified that, other than redactions for specific owners and units, no alterations or omissions were made to the ledger. She testified that the complete ledger has been provided to the Applicant. The Applicant has offered insufficient evidence to counter Ms. Blair's testimony. I accept Ms. Blair's testimony and find that the Applicant has been provided the complete general ledger for repairs and maintenance for the period of July 1, 2016 to February 8, 2021.

- [20] In his submissions, the Applicant contended that there were repair activities that should have formed part of the ledger but were missing. The Respondent's position is that missing entries referred to by the Applicant could be in other ledgers. I do not need to determine whether certain entries were improperly recorded in other ledgers to decide the issue before me, and I refrain from doing so.

Should YCC#504 be required to pay a penalty under s.1.44(1)6 of the Act for refusing to provide requested records without a reasonable excuse, and if so, in what amount?

- [21] The Tribunal, pursuant to s. 1.44 (1) 6 of the Act, may make an order directing a condominium corporation "to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under s.55 (3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection." I must find both a refusal, and then the lack of a reasonable excuse before I may consider a penalty.
- [22] Under s. 1.44 (3) of the Act, the Tribunal has authority to award a penalty of up to \$5000. What penalty is appropriate depends on the specific facts in each case. It is important to outline the basis for a penalty under the Act. As noted in previous Tribunal decisions, the purpose of a penalty is to impress upon condominium corporations the seriousness of their legal responsibilities to comply with the provisions of the Act and to provide unit owners with a remedy when there has been non-compliance.

- [23] The Applicant asks the Tribunal to order YCC#504 to pay the maximum penalty of \$5,000. He argues that the Respondent has frustrated the legal process and not given the process seriously attention. Further, he argues that YCC#504 refused to provide records without a reasonable excuse.
- [24] YCC#504 argues that it has never refused to provide records. Additionally, in respect of the ledger from January 1, 2014 to June 30, 2016, the Respondent argues that it was willing to provide these records, subject to the requested fee of \$167.60.
- [25] In accordance with subsection 13.3(6) of O. Reg. 48/01, YCC#504's response to the Applicant's Request for Records was due by March 10, 2021, within thirty days of the request. Additionally, the delivery of the record of owners and mortgagees was also due by March 10, 2021 in accordance with subsection 13.6(1)(a) of O. Reg. 48/01.
- [26] The Respondent was thirteen days late in its response and then failed to provide the record of owners and mortgagees until the negotiation stage of the CAT process. Ms. Blair testified that the failure to respond to the Request for Records in the legislated timeline was an oversight, inadvertence that was corrected by responding immediately after it became aware of Mr. Missal's CAT application. Similarly, Ms. Blair testified the Respondent intended to provide the Applicant with the record of owners and mortgagees with the Board's Response to Record's Request, but failed to do so, again because of inadvertence. Once the Respondent became aware of the error, these records were provided in the Negotiation Stage of the CAT process. I accept these explanations and find there was no overt attempt to keep the record of owners and mortgagees from the Applicant. Given that the Respondent's response indicated that the Applicant was entitled to the record of owners and mortgagees, I am satisfied there was not a refusal to provide the record of owners and mortgagees. Additionally, while the response was thirteen days late, it was not of sufficient duration for a finding of an effective refusal.
- [27] With respect to the ledger request, YCC#504's response was also due within thirty days, by March 10, 2021. The Respondent's response was thirteen days late.
- [28] Furthermore, YCC#504's response to the ledger request was deficient. The Respondent indicated that the Applicant "may not examine or obtain a copy" of the General Ledger for Repairs and Maintenance. However, in its explanation, the Respondent indicated that YCC#504 "has electronic information on repairs and maintenance from 2016 to 2021 and that information is enclosed." In its explanation, the Respondent was silent as to the period of January 1, 2014 to

June 30, 2016.

- [29] I find that the logical inference from this silence and the Respondent's "may not examine or obtain a copy" statement is that YCC#504 was refusing to provide the records for this earlier period. The Respondent should have indicated that the records for that period existed in paper format, were in storage, and provided a fee estimate to provide access to the records in accordance with subsections 13.3(6) and 13.3(7) of O. Reg. 48/01. The fee estimate was not provided until the mediation stage of the CAT process. I find the silence and failure to address this period as an effective refusal, at least temporarily.
- [30] Having found a refusal, I now consider whether the Respondent had a reasonable excuse for its refusal. The Respondent provided scant evidence as to its excuse. The Respondent had an obligation to take active steps to determine the existence of the ledger for the period January 1, 2014 to June 30, 2016. Based on the facts before me, I find that the failure to do so resulted from inadvertence or carelessness, neither of which I find to be a reasonable excuse.
- [31] YCC#504's response with respect to the redaction of the ledger from July 1, 2016 to February 8, 2021 was also deficient by failing to provide an explanation as to both the nature and basis for the redactions in accordance with subsection 13.3(6) of O. Reg. 48/01, even if appropriate. The Respondent relied on section 55(4)(c) of the Act to redact references to specific units and owners. It was obligated to explain why it was refusing to provide the redacted portions of the ledger. As such, I find that the redactions were an effective refusal; however, I find the Respondent had a reasonable excuse.
- [32] Given my finding that the Respondent initially refused to provide the ledger for the period of January 1, 2014 to June 30, 2016 without a reasonable excuse, I find that a penalty is warranted. I order a penalty of \$500 to impress upon the Respondent of its obligation to respond to record requests in accordance with the legislation.

Should costs be awarded?

- [33] The Applicant seeks costs including his time to prepare and participate in the CAT process. The Respondent argues that costs should be limited to \$25, the Applicant's Stage 1 CAT filing fee. The Respondent further argues that the Stage 2 and 3 filing fees were only incurred because the Applicant refused to accept the records fee estimate of \$167.60 as reasonable.
- [34] The Tribunal has the discretion to award costs under s.1.44(1)4 of the Act. Rule 45

of the CAT's Rules of Practice provide some guidelines for the award of costs and legal fees. According to Rule 45.1, the Tribunal may order costs where the costs were directly related to a user's participation or unreasonable behaviour. The evidence does not establish that either party has incurred costs due to unreasonable behaviour.

[35] The Applicant was required to file a CAT application because of the Respondent's failure to respond in both a timely and fulsome manner. It was not until Stage 2 that the Respondent provided its fee estimate. As such, I award the Applicant his Stage 1 and 2 CAT filing fees in the amount of \$75. While the Applicant was successful in receiving a penalty at Stage 3, the Respondent was successful on the issue of the reasonableness of the fee estimate. On that basis, I decline to award the Stage 3 filing fee.

C. ORDER

[36] The Tribunal orders that:

1. Within 30 days the Applicant providing payment of \$167.60 to the Respondent, the Respondent shall provide the Applicant with the General Ledger for repairs and maintenance for the period January 1, 2014 to June 30, 2016, redacted for reference to specific units and owners.
2. Within 30 days of the date of this decision, the Respondent shall pay costs of \$75 to the Applicant.
3. Within 30 days of the date of this decision, the Respondent shall pay to the Applicant a penalty in the amount of \$500.

Stephen Roth
Member, Condominium Authority Tribunal

Released on: January 5, 2022