CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 7, 2022
CASE: 2021-00357R
Citation: McLaughlin v. Brant Standard Condominium Corporation No. 75, 2022 ONCAT 16

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

Member: Ian Darling, Chair

The Applicant,
Justin McLaughlin
Self-Represented

The Respondent,
Brant Standard Condominium Corporation No. 75
Represented by Paul Megna and Thomas Sargent, Agents

Hearing: Written Online Hearing – November 19, 2021 – February 25, 2022.

REASONS FOR DECISION

A. OVERVIEW

[1] This hearing started on November 19, 2021. When the hearing commenced, the Respondent was represented by Paulo Megna, of Megna Property Management, the condominium manager for the corporation. At the outset, Mr. Megna stated that all the requested records had been provided, except for the garbage removal contract. Mr. Megna stated that it could not be provided due to a conflict of interest. Mr. Megna further clarified that that the condominium management provider for the corporation would change on December 1, 2021, and that the new management provider could provide the contract.

[2] Thomas Sargent of G3 Property Solutions assumed the role of agent for the Respondents on December 1. The hearing was paused to allow Mr. Sargent time to review the case and provide any outstanding records. The case resumed after the Respondent stated that they provided all the records they had available.

[3] This case deals with the question of whether the Respondent refused to provide

records without a reasonable excuse, and if they did, should the Tribunal award a penalty?

B. RESULT

[4] I find that the Respondent has refused to provide the records without a reasonable excuse, and I impose a penalty of $2500 and award costs of $200 to the Applicant, representing the fees paid to the Tribunal.

C. ISSUES AND ANALYSIS

[5] The issues to be decided are:

1. Has the Respondent refused to provide records without a reasonable excuse such that the Tribunal should award a penalty?

2. Should the Tribunal award any costs?

ISSUE #1: Has the Respondent refused to provide records without a reasonable excuse such that the Tribunal should award a penalty?

[6] The Applicant's entitlement to the records was not in dispute. The question for me to decide is whether the Respondent refused to provide the records without a reasonable excuse, and whether a penalty should be applied. Section 1.44 (1) 6 of the *Condominium Act, 1998* (the "Act") states that the Tribunal may order the Respondent:

> to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies ... if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

[7] Under s. 1.44 (3) of the Act, the Tribunal has authority to award a penalty of up to $5000. It is for me to decide first if the Respondent refused to provide the requested records to the Applicant. The next step is to ask if there a reasonable excuse for such refusal. If there is no reasonable excuse, then a penalty may be appropriate. Finally, if I determine a penalty is justified, the next question is to decide the appropriate amount that should be paid.

[8] The facts in this case are:

1. In a Request for Records dated September 16, 2021, the Applicant requested electronic copies of the following from the Respondent:

i. Record of owners and mortgagees
ii. Record of notices relating to leases of units, under s. 83 of the Act
iii. Periodic information certificates from the past 12 months
iv. The corporation's budget for the current fiscal year, including any amendments
v. Minutes of Board meetings held between September 1, 2018, and September 1, 2021
vi. The Respondent's contract for garbage services with Waste Connections Canada

[9] The Stage 2 Summary and Order, developed by the CAT at the conclusion of the mediation indicates that the Respondent did not reply with a formal Board's Response to Request for Records. During Stage 2 – Mediation, the Respondent asserted that it did not have electronic copies of the records requested, but the Respondent could view or pick up most of the information requested at their office, except for the garbage services contract.

[10] During Stage 2 – Mediation, the Respondent arranged to deliver a package of documents to the Applicant, which constituted all that it believed it had available to offer. The parties disagree about what the package contained. The Applicant asserts that it contained the following:

1. A List of Owners, not including service addresses for owners not living in the building
2. 2021 Budget with amendments
3. Minutes of the 2019 and 2021 Annual General Meetings
4. Periodic Information Certificate for Fall 2021

[11] At the end of Stage 2 – Mediation, the following records had not been provided:

1. Waste collection contract with Waste Connections Canada
2. Service addresses for owners and mortgagees
3. Board meeting minutes for September 2018 to September 2021
4. Minutes of the 2020 Annual General Meeting (AGM)
5. The second Periodic Information Certificate (PIC) for the 2021 fiscal year.

[12] The waste collection contract was provided after the change in management providers.

[13] During the mediation, the Respondent provided an incomplete record of owners

and mortgagees. They provided a list of names of owners but omitted the address for service of each owner. The Respondent did not explain why the list was incomplete. A complete record was provided after the Respondent changed management providers.

[14] The board meeting minutes were not provided because the corporation did not hold any board meetings from September 2018 to September 2021. The Respondent did not provide minutes of the 2020 Annual General Meeting because it was cancelled due to the COVID-19 pandemic.

[15] The Applicant indicated that the PIC was not received.

Waste Collection Contract.

[16] The Respondent did not provide the contract when they were managed by Megna. The reason for the refusal was an apparent conflict of interest. The evidence before me is that the record was refused in order to protect the business interests of the condominium manager. In submissions during the hearing, Paulo Megna explained the decision to refuse to provide the record stating:

> We are not comfortable providing the requested information regarding our garbage contract to this individual. The reason being is that if it is made available to the public, it could potentially jeopardize our business relationship as we do have other properties which Waste Connections services. Other issues that could arise could be losses to our own organization, other companies could potentially gain a competitive advantage if ever given the contract. Also potentially the loss of other contracts if it was ever discovered**.**

[17] Although the Respondent is no longer represented by Megna Property Management, the submissions of Megna were made during the hearing when Megna was acting as the agent of the Respondent presumably under the direction of the board of directors of the condominium corporation.

[18] The Act is clear that owners will have access to records, including contracts. Previous Tribunal decisions have highlighted the principle that the affairs of a condominium corporation are an “open book.” The Act also establishes the limited circumstances where a corporation can refuse to provide records. Protecting the business interests of the condominium management provider is not a valid reason to refuse to provide a record. The Respondent’s agent stated that there was a conflict of interest with respect to the waste collection contract. The conflict was between the private interests of the condominium manager and the best interests of their clients. The manager chose to protect their own interests without regard to

the interests, or legal obligations, of the Respondent. The manager prioritized themselves to the detriment of the Respondent.

Record of Owners and Mortgagees

[19] The requirement to maintain the record of owners and mortgagees is established in section 46.1 of the Act. Section 46.1(3) of the Act indicates that the record should contain:

> (a) the owner's name and the identification of the unit, if an owner, at any time, gives notice to the corporation in writing, setting out the owner's name and, in accordance with the regulations, identifying the owner's unit;
>
> (b) the owner's address for service if,
>
> (i) an owner who has given the notice described in clause (a), notifies the corporation in writing, at any time, of the owner's name and address for service, including any change in the address for service, and
>
> (ii) the owner's address for service is in Ontario

[20] The Respondents (under the guidance of Megna), initially provided a list of owners which omitted the addresses for service. Following the change in managers, the Respondent provided a complete record of owners and mortgagees.

[21] The Act and its regulations contain clear and precise instructions regarding this record. Tribunal decisions going back to 2018 have confirmed what constitutes an adequate record of owners and mortgagees. The Act expressly states that this record, which is a core record, is to be provided upon request without delay, without fee, and without redactions. Claims that names and addresses contained in this record cannot be provided due to "confidentiality" are inconsistent with the Act.

[22] The Applicant expressed concern that the record was missing a list of mortgagees. The Respondent submitted that under section 46.1(3)(c) the record must contain the mortgagee's name, the identification of the unit and the mortgagee's address for service, if:

> (i) a mortgagee, at any time, gives notice to the corporation in writing, setting out the mortgagee's name and, in accordance with the regulations, identifying the unit that is the subject of the mortgage,

The Respondent submitted that the corporation has not received written notice from any mortgagee, so the list is complete. I accept this as accurate, and not a

refusal to provide a record.

[23] I conclude that the decision to provide an incomplete record, specifically the failure to include the addresses for service of the owners, was a refusal without reasonable excuse. I also conclude that the actions of the Respondent to provide the record after it changed management providers mitigated the impact of that refusal.

Board meeting minutes for September 2018 to September 2021

[24] There is no dispute that the Respondent has not provided board meeting minutes for the period of September 2018 to September 2021. Both parties agree that the owner is entitled to board minutes. It is the Respondent's evidence that there are no minutes during this time because there were no board meetings.

[25] In explaining the failure to hold meetings, and therefore the absence of minutes, the Respondent submitted that:

> "many attempts were made to schedule proper Board meetings with Management and for varying reasons these did not occur, scheduling initially seemed to be a challenge and once Covid occurred it became even more challenging. Business was conducted informally in various forms but mainly in person or via written communication which if needed was then delivered to the previous Manager."

[26] During the hearing, Thomas Sargent, the Respondent's representative discovered some handwritten notes from various owner meetings. The notes were provided to the Applicant. While they are not formal minutes of the corporation, I recognize the Respondent's belated efforts to ensure transparency.

[27] The Act is clear that the corporation's business must be conducted through board meetings, and that the corporation must keep adequate minutes of meetings. Section 32(1) of the Act states that the board of a corporation shall not transact any business of the corporation except at a meeting of directors at which a quorum of the board is present. Section 55(1) of the Act states that the corporation shall keep adequate records, and specifically lists a minute book containing the minutes of board meetings as a required record.

[28] The Applicant provided copies of the minutes of the annual general meetings held in 2018, 2019 and 2021. It is clear from the minutes of the annual meetings that the board was conducting business on behalf of the corporation. The minutes refer to contracts with values of over $100 000 for flooring repairs and a major repair to the garage structure that received tenders from five different contractors. By failing

to keep minutes of the corporation transacting business, the Respondent has not complied with the Act.

[29] Previous Tribunal decisions[1] have adopted "a reasonably high standard of expectation for accuracy" of minutes. They have spoken to the "special place and purpose in helping to ensure that 'the affairs and dealing of the corporation and its board of directors are an open book to .... the unit owners,' and in helping owners protect their "unique interest in how the corporation is managed."

[30] The Respondent asserted that there can be no refusal to provide the record since the minutes do not exist. I do not accept this argument. Although a condominium corporation cannot be compelled to produce records that do not exist, it also cannot justify its inability to produce such records by citing its own deliberate non-compliance with the Act.

[31] It is not reasonable that a condominium board with the aid of Megna (a licensed condominium manager) did not know of the necessity to hold meetings in order to conduct the business of the corporation and of its obligation to keep minutes of such meetings, and, in turn, of its duty to make such minutes available upon receiving a request in accordance with the Act.

[32] This is not a mere failure to provide the records, but is tantamount to a refusal to do so, and one that cannot be seen as having any reasonable excuse.

Minutes of the 2020 Annual General Meeting.

[33] The parties agree that there was no AGM in 2020. It was cancelled due to the COVID-19 Pandemic. The Applicant submitted that the Respondent was required to hold the meeting, citing the *COVID-19 Response and Reforms to Modernize Ontario Act, 2020*, which established extensions for hosting an annual general meeting, but it did not waive the requirement for hosting a meeting. The legislation reads:

> "Time Extension for Annual General Meetings
>
> 3. The operation of subsection 45 (2) of the Act is temporarily suspended and the following replacement provisions are in effect during the temporary suspension period only:
>
> Annual general meeting

[1] Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, (2020 ONCAT 33)

> (2) The board shall hold a general meeting of owners not more than three months after the registration of the declaration and description and subsequently within six months of the end of each fiscal year of the corporation.
>
> Annual general meetings, time extension
>
> (2.1) Despite subsection (2), if the last day on which a meeting is required to be held under subsection (2) is a day that falls within the period of the declared emergency, the last day on which the meeting is instead required to be held is no later than the 90th day after the day the emergency is terminated.
>
> (2.2) Despite subsection (2), if the last day on which a meeting is required to be held under subsection (2) is a day that falls within the 30-day period that begins on the day after the day the emergency is terminated, the last day on which the meeting is instead required to be held is no later than the 120th day after the day the emergency is terminated."

[34] An annual general meeting was required to be held by October 22, 2020. I find that the Respondent is not in compliance with the Act, and the *COVID-19 Response and Reforms to Modernize Ontario Act, 2020.*

[35] My conclusions on the Annual General Meeting minutes are similar to the conclusion related to board meeting minutes. Although a condominium corporation cannot be compelled to produce records that do not exist, it also cannot justify its inability to produce such records by citing its own deliberate non-compliance with the Act.

[36] While it may have been acceptable to delay the Annual General Meeting due to the COVID-19 pandemic, it is not reasonable that a condominium board with the aid of Megna (a licensed condominium manager) did not hold an Annual General Meeting.

[37] This is not a mere failure to provide the records, but is tantamount to a refusal to do so, and one that cannot be seen as having any reasonable excuse.

The second Periodic Information Certificate (PIC) for the 2021 fiscal year

[38] The Applicant has received the May 2019 PIC but raised concerns with the accuracy of its information. However, this record is not included in the Request for Records in this case, so I will not deal with the applicant's issues regarding the content of that record.

[39] Regarding the second PIC for the 2021 fiscal year, the Applicant stated they did not receive the PIC. The Respondent's second agent, Thomas Sargent, confirmed that they did not receive the PIC. The PIC should have been created during the time when Megna was the condominium manager. The Respondent's agent submitted that when they took over the management of the corporation, they asked the former management firm for the PIC, but it was not provided. Based on the evidence before me, I conclude that the record was not provided to the Applicant. I further conclude that it probably does not exist.

[40] Overall, the evidence in this case suggests that the corporation's efforts to provide records may have been frustrated by the previous condominium manager. If the parties have concerns regarding the conduct of the manager, or their legal requirements to provide records upon the change of condominium managers, they should direct them to the attention of the Condominium Management Regulatory Authority of Ontario (CMRAO).

[41] The requirement to provide a PIC is established in the Regulation. It is, again, something the Respondent ought to have known it should do. This is a matter of non-compliance that is similar to those relating to the non-production of meeting minutes discussed above. There is insufficient evidence, however, for me to determine conclusively whether this was as conscious a breach of its statutory obligations. I therefore don't find it necessarily constitutes a refusal to provide the record without reasonable excuse, but it follows a strikingly similar pattern.

If a penalty is warranted, what is the appropriate amount?

[42] Since I have determined that the Respondent has effectively refused, without reasonable excuse, to provide required records, it is appropriate to impose a penalty. In determining the amount of the penalty in this case, I follow the reasoning in previous Tribunal cases[2] that a penalty should be "substantial enough to act as a reminder to the Respondent to apply more care and diligence, and especially to be more mindful of its legal obligations, when responding to unit owners' requests for records." Tribunal decisions have established that penalties are proportional, taking into consideration the nature of the records requested, and conduct of the Respondent which led to the refusal.

[43] The responsibility for the unreasonable refusal lies both with the Respondent and the previous condominium management provider. I draw particular attention to the condominium manager's prioritization of their own commercial interests over their

[2] Shaheed Mohamed v York Condominium Corporation No. 414, 2018 ONCAT 3

responsibilities to promote and protect the best interest of clients. However, although the manager contributed to the problem, the ultimate responsibilities to maintain and produce records lie with the condominium corporation. Furthermore, the evidence before me is that the corporation has not complied with the Act with respect to its requirement to hold board and annual general meetings.

[44] In this case, the Respondent did not provide records that are fundamental to transparent condominium governance and the protection and promotion of owners' rights under the Act. The Respondent has avoided its obligations with respect to records and demonstrated carelessness with respect to its governance practices; however, the evidence is that the board is attempting to revise its practices to ensure future compliance with the Act.

[45] I take all these factors into account in assessing the appropriate penalty. Therefore, I award a penalty of $2500, payable to the Applicant within 30 days of the issuance of this decision.

ISSUE #2 - Should the Applicant be awarded any costs?

[46] The Applicant has paid $200 in Tribunal fees to bring this to Stage 3. Since the Applicant was successful in their case, I order the Respondent to reimburse the fees.

ORDER

[47] The Tribunal Orders that:

1. The Respondent shall pay a penalty of $2500 to the Applicant within 30 days of this decision.

2. The Respondent shall reimburse the Applicant $200 for their Tribunal fees within 30 days of this decision.

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Ian Darling
Chair, Condominium Authority Tribunal

Released on: March 7, 2022