

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 9, 2022

CASE: 2021-00424N

Citation: Aganeh v. York Condominium Corporation No. 332, 2022 ONCAT 63

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

Member: Nicole Aylwin, Member

The Applicant,

Ubah Aganeh,

Self-Represented - January 2022 – May 10, 2022

Represented by Arafat Aganeh, Agent - May 10, 2022 – Current

The Respondent,

York Condominium Corporation No. 332

Represented by Luis Hernandez, Counsel

DISMISSAL ORDER

- [1] Ubah Aganeh (the Applicant) filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 2 - Mediation on January 11, 2022.
- [2] Under Rule 34.3 of the CAT's Rules of Practice, the CAT can close a case in Stage 2 - Mediation if the Applicant does not move their case to Stage 3 after having the opportunity to do so for more than 15 days.
- [3] The Applicant in this case was given the opportunity to move the case to Stage 3 – Tribunal Decision on May 24, 2022. The Applicant did not request to move this case forward. Thus, I am dismissing the case.
- [4] The reason for this dismissal is as follows:
- [5] The mediation in this case began on January 11, 2022. Mediation discussions in this case took place until March 15, 2022 at which time due to an impasse, the Applicant was advised that she would have three days until end of day March 18, 2022 to decide if she would like to continue mediation or advise that she would like to move the case to Stage 3 - Tribunal Decision. The Applicant was advised that if she opted to end the mediation, she would then have 15 days to move the case

forward and pay the Tribunal fees associated with Stage 3 - Tribunal Decision.

- [6] On March 17, 2022 the Tribunal was advised by Arafat Aganeh that the Applicant had experienced a medical emergency and the mediation was paused until further information and a reasonable and fair timeline for its resumption could be established.
- [7] On March 30, 2022 I wrote a message to both parties asking for an update regarding the Applicant's participation in this case as no communication had been received since March 17, 2022. In this message the Applicant was advised that she should communicate with the Tribunal by April 6, 2022 and if no response was received the Tribunal would decide how the case would proceed.
- [8] On April 6, 2022 the Tribunal received another email from Arafat Aganeh advising that they would know more about the Applicant's health by April 25, 2022 and asking for an extension in the pause of the mediation until after this date. I granted this extension and asked the Applicant to provide an update on her health and ability to participate in the mediation by the end of day on April 29th. The Applicant was again advised that if no response was received, the option for moving the case to Stage 3 - Tribunal Decision would be made available and the case would be closed after 15 days if no action was taken.
- [9] On April 29, 2022, Arafat Aganeh emailed the Tribunal indicating that she would resume the mediation on the Applicant's behalf. On May 3, 2022 the Tribunal emailed Arafat Aganeh to confirm that she would act as the Applicant's formal representative. The Tribunal further informed her that as the Applicant's representative she would need to use the CAT-ODR system to participate in the mediation process on the Applicant's behalf.
- [10] On May 10, 2022 the Tribunal received an email confirming that there would be a change of representative for the Applicant and Arafat Aganeh would act on the Applicant's behalf. The Applicant's new representative was sent an invitation to join the ODR system on May 10, 2022. On May 13, 2022 I posted a message notifying the parties of the change in representative, and detailed where the mediation process had left off (with the exchanging of offers) and asking for the Applicant's representative to engage in a discussion of settlement offers. This message also set a deadline of May 24, 2022 for progress to be made in the mediation. Both parties were advised that if no progress was made by this time the option for Stage 3 - Tribunal Decision would be made available beginning May 25, 2022 with the Applicant needing to move the case forward by end of day June 8, 2022.

- [11] As no response to this message was posted by the Applicant or her representative, on May 19, 2022 I posted a message to both parties indicating that participation in the mediation was required by May 24, 2022 or the option for Stage 3 – Tribunal Decision would be opened.
- [12] On May 24, 2022 the Applicant’s representative posted a message requesting a further extension of a ‘couple of days’ to consider the active offer, which had been posted to the system on February 11, 2022, remained unchanged, and had been confirmed as valid on several subsequent occasions. This extension was denied. Notwithstanding the time available for the Applicant to consider the offer prior to the change in representative, since the change in representative, two weeks, i.e. the period of May 10 - May 24, 2022 had been provided for the Applicant and her representative to consider the offer and initiate discussions. Moreover, the Applicant still had 15 days, beginning on May 25, 2022, to consider the offer that had been made and respond to it. This meant that since changing representatives, the Applicant and her representative would have had in total over 1 month to consider, discuss and participate in the mediation.
- [13] On June 7, 2022, the Applicant’s representative posted a response to the offer that had been made. In response to this offer, I set a deadline of noon on June 8 for determining if there could be further meaningful mediation discussions based on the new offer. However, both parties were advised that the deadline for moving the case to Stage 3 – Tribunal Decision had not changed. It was still set at end of day on June 8th. The Applicant’s representative was advised that they should continue to be prepared to make the decision on whether to move the case to Stage 3 by the deadline if it was determined that no further progress could be made in the mediation.
- [14] On June 8, 2022 at 12:30 pm it was made clear that the mediation was at an impasse and there was no chance for further meaningful discussions. At that time, both parties were advised that the mediation was ended. All message topics were closed and the Applicant was again advised that she had until the end of the day to move the case forward and pay the fee.
- [15] The Applicant did not opt to move the case to Stage 3 - Tribunal Decision by the deadline and thus, I am ordering this case to be dismissed.

ORDER

- [16] The Tribunal orders that:

1. This case is closed in Stage 2 - Mediation under Rule 34.3 of the CAT's Rules of Practice.
2. Any documents and messages that have been shared for this Case in Stage 1 - Negotiation and / or Stage 2 - Mediation are private and confidential. That means that the Users cannot share, or tell anyone about, messages or documents they received from other Users during these stages without the permission of the other User.
3. The Users may share a copy of any document they received during the course of this case if required by law, such as to a government organization or a court.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: June 9, 2022