

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 2, 2022

**CASE:** 2022-00109R

**Citation:** Zugec v. Wentworth Standard Condominium Corporation No. 566, 2022 ONCAT 81

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

**Member:** Marc Bhalla, Member

**The Applicant,**

Lynda Zugec

Self-Represented

**The Respondent,**

Wentworth Standard Condominium Corporation No. 566

Represented by Aldis Gonzalez, Agent

**Hearing:** Written Online Hearing – May 16, 2022 to July 7, 2022

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] The Applicant requested records from the Respondent related to shared facilities. The Applicant claims the Respondent refused to provide these records and seeks a penalty and costs.
- [2] The Respondent's participation in the hearing was limited. It uploaded documents but failed to make submissions. The Applicant participated in the hearing, met all deadlines and offered concise submissions. I commend the Applicant's participation in the hearing.
- [3] The Respondent did not reply to the Applicant's request within the prescribed timeline; in effect, it refused to provide records. As the Respondent did so without a reasonable excuse, a penalty is in order.

**B. ISSUES & ANALYSIS**

**Should the Respondent be ordered to provide the Applicant with further records?**

- [4] During the hearing, the Respondent uploaded records for the Applicant. The issue for me to decide is if the Applicant is entitled to further records. Specifically, further shared facilities committee meeting minutes beyond those provided during the hearing. There is no dispute before me about the Applicant's entitlement to shared facilities committee meeting minutes. There is also no dispute about the minutes and financial statements provided during the hearing.
- [5] The Respondent sent the Applicant a letter, dated March 17, 2022. In it, the Respondent stated the shared facilities committee met four times between November 25, 2020 and November 2021. Minutes related to these meetings were provided during the hearing.
- [6] In the letter, the Respondent also stated that no shared facilities committee meetings took place in January, June, September, and October 2021. The Applicant disputes this. They claim shared facilities committee meetings took place in January, June, September, and October 2021. The Applicant shared screen shots of what appear to be parts of minutes of shared facilities committee meetings of January 14, June 22, September 18, and October 28, 2021. The Applicant says they received them from other owners. The Applicant would like to receive these meeting minutes from the Respondent.
- [7] The minutes in question are of shared facilities committee meetings on which the Respondent has representation. This is distinct from Respondent board meeting minutes or other records in the Respondent's control. For example, there is nothing before me that suggests the Respondent creates the minutes of shared facilities committee meetings or can, alone, approve them.
- [8] The Applicant's evidence calls into question the Respondent's claim that meetings did not take place in January, June, September and October 2021. Yet, the Applicant has not proven that final, approved minutes of such meetings are in the Respondent's possession. It is unclear if the minutes the Applicant presents are final, approved minutes. Even if so, it is unclear if such are in the Respondent's possession. I cannot order the Respondent to provide records it does not have.
- [9] The Applicant claims meetings took place that the Respondent said did not. My role is not to decide if the meetings took place but instead if the Applicant is entitled to further records. Section 1.44 (1) 7 of the *Condominium Act, 1998* (the "Act") allows me to order whatever relief is fair in the circumstances. I find it fair for the Respondent to address the discrepancy between its statement that meetings did not take place January, June, September and October, 2021 and the Applicant's evidence that they did. This will ensure that the Respondent has a complete record and the Applicant receives what they requested and the parties did not dispute entitlement to.
- [10] I order the Respondent to seek minutes of shared facilities meetings that occurred between November 25, 2020 and November 2021 that it has not already provided to the Applicant from the shared facilities committee and shared facilities

management. Upon receipt of any further minutes, the Respondent is to provide them to the Applicant.

### **Did the Respondent refuse to provide the Applicant with records?**

- [11] Section 13.3 (6) of Ontario Regulation 48/01 requires a condominium board to respond to a Request for Records within 30 days, on the prescribed form. The Respondent did not do this.
- [12] The Applicant submitted a Request for Records to the Respondent on November 14, 2021. The Respondent's condominium manager acknowledged the Applicant's request by email on November 15, 2021. On March 17, 2022, the Respondent provided the Applicant with a letter about their request - and did not use the prescribed reply form. The Respondent uploaded the proper reply form during the hearing and failed to reply when I asked when it was prepared. Nothing before me suggests the Respondent prepared the prescribed reply form prior to the hearing. The March letter was issued more than four months after the Applicant requested records.
- [13] In *Ji v. Toronto Standard Condominium Corporation No. 1611*, 2022 ONCAT 42 and *Ji v. Toronto Standard Condominium Corporation No. 1611*, 2021 ONCAT 122 a condominium's lack of reply within the prescribed timeline was found to be a refusal to provide records. I find the same here. The Respondent refused to provide the Applicant with records.

### **Is a penalty appropriate?**

- [14] The Applicant seeks a penalty of \$5000. Section 1.44 (1) 6 of the Act provides that a penalty may be warranted if the Respondent refused to provide records without a reasonable excuse.
- [15] In communications from the Respondent to the Applicant, excuses are offered about the delay. These include an implication that the shared facilities manager was the gatekeeper of the records requested and that approval was needed from the shared facilities committee. The Respondent did not offer me a reason for the failure to provide records. I was offered no excuse to consider reasonable. Based on what is before me, there is no reasonable excuse for the Respondent's failure to provide the Applicant with records. I find that a penalty is appropriate.
- [16] The Applicant cites another case involving both parties, *Zugec v. Wentworth Standard Condominium Corporation No. 566*, 2022 ONCAT 13, to suggest the Respondent has a pattern of delay in providing records to them. In that case, released February 16, 2022, the Respondent was penalized \$1000 for refusing to provide records without reasonable excuse. The Respondent has done the same again. In considering the circumstances of this case, the repeated refusal of the

Respondent to provide the Applicant with records and other cases where this Tribunal awarded penalties for a refusal to provide records without reasonable excuse<sup>i</sup>, I find a penalty of \$2000 appropriate.

**Are costs appropriate?**

[17] The Applicant sought reimbursement of their \$200 Tribunal filing fees. As they were successful in proving the Respondent failed to provide records without a reasonable excuse, this is appropriate under Rule 48.1 of the Tribunal's Rules of Practice.

**C. ORDER**

[18] The Tribunal orders the Respondent to:

1. immediately seek minutes of shared facilities meetings which took place between November 25, 2020 and November 2021 that it has not already provided to the Applicant from the shared facilities committee and shared facilities manager. The Respondent is ordered to provide minutes of shared facilities meetings which took place between November 25, 2020 and November 2021 that it receives and has not previously provided directly to the Applicant, to the Applicant, at no charge, within 30 days of receipt.
2. pay the Applicant a penalty of \$2000 and costs of \$200, for a total of \$2200 within 30 days of this Order. The Applicant can set-off the full amount against the common expenses attributable to their unit(s) under Section 1.45 (3) of the Act if not paid in full.

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Marc Bhalla  
Member, Condominium Authority Tribunal

Released on: August 2, 2022

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<sup>i</sup> Including McLaughlin v. Brant Standard Condominium Corporation No. 75, 2022 ONCAT 16, Kerswill v. Toronto Standard Condominium Corporation No. 2595, 2022 ONCAT 34 and Jasper Developments Corp. v. York Condominium Corporation No. 82, 2022 ONCAT 32.