

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 10, 2022

**CASE:** 2022-00508R

**Citation:** Wlodarczyk v. Metropolitan Toronto Condominium Corporation No. 1359, 2022 ONCAT 120

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

**Member:** Jennifer Webster, Member

**The Applicant,**  
Halina Wlodarczyk  
Self-Represented

**The Respondent,**  
Metropolitan Toronto Condominium Corporation No. 1359  
Represented by Carol Dirks, Counsel

**Hearing:** Written Online Hearing – September 13, 2022 to October 14, 2022

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant, Halina Wlodarczyk, is the owner of a unit of Metropolitan Toronto Condominium Corporation No. 1359 (“MTCC 1359”), the Respondent.
- [2] The Applicant claims that MTCC 1359 has failed to keep adequate records within the meaning of section 55(1) of the *Condominium Act, 1998* (the “Act”). In particular, she argues that the minutes of MTCC 1359’s board meeting held on February 22, 2022, are inadequate because there was no quorum of qualified directors present. The Applicant seeks a penalty against the disqualified directors and an order prohibiting them from re-election to the MTCC 1359 board.
- [3] MTCC 1359 acknowledges that the February 22, 2022, minutes were not an adequate record. However, it submits that no remedy should be ordered because it removed the minutes from its corporate minute book and amended the document to correct the inaccuracies.
- [4] For the reasons set out below, I accept MTCC 1359’s acknowledgment that it did not keep adequate records when it created board meeting minutes for February 22, 2022. I conclude, however, that it is not necessary or appropriate to issue any orders in relation to these minutes.

## **B. BACKGROUND**

- [5] MTCC 1359 issued an Information Certificate Update (ICU) on February 3, 2022. In this ICU, MTCC 1359 identified that two directors, Alan Sundeen and Denise Lepard, were disqualified from continuing as directors since they had not completed the mandatory directors training provided by the Condominium Authority of Ontario. As a result, the board no longer had a quorum of directors to transact the business of the corporation.
- [6] The board of MTCC 1359 held a meeting on February 22, 2022. The minutes of this meeting indicate that Mr. Sundeen and Ms. Lepard were present. The minutes also state that “Alan Sundeen as chairperson and with a quorum of other director’s present, called the meeting to order at 7:00 pm” [*sic*]. The board conducted business at the meeting and the minutes reflect that motions were passed by the board.
- [7] On March 1, 2022, MTCC 1359 held a special owners’ meeting. At this meeting, the owners re-elected Mr. Sundeen and Ms. Lepard as directors on the MTCC 1359 board.

## **C. ISSUES & ANALYSIS**

- [8] Although the parties participated in Stage 2-Mediation of the Tribunal’s process, they were not able to reach a resolution of the issues raised by the Applicant. The Stage 2 Member issued a Summary and Order. In this order, the Member identified the issues to be decided in Stage 3-Tribunal Decision as follows:

(a) Are the records of the Respondent “adequate”, as understood in s.55 of the *Condominium Act, 1998*?

a. Put another way, does the fact that the minutes of the February 22 meeting reflected quorum existed, when apparently it did not, make such minutes deficient?

i. If the answer to the above is “yes”, what would be a reasonable remedy in these circumstances.

(b) Is either party entitled to an Order requiring the other to pay for the costs of this CAT proceeding?

- [9] Both parties confirmed these issues at the start of the hearing. Nonetheless, the Applicant sought, through her submissions, to add the issue of whether the minutes of the special owners’ meeting held on March 1, 2022, were an adequate record. I ruled that this issue was outside the scope of the hearing and I restricted the submissions to the issues related to the minutes of the February 22, 2022 meeting, as set out in the Stage 2 Summary and Order

**Issue 1: Are the minutes of the February 22, 2022 meeting an adequate record as required by section 55(1) of the Act?**

- [10] The Applicant submits that the minutes of the February 22, 2022, meeting are not an adequate record because the minutes misrepresent that there was a quorum of board directors when two of the three participating board members had been disqualified.
- [11] As noted above, MTCC 1359 agrees that the minutes are not an accurate record, and it has taken steps to amend the record. The minutes have been removed from the minute book and an amended record has been created. The new minutes have the title “AMENDED MINUTES of the meeting of the Directors (Current and Past)” and a note has been added to advise “there being no quorum of the Board of Directors of MTCC 1359 present resulting from notice of disqualification by Condominium Authority of Ontario.” In addition, all references to motions have been removed from the minutes and a watermark has been added to each page with the words “NO QUORUM”.
- [12] The Applicant argues that, despite the amendments, the record of the meeting on February 22, 2022, is still not an adequate record because they provide insufficient information about the disqualification of the directors. I do not agree. The amended minutes adequately show that there was no quorum at the meeting on February 22, 2022, due to disqualification of board directors. The fact of the disqualification had also been communicated to all owners through the ICU on February 3, 2022.
- [13] Based on the evidence, I find that the minutes were not adequate when first created but that the amendments made corrected the inaccuracies and the amended record is therefore adequate.

**Issue 2: If the minutes of the February 22, 2022 meeting are not an adequate record, what remedy is reasonable, if any?**

- [14] I find that no order is necessary to address the adequacy of the minutes because MTCC 1359 has already agreed that the minutes were not adequate and taken the necessary steps to amend the record.
- [15] Nonetheless, the Applicant seeks an order from the Tribunal imposing a penalty under section 1.44(1) 6 of the *Act* against the two individual directors and an order prohibiting them from being re-elected to the board of MTCC 1359.
- [16] Section 1.44(1) of the *Act* sets out the orders that the Tribunal may make. The Tribunal’s authority to order a penalty is described in section 1.44 (1) 6 as follows:
6. an order directing a corporation that is a party to a proceeding with respect to a dispute under subsection 55(3) to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under that subsection if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.
- [17] In the present circumstances, I find that I do not have authority to order a penalty.

Firstly, section 1.44(1) 6 states a penalty may be ordered when the Tribunal considers that the condominium corporation has refused access to records without reasonable excuse. This is not the situation in this case. MTCC 1359 provided the records. Secondly, section 1.44 (1) 6 provides that the penalty is directed at the condominium corporation and not at individual directors, as sought by the Applicant.

- [18] In addition, I find that it is not appropriate to order the individual directors to be disqualified from being elected to the board of MTCC 1359. This type of order is outside of the Tribunal's authority. Moreover, the disputed records have been amended to make the minutes an accurate and adequate record, and the disqualified directors were re-elected to the board at the special owners meeting.

**Issue 3: What order should the Tribunal make in relation to the parties' costs of the CAT proceeding?**

- [19] The Tribunal generally orders that an applicant is entitled to recover their filing fees of \$200 when the application is successful. Although the Applicant has been successful in establishing that the minutes of February 22, 2022, were not an adequate record, I decline to order her filing fees because the Respondent acknowledged that the records were not adequate and voluntarily took the necessary steps to amend the minutes to ensure that they were adequate records. The Applicant, however, made her application to the Tribunal to pursue governance issues about the legal validity of the business conducted by the board and the disqualification of the directors. These governance issues are outside the Tribunal's jurisdiction.

- [20] MTCC 1359 requests an order for costs on the basis that the application was vexatious, given that it had accepted that the minutes were inadequate and corrected them. Rule 48.2 of the Tribunal's Rules of Practice states that the Tribunal will generally not order a party to reimburse another party's costs of the proceedings. This rule further provides that, where appropriate, the Tribunal may order a party to pay part of all of another party's costs, "including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense." Although there is a possibility that the Applicant filed this case to pursue governance issues, I am not prepared to find that, based on the evidence, she filed for an improper purpose.

**D. CONCLUSION**

- [21] I find that MTCC 1359 produced inaccurate records in relation to a meeting held on February 22, 2022. However, MTCC 1359 acknowledged the inaccuracies and made the necessary corrections, and, therefore, I find that the amended minutes are an adequate record.

**E. ORDER**

[22] The Tribunal makes no orders with respect to this application.

---

Jennifer Webster  
Member, Condominium Authority Tribunal

Released on: November 10, 2022