

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 1, 2023

CASE: 2022-00260N

Citation: Kaminski v. Halton Standard Condominium Corporation No. 645, 2023 ONCAT 15

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Mary Ann Spencer, Member

The Applicants,

Wayne and Ann-Marie Kaminski
Self-Represented

The Respondent,

Halton Standard Condominium Corporation No. 645
Represented by Inderpreet Suri, Counsel

CONSENT ORDER

- [1] In Stage 3 - Tribunal Decision, the Applicants, Wayne and Ann-Marie Kaminski, and the Respondent, Halton Standard Condominium Corporation No. 645, have reached an agreement to settle this case and have requested that their agreement be incorporated into a Consent Order of the Tribunal.
- [2] Under Rule 43.1 of the CAT's Rules of Practice, the CAT can close a case in Stage 3 - Tribunal Decision if the Parties agree to the CAT making a Consent Order that resolves the dispute.
- [3] With the consent of the Parties, the CAT orders that this case has been resolved, based upon the terms and conditions set out in this Consent Order.
- [4] The Applicants and the Respondent acknowledge that with issuance of this Consent Order, the case before the Tribunal will be closed.

ORDER

- [5] Within 7 business days of this Order, the Respondent shall provide a copy of HGC Engineering's ("HGC") Report dated November 18, 2022 regarding the acoustic noise testing conducted on November 3, 2022 (the "Report") to the Applicants.
- [6] The Applicants and the Respondent agree to accept the findings in the Report that noise emanating from the fitness room is excessive.

[7] The Respondent agrees to take the following steps:

- a) Within 7 business days of this Order, the Respondent agrees to change the operating hours of the fitness room to 8:00 a.m. - 9:00 p.m.;
- b) Within 14 business days of this Order, the Respondent agrees to permanently remove or disable from use the Omega Commercial Multi-Station machine and the Paramount Functional Trainer machine from the fitness room;
- c) The Respondent agrees to designate the alcove area where the Omega Commercial Multi-Station machine is currently located for the use and storage of the free weights and weight bench (the "Designated Free Weight Area"). However, should the Respondent choose to move the free weights to a different designated area within the fitness room, it will be subject to the required noise-dampening modifications and acoustic testing. The Respondent agrees to remove or disable from use the free weights from HSCC 645's fitness room within 14 business days of this Order and until such time that sufficient noise-dampening modifications are installed in the Designated Free Weight Area by the Respondent as recommended in the Report. Following the installation of sufficient noise-dampening modifications to the Designated Free Weight Area, a further acoustic test shall be performed by HGC or another accredited engineering company to measure the noise levels emanating from the reasonable use of the free weights in the Designated Free Weight Area into the Applicants' unit. Such further acoustic testing will be performed using the full range of the free weights available to users in the gym under real-life use conditions to determine whether such noise levels are considered excessive. If the noise levels are considered to be excessive as per industry standards for any one or more of the free weights, the Respondent shall, within 14 business days of receiving the written report, permanently remove the individual free weight(s) that exceeds industry standards from HSCC 645's fitness room;
- d) Within 7 business days of this Order, the Respondent agrees to post appropriate signage in the fitness/yoga rooms advising residents on where equipment can be used in the fitness/yoga rooms, the proper use of the fitness equipment and fitness/yoga room protocols for users to follow. Such protocols shall include restrictions limiting users from bringing any personal training/exercise equipment into the fitness/yoga rooms except for typical yoga accessories that may be brought only into the yoga room;

- e) The Respondent agrees that any new equipment added to the fitness/yoga rooms will require acoustic testing by an accredited acoustic testing engineering company. If the engineering company determines that the noise levels of the new equipment are unacceptable and excessive as per industry standards, the new equipment will not be added to the fitness/yoga rooms; and,
 - f) The Respondent agrees to adopt and implement a noise enforcement policy directed at fitness/yoga room users whereby whenever a verified noise complaint is registered, a warning letter will be issued to the offending user to refrain from using the equipment or engaging in an activity that causes excessive noise. After three (3) warnings within a one-year period, the individual's fitness/yoga room privileges will be revoked/suspended for fifteen (15) days. If a user whose fitness/yoga room privileges have been previously suspended is the subject of a further verified noise complaint within six (6) months following the end of the suspension, then the Respondent shall, within the reasonable discretion of the Board, take such further enforcement measures as may be required to secure compliance including, but not limited to, the commencement of proceedings before the Condominium Authority Tribunal.
- [8] The Applicants and the Respondent agree that paragraph 7 of this Order shall continue to apply as long as the Applicants are the registered owners of their current unit in Building B of Halton Standard Condominium Corporation No. 645. If the Applicants sell their current unit, paragraph 7 will no longer apply and will be void.
- [9] The Applicants and the Respondent agree that paragraph 7 of this Order shall not apply to or limit the Respondent from complying with orders of the court, other tribunals or other legal requirements.
- [10] Within 30 business days of this Order, the Respondent will pay \$400.00 to the Applicants representing the CAT fees paid by the Applicants in respect of this Application and a reimbursement of costs incurred by the Applicants.
- [11] The Applicants and the Respondent acknowledge and understand that an award of damages, penalties and/or costs could have been assessed by the CAT at the conclusion of Stage 3 -Tribunal Decision. The Applicants and Respondent agree to waive and not collect or pursue any such damages, costs and/or penalties, or any other amounts, from the Respondent pertaining to this application.

COMPLIANCE

[12] If any of the Parties fails to comply with any of the terms of this order, it may be enforced through the Ontario Superior Court of Justice.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: February 1, 2023