

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 1, 2023

**CASE:** 2021-00407R

**Citation:** Walsh v. Simcoe Standard Condominium Corporation No. 432, 2023 ONCAT 34

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

**Member:** Anne Gottlieb, Member

**The Applicant,**  
Michael Walsh  
Self-Represented

**The Respondent,**  
Simcoe Standard Condominium Corporation No. 432  
Represented by Howard Binsky, Agent

**Hearing:** Written Online Hearing – August 23, 2022 to February 6, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] On September 21, 2021, the Applicant, Mr. Walsh asked for condominium records via email to Shore to Slope Property Management, which at that time, was the management company for the Respondent condominium corporation, (“SSCC No. 432”). There was no Request for Records form attached. Mr. Walsh was asked to complete and submit the appropriate form in a response email of September 28, 2021, from SSCC No. 432’s president Mr. Binsky.
- [2] On October 20, 2021, the Applicant made a formal Request for Records (the “Request”) and sent it via email to Shore to Slope Property Management. The Request is dated September 29, 2021, however the evidence reflects that it was forwarded on October 20, 2021. The Request asks SSCC No. 432 for certain records, and cites the first record as the only core record. It then lists the subsequent five records as non-core records.
1. Board meeting minutes: June 16, 2021, to September 11, 2021 (the “minutes”)
  2. All resident request forms to install video cameras: March 2, 2020, to September 11, 2021, (the “forms to install video cameras”)

3. All resident request forms to install an electronic door lock: March 2, 2020, to September 11, 2021, (the "forms to install electronic door locks")
  4. Compliance infractions sent on August 31, 2021, to all residents as part of the audit, with names redacted for privacy: June 16, 2021, to September 11, 2021, (the "compliance infractions")
  5. Board meeting minutes and agenda in which it was discussed that... (Applicant's unit) was being charged for the cleaning and sanitization of patio furniture and deck (with) any attachments to the board report which assisted in the board reaching this decision: August 6, 2021, to September 11, 2021, (the "cleaning charge attachments")
  6. Meeting minutes and agenda and attachments, in which board concluded that rentals are not in compliance (if they are) "less than 31 days in length" and attachments to the board report which assisted in the board reaching this decision: August 6, 2021, to September 11, 2021, (the "rental attachments")
- [3] A Board Response to Request for Records (the "Response") was provided on October 28, 2021, by Shore to Slope Property Management. The Response denies Mr. Walsh access to the forms to install video cameras and electronic door locks, and the compliance infractions and cited "owners privacy act issues", for each of these records. The Response addresses the minutes and indicates it would grant access to these records. There was no reference in the Response to the cleaning charge attachments and rental attachments.
- [4] On October 28, 2021, an email from Shore to Slope Management to Mr. Walsh outlines that he would be charged \$50 per hour for redaction of minutes. The email states that the Request would be forwarded to the new management company, E&H Management, when they 'took over' the next week. Mr. Walsh responded that he agreed to pay the fee.
- [5] On November 1, 2021, E&H Property Management took on the management responsibilities for SSCC No. 432. Mr. Walsh did not receive any of the requested records and on November 29, 2021, he filed this case with the Tribunal.
- [6] On November 30, 2021, an email was sent to Mr. Walsh by condominium manager Mr. Vivian, from E&H Property Management stating that redacted minutes (from June-Oct 2021) are available "once you submit a cheque to E&H Property Management for \$50.00. You may also choose to have the \$50.00 added to your Common Element fees and the Condominium Corporation will then issue a cheque for \$50.00. Once payment is received, these minutes will be forwarded to you electronically..."
- [7] Mr. Walsh sent a reply email that day, to the condominium manager, confirming that he had previously agreed to add the \$50 to the common elements fee. The redacted minutes for the September and October 2021 meetings were approved at the November 30, 2021, board meeting. These, along with the minutes from June,

July and August 2021, were sent via email to Mr. Walsh on December 1, 2021. Based on the facts of this case, there is no fee applicable for the production of these records, as they are core records.

- [8] For the reasons set out below, I find that Mr. Walsh is not entitled to the forms to install video cameras and the forms to install electronic door locks, as the forms are designed in a way that all the completed information would need to be redacted per section 55(4)(c) of the *Condominium Act, 1998* (the “Act”).
- [9] I find that Mr. Walsh would have been entitled to appropriately redacted copies of compliance infractions and that these were refused without a reasonable excuse. The testimony reveals that these records are not in the corporation’s files and therefore I cannot order their production or redaction. I further find that SSCC No. 432 initially refused to provide records relating to cleaning charge attachments and rental attachments without a reasonable excuse. I award a penalty of \$1000 to be paid to Mr. Walsh, as well as reimbursement for the Tribunal fee of \$200. Furthermore, the corporation shall pay Mr. Walsh \$36.50 as compensation for the amount paid to the Town of Collingwood to obtain a copy of a report related to the rental attachments.

## **B. ISSUES & ANALYSIS**

- [10] I have taken into account the evidence and submissions of both parties. I will only refer to matters that are relevant to the issues to be decided. Based on the evidence before me, the five issues to be decided in this case are:
1. Is SSCC No. 432 entitled to charge \$50 to provide the requested board meeting minutes, or the redacted board meeting minutes?
  2. Is Mr. Walsh entitled to resident forms to install video cameras and resident forms to install electronic door locks?
  3. Is Mr. Walsh entitled to compliance infractions?
  4. Did SSCC No. 432 refuse to provide Mr. Walsh with requested records without a reasonable excuse and should a penalty be awarded in this case?
  5. Should there be an order for costs and fees?

### **Issue 1: Is SSCC No. 432 entitled to charge \$50 to provide the requested board meeting minutes or the redacted board meeting minutes?**

- [11] In opening remarks, the condominium corporation submits that: “... (Mr. Walsh) was advised that the costs to provide these ‘redacted’ minutes would be fifty dollars (\$50) which he agreed to pay. To date he has not been billed for these as he has objected to payment and this is one of the issues for the Stage 3 hearing”.
- [12] Sections 13.3(8) and 13.3(9) of Ontario Regulation 48/01 establish when a

condominium corporation can charge a fee for the examination or production of records. A condominium can charge a fee if the requested record is a non-core record of the condominium. A condominium can also charge a fee when it determines that it is required to redact a non-core record. There is no fee allowed to be charged for core records. Under Section 1(1) of Ontario Regulation 48/01, I find that the board minutes requested were core records, as they were within twelve months of the date of the Request. For that reason, a fee cannot be charged to produce or redact them.

- [13] Mr. Walsh confirms authorizing a \$50 fee to add to his common element fees, in order to obtain the minutes. Although Mr. Walsh agreed to pay the amount, it should never have been asked of him. Minutes of board meetings held within twelve months of the date of a request are considered core records and there is no provision to charge a fee for the production of core records. I note that the records were not withheld from Mr. Walsh and were provided to him, with the issue of the fee, to be decided by this Tribunal.
- [14] In closing remarks, SSCC No. 432 acknowledges that there should be no charge for the redacted board minutes which are a core record. In any event, Mr. Walsh has not yet paid the \$50, which the condominium corporation previously insisted they were entitled to receive.

**Issue 2: Is Mr. Walsh entitled to resident forms to install video cameras and resident forms to install electronic door locks?**

- [15] Section 55(3) of the Act sets out the right to examine or obtain a copy of records:

55(3) The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4).

Records that relate to “specific units or owners” fall into one of the exemptions to the right to examine or obtain records, as set out in section 55(4)(c):

55(4) The right to examine or obtain copies of records under subsection (3) does not apply to,

[...]

(c) subject to subsection (5), records relating to specific units or owners;

- [16] Documents uploaded and submitted by the condominium are helpful in determining the entitlement of Mr. Walsh to such records from other residents/owners. A copy of a Keyless Entry Agreement from Mr. Walsh’s unit and a Request for Consent and Release for Mr. Walsh’s unit were submitted as evidence by the Respondent. It was confirmed that these are the same forms that Mr. Walsh requests to see, from other residents/owners.

- [17] On the face of these documents the content required to be completed, namely: unit number, name of owner, and signature of unit owner are all information specific to both a unit owner and a unit. This information would fall into an exemption contemplated by the Act in s.55(4)(c). There is little to no 'other information' on these forms – other than the blank form itself. To redact the completed information on these forms, in order to provide them to Mr. Walsh, would be the equivalent of submitting blank forms to Mr. Walsh. I find that Mr. Walsh is not entitled to copies of the forms to install video camera or electronic door locks from other resident/owners because the information on these forms, when completed by owners, is exempt under the Act.
- [18] The Response did not cite the provisions of the Act that were being relied upon as an exemption by the condominium corporation for refusing to provide the records. The Response does indicate: "may not examine...owner privacy act issues". As the privacy concerns of owners was referenced, I find that this does not amount to a refusal to provide records without a reasonable excuse, in the case of these specific forms. I point out that the condominium corporation did not effectively comply with the legislation regarding the form or content in the Response provided to Mr. Walsh. While there are no consequences that follow in the case of these specific forms to install video cameras and electronic door locks, I caution the corporation of consequences, if they fail to cite the provisions of the Act relied upon, for a refusal to provide records.

### **Issue 3: Is Mr. Walsh entitled to compliance infractions?**

- [19] In the closing submission, SSCC No. 432 takes the position that this request is not in Mr. Walsh's 'sole interest as an owner', as required by the Act. Mr. Walsh indicated that he wanted to know if he was being 'singled out' by the condominium corporation. I find that this is directly related to his interest as an owner. The evidence is that the condominium corporation communicated in correspondence to Mr. Walsh that it was changing its enforcement approach, so that rules could be enforced consistently. This was the background to a compliance letter sent to Mr. Walsh. That was the basis for Mr. Walsh's request for compliance infractions by other residents/owners.
- [20] SSCC No. 432 submits that if infractions by unit owners were included in board minutes they would have been redacted. There is no disagreement on this point. Mr. Walsh specified in the Request that the name of unit owners should be redacted from the records he was seeking. As explained above, per s. 55(4)(c) of the Act, an exemption would exclude the right of Mr. Walsh to know the name of any unit owner, or any unit number. Mr. Walsh would only be entitled to appropriately redacted copies of the record. This was not put forward in the Response. The Response contained a refusal and the words "owners privacy concerns". This was a refusal without a reasonable excuse.
- [21] Under the heading *Notice of Infraction Forms*, the September 2, 2021, minutes indicate that: "the inspection was completed this week and notice has gone out to

owners and will be dropped off for tenants”. The Request asks for compliance infractions sent on August 31, 2021, to all residents as part of an ‘audit’ and lists a date range of June 16, 2021, to September 11, 2021. The testimony of Mr. Vivian is that “regarding supplying an ‘audit’ of infractions by residents from June 14th to August 31 2021 (of SSCC No. 432), I could not locate such a document conducted by Shore to Slope.”

- [22] In his answer to a question posed on cross examaintion, Mr. Vivian states: “I have not seen any correspondence to owners through Shore to Slope owner’s portal. I have not seen the referred audit conducted on August 30th (2021) by Shore to Slope.” I accept the testimony that copies of the records are not in the corporation’s files. It is not possible for me to order the production or redaction of records, if they do not exist in the corporation’s current files.
- [23] I find that Mr. Walsh would have been entitled to appropriately redacted copies of notices or letters of compliance infractions. There was a refusal to produce the records without a reasonable excuse. The fact that copies of the compliance infractions are not in the corporation’s files, could and should have been disclosed to Mr. Walsh, at an earlier point in time.

**Issue 4: Did SSCC No. 432 refuse to provide Mr. Walsh with requested records without a reasonable excuse and should a penalty be awarded in this case?**

- [24] Section 1.44(1)(6) of the Act provides that the Tribunal may order a penalty if it finds that the condominium corporation has, without reasonable excuse, refused to permit an owner to examine or obtain records. Mr. Walsh asks for the maximum penalty of \$5,000 to be awarded in this case.
- [25] An email from Mr. Vivian dated November 12, 2021 submitted into evidence states:

...we will only be providing approved minutes, not board reports, not agendas, not any other information not identified in the CAO form. Take note that I have been asked to inform you there will be a charge of \$50/hour to retrieve and supply this redacted information. Please let me know if you want me to proceed.

There are several points to be made with regard to this email. The first has already been discussed, namely, that the board minutes requested were for meetings which took place within the twelve month period before the corporation received the Request and are therefore core records for which a fee cannot be charged. The second point is that the Request specifically asks for the board reports and agenda and attachments and documents that “assisted the board in coming to their decisions” made during the board meetings. The statement in the email is incorrect, because the cleaning charge attachments and the rental attachments were identified in the Request. Both the Response and this email are initial refusals to provide records without a reasonable excuse. However, based on Mr. Walsh’s opening statement, some of these records were provided in April 2022.

- [26] The report from the Town of Collingwood, which is related to the request for the rental attachments record, was not provided by the condominium corporation. There is evidence of a September 2021, email from management to the board indicating that management was in receipt of an email from the Town of Collingwood regarding compliance issues with short-term rental by-laws. There is also a November 10, 2021, email from Mr. Binsky to Mr. Walsh which discloses that “the Town (of Collingwood is) charging 2 unit owners for renting their units for less than 31 days”. This supports Mr. Walsh’s desire for a copy of the Town of Collingwood report, as part of the rental attachments requested.
- [27] In his witness statement, Mr. Walsh states that “to date the report from the Town (of Collingwood was ) not received from the board”. He further states that his only recourse was to seek this information via the Freedom of Information Act via the Town of Collingwood at a total cost of \$36.50. I accept this testimony as credible.
- [28] SSCC No. 432 submits that at most records were provided to Mr. Walsh eleven days late (i.e. December 1, 2021), and cites the case of *Missal v York Condominium Corporation No. 504*<sup>i</sup> to indicate that this is “not of sufficient duration to cause an effective refusal”. On the evidence, the eleven day delay may be true of the minutes provided, but not true respecting the other records requested and this argument does not succeed.
- [29] I have found that SSCC No. 432 initially refused to provide requested records without a reasonable excuse. SSCC No. 432 either does not understand or does not acknowledge its obligation to provide core records, and non-core records to an owner, in a timely manner pursuant to the Act. On the facts before me, I have found an initial refusal to provide records without a reasonable excuse. I weigh the fact that Mr. Walsh did ultimately receive most of the records to which he was entitled, and find that a penalty in the amount of \$1000 is warranted.

## **Issue 5: Should there be an order for costs and fees?**

### Tribunal Fees

- [30] Mr. Walsh asks for \$200 for the Tribunal fees paid to bring this matter to Stage 3 pursuant to Rule 48.1 of the Tribunal’s Rule of Practice. It was necessary for Mr. Walsh to proceed through this hearing. It was only during Stage 3 that it was acknowledged that a fee could not be charged for the production of the minutes. Through testimony and cross examination it became known that some of the records requested do not exist. I award \$200 to Mr. Walsh for the fees he paid to file this matter with the Tribunal.

### Costs

- [31] Mr. Walsh asks to be reimbursed the \$36.50 he paid to the Town of Collingwood to gain access to a report regarding compliance with the short-term rental by-law. I have accepted the testimony that this was not provided to Mr. Walsh by SSCC No.

432 and that he had to make an application to the Town of Collingwood to obtain a copy.

[32] Section 1.44(1)(3) of the Act provides that the Tribunal may make an order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance. I find that SSCC No. 432 failed to provide this record, and that this was an act of non-compliance. As a direct result of the non-compliance, Mr. Walsh incurred the \$36.50 fee. I therefore order payment by SSCC No. 432 of \$36.50 to Mr. Walsh.

**C. ORDER**

[33] The Tribunal Orders that:

1. Within 30 days from the date of this Order, SSCC No. 432 will pay Mr. Walsh a penalty in the amount of \$1000.
2. Within 30 days from the date of this Order, SSCC No. 432 will pay Mr. Walsh the Tribunal filing fee in the amount of \$200.
3. Within 30 days from the date of this Order, SSCC No. 432 will pay Mr. Walsh \$36.50 for the fee paid to the Town of Collingwood.

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Anne Gottlieb  
Member, Condominium Authority Tribunal

Released on: March 1, 2023

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<sup>i</sup> Missal v York Condominium Corporation No. 504, 2022 ONCAT 2