

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 21, 2023

CASE: 2022-00628R

Citation: Verjee v. York Condominium Corporation No. 43. 2023 ONCAT 45

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

Member: Marc Bhalla, Member

The Applicant,
Miriam Verjee
Self-Represented

The Respondent,
York Condominium Corporation No. 43
Represented by Ava Naraghi, Counsel

Hearing: Written Online Hearing – December 5, 2022 to February 27, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] This is a case of a condominium not doing enough and a unit owner expecting too much.
- [2] The Applicant is an owner of the Respondent condominium corporation. They sent a Request for Records to the Respondent and are not satisfied with the response. While there is merit to the Applicant's view, they also hold the Respondent to an impossible standard. This includes offering over 40 criticisms of the Respondent's reply to their Request for Records. The Respondent claims to be overwhelmed by the Applicant; yet, admits it refused to provide records and agrees the Applicant is entitled to records they have not received.
- [3] Appreciating they remain in community, I encourage both parties to do better at working together.
- [4] While I have reviewed all submissions, only those most relevant to my decision will be mentioned. After reviewing the submissions, I order the Respondent to provide the Applicant records and \$400.

B. BACKGROUND

- [5] On July 1, 2022, the Applicant submitted a Request for Records. They asked the

Respondent for:

1. the condominium's by-laws
2. periodic information certificates from the last 12 months
3. minutes of board meetings held within the last 12 months
4. record of owners and mortgagees
5. unaudited financial statements and arrears reports from April 2022 to July 1, 2022
6. invoices from Shibley Righton LLP from August 2021 to July 1, 2022
7. the Respondent's plumbing contract
8. invoices for an elevator camera installation of around June 2022
9. general and administrative expense ledgers of March – July 2022

[6] The Respondent replied using the required form on July 31, 2022.

Record Provision at No Cost

[7] While the adequacy of what has since been provided is in question, the Respondent agreed to give the Applicant the following records at no cost:

1. by-laws
2. periodic information certificates
3. minutes of board meetings
4. record of owners and mortgagees
5. unaudited financial statements

[8] The Applicant feels:

1. some by-laws were not provided. They also fail to understand how condominiums can have two by-laws of the same number.
2. periodic information certificates are incomplete and inaccurate. This includes allegations of an incorrect service address and failure to use the prescribed form.
3. they have not been provided with all meeting minutes. They feel some minutes are unapproved or incomplete. The Applicant also fails to

understand how approved minutes can be unsigned.

- [9] The Applicant had nine different issues with the Record of Owners and Mortgagees. They felt this record was inadequate. The Applicant subjected the Record of Owners and Mortgagees to an intensive level of scrutiny. This included applying personal information known to the Applicant about certain owners that is not the business of others. It extends to confusing residency with address for service. I am not convinced the Respondent is responsible for the Applicant's adequacy concerns - many of which extend to the responsibility of owners to update the Respondent's records. While the Respondent may wish to consider the feedback, the Applicant has not offered sufficient evidence for me to find the Record of Owners and Mortgagees inadequate.
- [10] The Applicant seeks many explanations in response to a large volume of their concerns with the records they received and the operation of the condominium in general. This falls beyond the jurisdiction of this Tribunal.
- [11] The Applicant is not entitled to flawless records. The focus of this case is on the Applicant receiving records they requested, with their imperfections. Minor imperfections do not make a record inadequate.

Record Provision at a Cost

- [12] The Respondent agreed to provide the Applicant with the following records at a cost:
1. invoices of Shibley Righton LLP
 2. general and administrative expenses ledger
 3. invoice for elevator cameras and installation
- [13] At issue is the amount that the Respondent requested to prepare the records for the Applicant. The Respondent asked for \$55 an hour for a total of three hours to prepare these records. The Respondent now asks for \$32 an hour for 2.2 hours. It also no longer requires the Applicant to pay by certified cheque.

Record Denial

- [14] The Respondent denied the Applicant the following records:
1. draft minutes of the Annual General Meeting, as draft minutes are not a record.
 2. the requested plumbing contract, citing that it does not exist.
 3. arrears report, citing it as confidential.

[15] I do not accept the Applicant's argument that prior provisions of non-records require the Respondent to provide non-records now.

[16] The Respondent changed its position on the arrears report. It is now willing to provide this to the Applicant, for a cost. Such cost is included in the Respondent's revised quote of \$32 an hour and 2.2 hours to prepare the records.

C. ISSUES & ANALYSIS

Are sums requested by the Respondent for preparing records appropriate?

[17] During the Stage 3 hearing, the Respondent adjusted the sum and related payment terms. The Applicant did not object to the revised sum. As the revised sum is in line with tribunal decisions and the nature of the work needed to prepare the records, I find it appropriate.

Has the Respondent refused to provide the Applicant with records without reasonable excuse?

[18] The Respondent admits it refused to provide the Applicant with records. The focus is on if it had reasonable excuse.

[19] The Respondent claims refusal was inadvertent. For example, it suggests the arrears report was refused because the Respondent thought it could not provide it without violating privacy. The Respondent now understands that it can.

[20] The Respondent also suggests innocent human error, such as neglecting to add an attachment to an email, gave rise to refusal.

[21] While the Respondent's refusals may have been inadvertent, I do not accept that a reasonable excuse exists for every refusal in this case. While the Respondent's amended positions have mitigated the refusal, records requested were refused without reasonable excuse.

Is a penalty appropriate in this case? If so, of how much?

[22] The *Condominium Act, 1998* (the "Act") gives discretion to the Tribunal to order a penalty when a record has been refused without reasonable excuse.

[23] Section 1.44(1)6 of the Act allows the Tribunal to make:

[a]n 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.

[24] Section 1.44(1)3 of the Act allows the Tribunal to award such a penalty in a sum of

up to \$5000.

- [25] The Applicant seeks a penalty. The Respondent feels the Applicant's conduct should disqualify them from receiving a penalty. It holds the Applicant as among those overwhelming it with records requests.
- [26] Both parties offered a case where a condominium was overwhelmed. The Respondent cites the case of *Cameron v. Toronto Standard Condominium Corporation No. 2078, 2021 ONCAT 83* ("Cameron"). The Applicant cites the case of *Harrison v. Toronto Standard Condominium Corporation No. 2714, 2021 ONCAT 30* ("Harrison"). I prefer Harrison as a comparable in this case. A key factor that overwhelmed the condominium in Cameron was the impact of the COVID-19 pandemic at the time. While the COVID-19 pandemic is ongoing, in Harrison and this case, the key factor was a large volume of requests by owners. The Respondent claims it has been overwhelmed by a large volume of requests made by the Applicant and other owners.
- [27] The Applicant's approach contributed to overwhelming the Respondent and was, as stated in Harrison, "not conducive to healthy condominium living". This, along with the Respondent's evolved position during the hearing to attempt to satisfy the Applicant, serves to reduce the amount of penalty appropriate. I find a penalty of \$275 appropriate in the circumstance.

Are costs appropriate in this case?

- [28] Rule 48.1 of this Tribunal's Rules of Practice grants discretion in ordering costs. The Applicant feels they should not have to file a case with this Tribunal for the Respondent to adjust sums requested for preparing records or to otherwise fully address a records request. I agree.
- [29] This case moved to Stage 3 because the Respondent did not join it earlier. I accept that the Applicant felt they had to pay the \$125 fee and move this case along to address this matter.
- [30] The Applicant requested that the Tribunal order the Respondent to pay their costs of \$125. I grant this request and order the Respondent to pay the Applicant \$125.
- [31] Both parties can do better. The Applicant can ease their scrutiny and the Respondent can be more attentive. Better attempts to work together should take place before these parties come to this Tribunal again.
- [32] I will order the Respondent to provide some of the records it has previously given to the Applicant. This will allow the Respondent to correct the innocent human errors it acknowledged in the hearing and take the Applicant's feedback into account in the spirit of the parties better working together going forward.
- [33] The Applicant requested that I also order the Respondent to change its address for service on the public record, have its directors re-take mandatory training and

amend practices preparing minutes. I find these items to fall beyond the scope of the case. These underlying issues serve as good opportunities for the parties to work on their cooperation going forward. While I will not order what the Applicant requested, I encourage the parties to work together to address the concerns.

D. ORDER

Record Provision at No Cost

[34] The Tribunal orders the Respondent to provide the Applicant with the following records electronically, within 30 days, at no cost:

1. a complete set of the condominium's by-laws
2. periodic information certificates from the 12 months preceding July 1, 2022
3. minutes of board meetings held within the 12 months preceding July 1, 2022
4. record of owners and mortgagees
5. unaudited financial statements from April 2022 to July 1, 2022.

Record Provision at a Cost

[35] If the Applicant wants additional records, they must pay the Respondent the revised quote of \$70.40. The Respondent is ordered to provide the Applicant with the following redacted records electronically, within 30 days of receiving \$70.40 from the Applicant for them:

1. invoices from Shibley Righton LLP from August 2021 to July 1, 2022
2. invoices for an elevator camera installation of around June 2022
3. general and administrative expense ledgers of March – July 2022.
4. arrears reports from April 2022 to July 1, 2022

[36] The Respondent is ordered to pay the Applicant costs of \$125 and a penalty of \$275 for a total of \$400 within 30 days. If the full amount of \$400 is not provided to the Applicant within 30 days of this Order, the Applicant can set-off the amount against the common expenses attributable to their unit(s) as set out in Section 1.45(3) of the Act.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: March 21, 2023