

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** May 24, 2023

**CASE:** 2022-00589SA

**Citation:** Wong v. York Condominium Corporation No. 43, 2023 ONCAT 71

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

**Member:** Stephen Roth, Member

**The Applicant,**

Jean Wong

Self-Represented

**The Respondent,**

York Condominium Corporation No. 43

Represented by Matthew Varao, Counsel

**Hearing:** Written Online Hearing – September 19, 2022 to May 16, 2023

### **REASONS FOR DECISION**

**A. INTRODUCTION**

[1] The Applicant, Jean Wong, alleges that York Condominium Corporation No. 43 (“YCC43”) contravened the terms of a Settlement Agreement (the “Agreement”) between the parties dated August 15, 2022.

[2] The relevant terms of the Agreement are as follows:

- York Condominium Corporation No. 43 shall within 5 days of acceptance of this offer to settle provide Jean Wong (by-email) with the unaudited financial statements of York Condominium Corporation No. 43 for the month of February 2022.
- York Condominium Corporation No. 43 shall within 7 days of acceptance of this offer to settle provide Jean Wong a \$25.00 cheque representing a return of the filing fees paid by Jean Wong in connection with this application.

**B. BACKGROUND**

[3] The Applicant is a unit owner who brought a previous CAT case (2022-00385R) alleging that the Respondent failed to respond to her records request. In the Mediation stage of that case, the parties resolved the case by way of the Agreement.

### **C. ISSUES & ANALYSIS**

[4] The issue before me is whether the Respondent complied with the above two terms of the Agreement.

#### **Term One: February 2022 unaudited Financial Statements**

[5] Ms. Wong testified that on August 17, 2022, two days after the parties entered into the Agreement, she received an email from Shekhar Tilak who identified himself as the Respondent's property manager. The email contained an attached document identified as the February 2022 unaudited financial statements.

[6] Ms. Wong testified that a few days later, when she inspected the attachment closely, she realized that pages were missing, and she had not been provided with the complete record. She did not indicate in her testimony whether she raised the deficiency with the Respondent prior to bringing her CAT application in September 2022.

[7] Irfan Naeem, YCC43's condominium manager, testified that pages 2 and 9 through 13 of the unaudited financial statements were not provided to the Applicant by a colleague (Shekhar Tilak) through inadvertence. Mr. Tilak was filling in for Mr. Naeem while he was on parental leave. Mr. Naeem testified that Ms. Wong did not raise the missing pages prior to her filing this CAT case. Based on the evidence before me, I find that Ms. Wong did not raise it before filing her CAT application.

[8] Ms. Wong argues that Mr. Naeem's testimony indicates he was independently aware of the missing pages prior to the CAT case. Ms. Wong spent considerable time in cross-examination pursuing this issue. The evidence before me does not persuade me that the Respondent knew that Ms. Wong was not satisfied with the records she had been provided, prior to bringing her application.

[9] It is evident through the Applicant's submissions that she has some frustration with the Respondent. Unfortunately, this may have created a communication barrier; however, it would have been preferable had Ms. Wong raised her concerns prior to bringing an application and given the Respondent an opportunity to comply.

[10] Mr. Naeem further testified that once the Respondent became aware of the

missing pages through the CAT case, they were provided to the Applicant. They were uploaded on December 5, 2022, with redactions.

- [11] In her submissions, Ms. Wong submitted that the Respondent came into compliance with this term of the Agreement on December 5, 2022, when it uploaded the missing documents. However, she further argued that the redactions related to arrears were not warranted. Specifically, she takes issue with the redaction of the breakdown of arrears specific to certain units. She requests the records without the redactions.
- [12] Ms. Wong's testimony was uploaded on December 11, 2022, six days after the redacted documents were uploaded. Ms. Wong made no reference in her testimony to concerns about the redactions. The Applicant questioned Mr. Naeem in cross-examination but asked no questions related to the redactions. She first raised the issue in her closing submissions.
- [13] The Respondent argues that the redactions were carried out in accordance with section 55(4) of the *Condominium Act, 1998* (the "Act") and that the redactions are not an issue before the CAT.
- [14] If I found that the Respondent improperly redacted the records, YCC43 would not be in compliance with the Agreement that implicitly assumes that any redactions comply with section 55(4) of the Act. As such, the Tribunal would have jurisdiction. However, this matter did not come before the CAT on the redaction issue, and it was not identified as an issue until closing submissions. Because it was only raised in closing submissions, I have no testimony from either party on this issue. Therefore, I find it inappropriate as a matter of fairness to make a decision on whether the redactions conform with section 55(4) of the Act.
- [15] I find that the Respondent breached the Settlement Agreement when it failed to provide the complete unaudited financial statements. I accept that this was through inadvertence.
- [16] The Applicant further requests the Tribunal award a penalty for the Respondent's delay in providing the complete records as related to the previous CAT case and this CAT case. Pursuant to section 1.44 (1) 6 of the Act, the Tribunal may make an order directing a condominium corporation "to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under subsection 55 (3) 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] Once the previous CAT case was settled, the Tribunal lost any jurisdiction to address a penalty related to that dispute. The Agreement includes an acknowledgment that the terms fully resolve the issues in dispute. The matter before me relates solely to the enforcement of the Agreement. The penalty provisions for a refusal to provide records without a reasonable excuse do not apply to issues related to the enforcement of Settlement Agreements, even if the Settlement Agreement relates to providing records. In any event, there is no evidence of a refusal to provide the complete record in accordance with the Agreement. Rather, the complete record was not provided because of inadvertence.

[18] When parties resolve their dispute by a Settlement Agreement and it then appears that there may be noncompliance with a term, communication between them is likely a more efficient and effective resolution to the matter rather than filing another case with the Tribunal. An owner can make inquiries of the condominium corporation before filing the case and the corporation can make a diligent effort to respond in a timely and diligent manner, providing an explanation as appropriate in the circumstances. That communication would in many instances make a further appearance before the CAT unnecessary.

**Term Two: Did the Respondent fail to pay \$25.00 to the Applicant?**

[19] Ms. Wong testified that when she met with Mr. Tilak on August 17, 2022, he provided her with \$25.00 in cash rather than a cheque with the explanation that it “takes too long to issue a cheque.” The Applicant testified that she did not raise an objection when he provided her with cash, but insisted on a receipt confirming he paid her cash.

[20] Mr. Naeem testified that on August 17, 2022, when the Applicant met with his colleague to pick up the \$25.00 cash, a discussion took place and Mr. Tilak told the Applicant that it would take some time to provide a cheque. Mr. Naeem, who admittedly, has no firsthand knowledge of this conversation, believes that Ms. Wong accepted an offer of cash rather than a cheque.

[21] In her submissions, Ms. Wong conceded that cash, rather than a cheque, is not a material breach but still a breach of the agreement.

[22] The Respondent submits that it technically breached this term; however, argues that the breach is de minimis. I agree with the Respondent’s position. Ms. Wong did not provide any explanation as to how she was either prejudiced by being paid in cash or to whether the method of payment made any practical difference.

[23] I am concerned that the issue of the form of payment is trivial, and Ms. Wong provided no rationale for including this issue in her application beyond the fact that the agreement called for a cheque payment.

**D. COSTS**

[24] The Applicant seeks her CAT filing fees of \$125. The Respondent provided no submissions on filing fees.

[25] I am awarding the Applicant \$75.00, a partial reimbursement of her requested fees. I have explained my concern that the issue of the \$25.00 was before the Tribunal. Furthermore, I am concerned that the Applicant did not testify that she raised the issue of the missing pages with the Respondent before filing the CAT case. The efforts made in trying to resolve issues before filing a CAT case is relevant to ordering costs. The Applicant made insufficient efforts; and on that basis, I decline to fully indemnify her. The Respondent failed to provide the complete record, which was its obligation. As such, a partial award for fees is warranted.

**E. ORDER**

[26] The Tribunal Orders that:

1. Pursuant to section 1.44(1)4 of the Act and Rule 48 of the Tribunal's Rules of Practice, the Respondent shall pay \$75 to the Applicant for filing fees within 30 days of the date of this decision.

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Stephen Roth  
Member, Condominium Authority Tribunal

Released on: May 24, 2023