

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 11, 2023

CASE: 2023-00246SA

Citation: Wong v. York Condominium Corporation No. 43, 2023 ONCAT 85

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

Member: Jennifer Webster, Member

The Applicant,

Jean Wong

Self-Represented

The Respondent,

York Condominium Corporation No. 43

Represented by Matthew Varao, Counsel

Hearing: Written Online Hearing – May 11, 2023 to June 22, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Jean Wong (the “Applicant”) is the owner of a unit of the Respondent, York Condominium Corporation No. 43 (“YCC43”). The Applicant and YCC43 were parties to case number 2022-00485R at the Tribunal, and they reached a Settlement Agreement (the “Agreement”) that fully resolved the issues in that case on October 28, 2022.
- [2] The Applicant filed this case because she alleges that YCC43 has failed to comply with the terms of the Agreement. Specifically, she claims that YCC43 has not implemented paragraphs 4 through 7 of the Agreement. She asks the Tribunal to order YCC43 to fulfil the terms of the Agreement. She also seeks an order requiring YCC43 to reimburse her filing fees in this matter and to pay her a penalty in relation to the non-compliance.
- [3] YCC43 acknowledges that it has not implemented the terms of the Agreement. It explains that the Agreement was lost due to inadvertence during a transition between condominium managers. YCC43 submits that it is prepared to comply with the terms of the Agreement and pay the Applicant’s filing fees, but it opposes

an order for a penalty in the circumstances.

- [4] Given YCC43's acknowledgment that it has taken no steps to comply with the Agreement. I find that the Respondent is in breach of the settlement terms. I order YCC43 to comply with all terms of the Agreement and to reimburse the Applicant for her filing fees of \$125 within 10 days of the date of this decision. I make no order for a penalty in this matter.

B. BACKGROUND

- [5] On July 2, 2022, the Applicant submitted a request for records to YCC43. When she did not receive a response to her request, she filed a case with the Tribunal (CAT case 2022-00485R).
- [6] The case proceeded to Stage 2 – Mediation on August 15, 2022, and the parties reached the Agreement that resolved all issues in dispute on October 28, 2022.
- [7] The terms of the Agreement that are relevant to the present matter are as follows:

[4] Within 5 business days of the release of the Settlement Agreement from the Tribunal, York Condominium Corporation No. 43 shall provide the Applicant with electronic copies of the following records (less any documents already delivered to the Applicant):

1. All approved and signed minutes from May 2021 to September 2022;
and,
2. The unaudited financial statements from March to August 2022.

[5] Within 5 business days of the release of the Settlement Agreement from the Tribunal, York Condominium Corporation No. 43 will provide to Jean Wong in electronic format the following records, on a without cost basis:

1. Shibley Righton invoices from January 2022 to September 2022;
2. Hydro Bills from April to June 2021 and December 2021 to March 2022 ;
and,
3. Gas Bills from April to June 2021 and December 2021 to March 2022.

[6] Within 5 business days of the release of the Settlement Agreement from the Tribunal, York Condominium Corporation No. 43 will provide to Jean Wong in writing setting out an explanation on the following:

1. The reason for the denial of the arrears reports as requested in the

request for records;

2. The reason the unapproved May, June and July 2021 minutes was [sic] provided to the applicant without identifying the minutes as unapproved;

3. The reason for the delay in approving the May, June and July 2021 minutes; and,

4. The reason the respondent does not need to provide a statement or explanation for any redactions made to records.

[7] Within 10 business days of the release of the Settlement Agreement from the Tribunal, York Condominium Corporation No. 43 will pay by certified cheque to Jean Wong the following amount:

1. \$375 representing filing fees and costs for denying access the records.
[sic]

[8] On April 21, 2023, the Applicant sent an email to the email address for YCC43's condominium manager in which she identified that a Settlement Agreement had been reached in relation to CAT Case 2022-00485R on October 28, 2022, and that YCC43 had failed to fulfill any of the terms in the Agreement. She further wrote that she was providing YCC43 with an opportunity to comply with the terms by April 27, 2023, but that she would proceed with a case with the Tribunal on April 28, 2023, for breach of settlement in order to meet the six-month deadline set out in the Agreement for filing a case related to failure to non-compliance. The Applicant copied this email to the Vice President of Ace Management, the company that supplies YCC43 with condominium management services.

[9] The Applicant received no response from YCC43 to her email of April 21, 2023, and she started this case with the Tribunal for breach of the Agreement.

C. ISSUES & ANALYSIS

[10] The issues to be decided in this matter are:

1. Has YCC43 breached the Settlement Agreement dated October 28, 2022?
2. If YCC43 has breached the Settlement Agreement, what orders should the Tribunal make?

Issue 1: Has YCC43 breached the Settlement Agreement dated October 28, 2022?

[11] The Applicant alleges that YCC43 has failed to implement the terms of the Agreement set out in paragraphs 4, 5, 6, and 7.

[12] YCC43 agrees that it has failed to comply with these terms and explains that it was not aware of the Agreement until this case was filed with the Tribunal for compliance. YCC43 states that the Agreement was entered into by Mr. Shikar Talik, who was its interim condominium manager, during the parental leave of Mr. Irfan Naeem, its regular condominium manager. YCC43 states that Mr. Tilak did not inform Mr. Naeem of the Agreement during the transition period after Mr. Naeem returned from his leave.

[13] YCC43 has conceded that it has breached the Agreement, and I find that YCC43 has failed to comply with the terms set out in paragraphs 4, 5, 6, and 7.

Issue 2: If YCC43 has breached the Settlement Agreement, what orders should the Tribunal make?

[14] The Applicant seeks orders directing YCC43 to comply with the terms of the Agreement, to reimburse her filing fees of \$125, and to pay a penalty for its breach of the Agreement and its refusal to provide the requested records.

[15] I accept that YCC43 has failed to comply with the Agreement, and I order the Respondent to comply with the terms in paragraphs 4,5, 6, and 7 within 10 days of the release of this decision.

[16] With respect to the Applicant's filing fees, I note that Rule 48.1 of the Tribunal's Rules of Practice states that the unsuccessful party will be required to pay the successful party's Tribunal fees unless the Tribunal member finds otherwise. The Applicant was successful in this matter, and I order YCC43 to pay her Tribunal fees of \$125.

[17] The Applicant also requests the Tribunal order a penalty for YCC43's non-compliance. She argues that YCC43 has failed to take responsibility for its breach of the Agreement and that it has not provided a reasonable explanation for its failure to implement the terms as agreed.

[18] The Tribunal has jurisdiction to issue a penalty, pursuant to section 1.44(1) 6 of the *Condominium Act, 1998* (the "Act"), if a condominium corporation has refused to provide records without reasonable excuse. The Applicant submits that a penalty is justified because YCC43 has effectively refused to provide records to her despite the express terms of the Agreement.

[19] YCC43 opposes a penalty, noting that the Tribunal has found in an earlier case between the same parties that it does not have jurisdiction to issue a penalty in a case about the enforcement of a settlement. In that case, the Applicant also

sought an order for a penalty on the basis of YCC43's delay in providing the requested records. In its decision in the earlier matter, *Wong v. York Condominium Corporation 43*, 2023 ONCAT 71, the Tribunal set out its reasons for declining the Applicant's request for a penalty as follows:

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 events, 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.

[20] The present case is similar to the earlier matter between these same parties, and I find that the Tribunal does not have jurisdiction to issue a penalty in the context of a dispute about the enforcement of a Settlement Agreement. It is understandable that the Applicant is frustrated with YCC43 and the condominium management and that she feels that she is being denied access to requested records. This is particularly problematic when her email of April 21, 2023, to inquire about compliance with the Agreement was unanswered by YCC43. The Applicant made the appropriate inquiry of YCC43 shortly before the six-month deadline for filing a case with the Tribunal about non-compliance, and no representative of YCC43 responded in any way. It is entirely reasonable for the Applicant to expect a timely response from YCC43 about her enquiry, and I encourage YCC43 to be more diligent both with respect to communications about its CAT cases and in responding to enquiries from owners. If YCC43 had responded to the Applicant's email, the parties may have been able to avoid this hearing at the Tribunal.

D. ORDER

[21] The Tribunal Orders that, within 10 days of the release of this decision:

1. York Condominium Corporation No. 43 shall comply with paragraphs 4, 5, 6, and 7 of the Settlement Agreement dated October 28, 2022; and
2. Pursuant to section 1.44(1) 4 of the Act and Rule 48.1 of the Tribunal's Rules of Practice, York Condominium Corporation No. 43 shall pay \$125 to the Applicant for filing fees.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: July 11, 2023