

Corrected Decision

This decision was amended to update paragraphs [18] and [21] which clarifies the amount the Respondent owes the Applicant for Tribunal fees.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 13, 2023

CASE: 2023-00077R

Citation: Verjee v. York Condominium Corporation No. 43, 2023 ONCAT 95

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

Member: Ian Darling, Chair

The Applicant,
Mariam Verjee
Self-Represented

The Respondent,
York Condominium Corporation No. 43
Represented by Matthew Varao, Paralegal

Hearing: Written Online Hearing – February 28, 2023 to July 28, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] In this records case the Tribunal considers and determines that the Respondent has not overly redacted records. It also determines that the Respondent has refused to provide the records without a reasonable excuse but does not assign a penalty due to the unique circumstances of this case.

B. BACKGROUND

[2] Mariam Verjee (“the Applicant”) submitted a records request to York Condominium Corporation No. 43 (“the Respondent”). There is no question of the validity of the request, or the entitlement to the requested records.

[3] The Respondent replied to the Request but did not provide the records. The Applicant filed an Application with the CAT. The Respondent did not join the case when the Applicant provided them Notice of the case. This case entered Stage 3 as a default order case. The Respondent joined once the case was in Stage 3 after the Tribunal registry notified them of the case.

- [4] Since there was no negotiation or mediation stages, I gave the parties a chance to resolve as many issues as possible before the adjudication commenced. The Respondent uploaded all the requested records. After a review the Applicant questioned the scope of the redactions in two records.
- [5] Part way through the case, the Respondent changed counsel, so there was a brief break to allow the Respondent's counsel to review the case and secure any outstanding records.
- [6] The Applicant has several concerns about how the corporation is being governed. This decision does not address those concerns beyond their specific application to the issues to be decided in this case.
- [7] Both the Applicant and Respondent cited the number of cases they were involved in. The Respondent attempted to impugn the intent of the Applicant – by implying that the Applicant was not acting reasonably. The Applicant pointed to cases where they were involved in, and additional cases involving the Respondent's disputes with other owners as evidence of the Respondent's poor practices with respect to record keeping.
- [8] I note that the Respondent did not join this case because they said that it was too hard to keep track of the number of CAT cases they are involved in.
- [9] I have taken notice of the reported CAT cases involving these parties, and the Respondent more generally. They are not relevant to the issues that I need to decide in this case but do point to a fundamental mistrust between the Applicant and Respondent. I will note that the consumer protection intent of the Act is that condominium records should be considered an "open book" and that good record management practices are fundamental requirements of condominium corporations, and that timely and accurate responses to record requests can prevent applications to the CAT.

C. ISSUES & ANALYSIS

- [10] After the records were provided, the parties agreed that two issues remained:
1. Did the Respondent comply with the requirements set out in s. 13.8(1) of the Regulation regarding the scope and explanation for redactions in the October 21, 2021 In-camera minutes and the unaudited financial statements for July, August & September 2022?
 2. Has the Respondent refused without reasonable excuse to permit the Applicant to examine or obtain copies of the records? If so, should the Applicant be awarded a penalty under s. 1.44(1)6 of the Act?

Did the Respondent comply with the requirements set out in s. 13.8(1) of the Regulation regarding the scope and explanation for redactions in the October 21,

2021 In-camera minutes and the unaudited financial statements for July, August & September 2022?

- [11] The Applicant also pointed to inconsistencies in redactions across different records. The Applicant is correct. In some instances, information that is redacted from these specific records is not redacted consistently. To support this the Applicant provided copies of the same record that was redacted differently for other owners, and circumstances where the information was not consistently redacted. Allowing a keen-eyed reader to circumvent the redactions. I further accept that the Applicant has pointed to instances where the same records they have received from other owners have been redacted differently. I accept that in other instances, the Respondent has been inconsistent – however, this decision relates specifically to October 21, 2021 In-camera minutes and the unaudited financial statements for July, August & September 2022.
- [12] The parties both referred to the same case law on adequacy of records and the scope of redactions. The difference between their submissions was their respective conclusions. The Applicant presented the cases as supporting that the redactions were too broad. The Respondent that the redactions were sufficient to meet the purpose of the records. In this situation, the case law is not helpful in deciding the issue. It required me to review the specific redactions.
- [13] I have the records in question. I have reviewed the accompanying statements that explain the redactions. I find the redactions appropriate. They are consistent with the purpose of redactions as outlined in section 13.8(1) of Ontario Regulation 48/01. I decline to order any further action with respect to this issue.
- [14] While I have determined that the redactions are consistent with the Regulation, the Applicant has demonstrated that the practices are inconsistent – and invite a higher level of scrutiny from owners. While I decline to order any further relief in this instance, the Respondent should review its practices with respect to retention of records, responses to owners, and redaction procedures. It would benefit both the corporation and owners, and may prevent additional cases.

Has the Respondent refused without reasonable excuse to permit the Applicant to examine or obtain copies of the records? If so, should the Applicant be awarded a penalty under s. 1.44(1)6 of the Act?

- [15] Although the Applicant has now received the records, this section considers if the Respondent refused to provide the records without a reasonable excuse prior to filing the case. The Respondent stated that “(i)nitially, the Respondent did not provide the records because, when it received the request, it unfortunately misread the request form and believed that the Applicant was seeking paper copies of the requested records...” I have reviewed the Applicant’s request form. It is clear. Each of the records were requested in electronic form. The Respondent’s explanation defies a plain reading of the form.

- [16] I find that evidence in the case demonstrates that the Respondent replied to the Request, they did not provide records in response to the Applicant. Although the Respondent does not say “no”, I find that in these circumstances, it constitutes a refusal to provide the record without a reasonable excuse.
- [17] Now that I have established that the Respondent refused to provide the record, I will turn to the question of whether the Tribunal should assign a penalty. Based on the circumstances of this case, I do not believe that a penalty is appropriate. The condominium corporation has participated in this case with counsel and has incurred legal fees to defend itself. I am mindful that the legal fees and the penalty are shared expenses that are passed on to individual owners. In the unique circumstances of this case, it would not be fair to the overall community to impose further costs in the form of a penalty.
- [18] I will order the Respondent to reimburse \$200 for the Applicant’s CAT fees, since the Applicant was forced to bring the CAT case in order for the Respondent to address the request.

D. CONCLUSION

- [19] The parties worked to resolve the majority of the issues cooperatively without requiring a formal hearing to decide most of the issues that were present when the case entered the adjudication stage. This made the hearing last longer because we factored in time to provide and review the records, but simplified the hearing itself because it reduced the issues to be decided. I would like to take a moment to recognize this approach. At the same time, this case has pointed to a fundamental mistrust by the Applicant of the Respondent’s approach to governance. While I have decided the issues in this case, the fundamental cause of this issue has not been resolved.
- [20] I am mindful of Member Bhalla’s comments to the same parties in *Verjee v. York Condominium Corporation No. 43*, 2023 ONCAT 45, in which the member encouraged both parties to “do better at working together.” That comment, and this decision should be read as an exhortation to both parties to examine their approaches. The Applicant was overly focussed on minor issues that do not render the records inadequate – but this has developed in an environment where the Respondent’s lax approach to records management has increased mistrust. Unless both parties examine their actions and expectations, we will see more of the same.

E. ORDER

- [21] The Tribunal Orders that York Condominium Corporation No. 43 pay the Applicant costs of \$200 within 30 days. If the full amount 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.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: July 13, 2023