

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 20, 2023

CASE: 2022-00632R

Citation: Nurmi v. York Condominium Corporation No. 43, 2023 ONCAT 99

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

Member: Marc Bhalla, Member

The Applicant,
Peter Nurmi
Self-Represented

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

Hearing: Written Online Hearing – March 22, 2023 to July 4, 2023
Video hearing – April 12, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] This case involved an Applicant unit owner unsatisfied with records received, and how requests for them were handled. The Respondent condominium corporation tried to correct initial refusals and delays.
- [2] There were three main components to this case:
1. outstanding records;
 2. claims that records provided were inadequate; and
 3. potential financial consequences.
- [3] By the end of the hearing, the Respondent had provided or offered all outstanding records it could. The focus of this decision is on record adequacy and the consequence of the Respondent initially mishandling the Applicant's record requests.
- [4] While all submissions have been considered, only those most relevant to the decision are cited.
- [5] The Applicant is awarded costs and penalties that total \$675.

B. BACKGROUND

- [6] This condominium community has experienced transition in recent years; both on the board and with management. These changes delayed the approval of meeting minutes and created other record complications.
- [7] On June 7 and July 6, 2022, the Applicant requested records from the Respondent. Met with delays and refusals, the Applicant filed a case with this Tribunal about each request. On consent of the parties, this case merged cases 2022-000632R and 2022-000742R to address both record requests.
- [8] After the cases were filed, the Respondent provided records to the Applicant. Some records were given during mediation, others during the hearing. The Applicant was not satisfied that many of the records provided were adequate. As the hearing ended, I asked the Applicant to list records that remained outstanding. The Respondent then offered all which were in its possession.

C. ISSUES & ANALYSIS

Should the Respondent be ordered to provide the Applicant with records?

- [9] There is no dispute before me on this issue. I order the Respondent to provide the Applicant with the records it offered.

Are records provided by the Respondent adequate?

- [10] The Applicant alleged deficiency and inaccuracy in many records provided by the Respondent. It is the Respondent's position that the records provided are accurate and complete. The Respondent suggests the Applicant has unrealistic expectations around the adequacy of records. For the most part, the Respondent is right.

Redaction

- [11] The Applicant claimed the Respondent inconsistently and excessively redacted records. They included board meeting minutes of May 28, July 16 and September 21, 2021, and March 31, 2022, as evidence of this claim. The minutes offered by the Applicant reference section 55(4) of the *Condominium Act, 1998* (the "Act"). The records indicate within them that they relate to specific units, owners, employees, actual or pending litigation or an insurance investigation.
- [12] The Applicant questioned why certain minutes were more redacted than others. The Applicant is entitled to a redaction statement, not answers to their specific questions. Minutes the Applicant cites in support of their claim are presented as restricted information. There is risk that offering details the Applicant seeks could compromise the purpose of the redaction. This condominium, in particular, is in the midst of addressing a large volume of cases before this Tribunal. That could explain a more careful approach to redaction, in balancing the open book principle

with reasonably contemplated litigation. Inconsistent redaction does not prove inadequacy of records.

[13] In support of their claim that records had been excessively redacted, the Applicant cited *Bryan Mellon v. Halton Condominium Corporation No. 70* 2019 ONCAT 2 (“Mellon”) and *Martynenko v. Peel Standard Condominium Corporation No.935*, 2021 ONCAT 125 (“Martynenko”):

1. In Mellon, redaction of minutes were alleged to have violated the applicant’s right to access records under section 55 (5) (b) of the Act. This speaks to records sought by an owner that relate to that owner. The Applicant made no claim the redactions in question relate to them.
2. In Martynenko, full pages of financial statements were left out; they were redacted in a manner not expressly permitted by law. In this case, paragraphs in minutes were redacted for reasons expressly permitted by the Act. That is an important distinction.

[14] I appreciate the Applicant’s concerns, but I do not find the redactions excessive based on the submissions before me.

Minutes

[15] The Applicant alleged that delays in the approval of minutes gave rise to inadequate record keeping. They cited *Bashir v. Toronto Standard Condominium Corporation No. 1821*, 2021 ONCAT 93 to support that a unit owner should be concerned when there are significant delays in approving minutes. While there may be merit in their concern, the Applicant has not proven inadequate record keeping on the basis of the delays. Reasonable, plausible explanations are offered as to why the approval of minutes was delayed. This appears to be related to the transitions in board and management, and a desire to ensure that minutes are accurate. It includes seeking aid from legal counsel to get it right.

[16] The Applicant took issue with the content of various minutes. They cited *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33. This case recognized the special place of minutes and importance of their accuracy. The Respondent’s legal representative reviewed the minutes and confirmed they accurately captured the business transacted at the meetings they speak for. The Applicant has not proven material inaccuracy.

[17] Unit owners have the right to read board meeting minutes, not a right to co-author them. The Applicant’s concern surrounds what they believe ought to have been discussed at these meetings; the Applicant speculates and asks why some discussions did not take place. This Tribunal is not the platform for the Applicant to receive those answers. The Applicant has not proven inadequacy related to minutes.

[18] The Applicant’s concerns would be better addressed by collaborating with the

Respondent. The Applicant may receive information they are not legally entitled to but which might be shared in the spirit of community. Particularly in a more private platform than a public hearing. The parties are encouraged to better embrace collaboration going forward. The Applicant has remaining requests that offer the parties a chance to do this.

Lost PIC

[19] The Respondent cannot locate the Periodic Information Certificate from the 3rd quarter of 2021. I could not assess the adequacy of this record without it. It is clear that this record has not been properly maintained.

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

[20] The Respondent initially refused to provide the Applicant with some requested records, such as an Arrears Report. The Respondent then tried to work with the Applicant and provide records it initially refused. There are no longer any records refused. This mitigates the impact of the Respondent's refusal but does not excuse it. While the Respondent claimed the Applicant was on a fishing expedition and had unreasonable expectations, it was fair for the Applicant to have concern. The Applicant should not have to file a case with this Tribunal and go to the hearing stage to receive records - even though the Respondent is now willing to provide them. The Respondent refused to provide the Applicant with records without reasonable excuse.

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

[21] The Act allows the Tribunal to order a penalty when a record has been refused without reasonable excuse. Section 1.44 (3) allows the Tribunal to award such a penalty, of up to \$5000. The Applicant sought a penalty against the Respondent but did not propose a sum. Though the Respondent refused to provide records without reasonable excuse, it also took steps to mitigate the impact of the refusal. A penalty of \$275 is appropriate.

Is either party entitled to costs?

[22] Rule 48.1 of the Tribunal's Rules of Practice allows an Applicant to recover their filing fee if successful in a case requiring a decision. In this case, the Applicant's filing fees totalled \$400 (since there were two cases that have been merged together). The Applicant felt it was necessary to file this case with the Tribunal. As records were provided and offered to the Applicant in Stage 3, all filing fees seemed necessary for the Applicant's requests to be addressed. That should not be the case. I order the Respondent to pay the Applicant their \$400 of filing fees.

[23] Rule 48.2 of the Tribunal's Rules of Practice provides that the Tribunal will not generally order one party to pay another party's legal fees or disbursements for a proceeding. For both this reason and due to its actions causing this case to reach

the hearing stage, I did not entertain the Respondent's request for cost recovery.

D. ORDER

[24] The Tribunal Orders:

1. That, as it offered, the Respondent is to provide the Applicant with:
 - i. In-Camera Minutes of March 31, May 31 & June 28, 2022, meetings, which may be redacted as permitted by law;
 - ii. Arrear Reports from January – May 2022, which may be redacted as permitted by law;
 - iii. Linkwood Village Recreation Centre unaudited financial statements of September 2021, which may be redacted as permitted by law; and
 - iv. Statements of redaction of all records provided to the Applicant as part of this case.

These items are to be provided within 30 days of this Order, at no charge to the Applicant.

2. The Respondent is ordered to pay the Applicant costs of \$400 and a \$275 penalty, for a total of \$675. 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 in section 1.45 (3) of the Act.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: July 20, 2023