CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 6, 2023
CASE: 2023-00297R
Citation: Richards v. Peel Condominium Corporation No. 27, 2023 ONCAT 146

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

Member: Dawn Wickett, Member

The Applicant,
Ann Richards
Self-Represented

The Respondent,
Peel Condominium Corporation No. 27
Represented by Patrick Nelson, Counsel

Hearing: Written Online Hearing – August 29, 2023 to September 22, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant is a unit owner in Peel Condominium Corporation No. 27 (“‘PCC 27”).

[2] The Applicant brings this case to the Tribunal because she believes the Respondent has failed to provide her records in response to her request for records of April 18, 2023. The Applicant sought to examine the November 22, 2017, unapproved and approved meeting minutes of the owners’ requisitioned meeting. The Applicant further contends that the unapproved minutes contain inadequate details, and that the Respondent has breached its obligation under the Ontario Regulation 48/01 (“O. Reg 48/01”) because it never replied to her request using the mandatory board response form. Because the Respondent has not approved the November 22, 2017, meeting minutes, the Applicant’s position is that its records are inadequate pursuant to section 55 (1) of the *Condominium Act,* 1998 (the “Act”).

[3] The Respondent contends that it fulfilled the April 18, 2023, request for records because it provided a copy of the unapproved meeting minutes. It did not provide her with the approved meeting minutes because this record does not exist. The Respondent submitted that it has not refused to provide the records because it

cannot provide a record which does not exist, and further, there is “no required timeline to approve minutes”. It is the Respondent’s position that the delay in approving the minutes was inadvertent or unintentional and it will have the minutes approved at the next available opportunity.

[4] The Respondent further submitted that the unapproved minutes contain adequate details, and that the Applicant agrees they do because she stated in her submissions that “the minutes of this meeting are not in dispute. The minutes are correct”. The Respondent did not dispute that it did not reply to the Applicant’s request for records by using the mandatory board response form.

[5] As remedies, the Applicant seeks an order requiring the Respondent to approve the November 22, 2017, meeting minutes, and that a penalty of $3000-$5000 be ordered against the Respondent for failing to provide the requested records and its failure to use the mandatory board response form. The Applicant also wants an order requiring the Respondent to reimburse her $200 for the fee paid to file this application.

[6] The Respondent submitted that the Tribunal has no authority to order a penalty against it for failing to use the mandatory board response form because this “does not constitute a refusal to provide records”. The Respondent further submits that it did not refuse to provide records without a reasonable excuse, so a penalty is not warranted.

[7] For the reasons that follow, I find the Respondent has refused without reasonable excuse, to provide the Applicant with the approved meeting minutes of November 22, 2017. I also find that the Respondent has failed to keep adequate records as required under section 55 (1) of the Act, and that it has not complied with the requirements of sections 13.3 (6) and (7) of the O. Reg 48/01 as it did not provide its response to the Applicant’s request for records on the mandatory board response form. I will order the Respondent to comply with its obligations under the Act, and the requirements of the O. Reg 48/01. I will also order a penalty of $200 against the Respondent, and an order requiring the Respondent to reimburse the Applicant for the fee she paid to file this application.

B. BACKGROUND

[8] This dispute started back in May 2018 when the Applicant made a request for records to obtain a copy of the approved owner’s requisitioned meeting minutes of November 22, 2017, the same meeting minutes that are subject to this application. The Applicant submitted that the Respondent never replied to her May 18, 2018, request for records, despite having followed up on the status of the request.

[9] The Applicant further submitted that the Respondent has never approved the meeting minutes of November 22, 2017, even though she has repeatedly brought the issue to their attention. She also filed a complaint with the Condominium Management Regulatory Authority of Ontario ("CMRAO".) The Applicant submitted that at one of the Annual General Meetings following the November 22, 2017, meeting, she was advised by a security guard that she would be ejected from the meeting should she "complain to *[sic]* much" about the minutes.

[10] Because the Applicant never received a reply from the Respondent in relation to her May 18, 2018, request for records, and it never approved the meeting minutes of November 22, 2017, the Applicant made another request for records on April 18, 2023, which is subject to this application.

[11] The Respondent did not provide any submissions or evidence to challenge the Applicant's descriptions of the history leading up to this dispute.

C. ISSUES & ANALYSIS

Issue No. 1: Did the Applicant receive the records for which she is entitled? Did the Respondent fail to use the mandatory board response form?

[12] There is no dispute between the parties that the Respondent provided the Applicant with a copy of the unapproved November 22, 2017, meeting minutes of the owners' requisition meeting. There is also no dispute that these minutes were provided to the Applicant on April 19, 2023, by email, and that the Respondent did not provide its response on the mandatory board response form. The Respondent provided no reason for not providing the mandatory board response form. Because the Respondent did not reply to the Applicant's request for record using the mandatory board response form, the Applicant takes the position that the Board did not respond to her request within 30 days as required under sections 13.3 (6) and (7) of the O. Reg 48/01.

[13] While there is no dispute that the Respondent did not provide the Applicant with the approved November 22, 2017, meeting minutes, the validity of the reason why differs between the parties.

[14] The Respondent contends that approved meeting minutes for November 22, 2017, do not exist. It cannot provide a record that does not exist, and therefore it cannot be said that it refused to provide records without a reasonable excuse. The Respondent submits that the meeting minutes not being approved was inadvertent and it will rectify the issue at the next available opportunity. The Respondent is hoping this opportunity will be at the next annual general meeting scheduled for

November 2023.

[15] The Applicant submitted that the Respondent should have approved the minutes within a reasonable period, and that more than five years after the fact is not reasonable.

[16] The questions before me are whether the Applicant received the records for which she was entitled, and did she receive the reply to her request on the mandatory board response form. Based on the evidence before me, the answer is no. On April 18, 2023, the Applicant sent the Respondent a request for records to examine the unapproved and approved meeting minutes of November 22, 2017. While she was given the unapproved minutes, she was not given the approved ones. The Respondent did not use the mandatory board response form to explain to the Applicant why she did not receive the approved minutes. Rather she was sent an email indicating that the unapproved minutes were attached.

[17] While it is the Respondent's position it cannot provide copies of records that do not exist, this was not explained to the Applicant prior to her having filed this application with the Tribunal. Further, I do not understand the Respondent's position that it was inadvertence on its part for the minutes not yet being approved. Particularly since no reasonable explanation was provided, and the Applicant's unchallenged evidence is that she frequently reminded the Respondent of the need to approve the minutes.

[18] In this circumstance, the Respondent has failed to provide a reasonable explanation as to why the minutes were not approved in a timely manner, particularly since the Applicant's unchallenged historical information indicates the issue was brought to their attention not long after the discovery that the minutes were not approved. In the absence of a reasonable explanation for the delay, I find it is unrealistic that the Respondent expect that the Applicant wait over five years to obtain a copy of approved meeting minutes, given it had ample opportunity prior to this hearing to bring itself into compliance with the requirements of the Act and the O. Reg 48/01.

[19] Based on the evidence before me, I find the Respondent refused to provide records to the Applicant without a reasonable excuse. While the approved meeting minutes do not exist, that does not mean the Applicant is not entitled to them. Approved meeting minutes are records for which the Respondent is responsible for maintaining, as well as providing to a unit owner upon receiving a request for records. These responsibilities are clearly set out in section 55 (1) and (3) of the Act. Further, my finding is in keeping with a previous Tribunal decision that I rely on for guidance in this matter. In *Surinder Mehta v. Peel Condominium*

Corporation 389, 2020 ONCAT 9 ("Mehta"), the Tribunal held that non-existence of records required to be maintained by a corporation under the Act is a refusal without reasonable excuse.

[20] Further, because the Respondent failed to reply to the Applicant's request for records using the mandatory board response form, I find the Respondent has failed to comply with its obligations under section 13 (6) and (7) of the O. Reg 48/01.

Issue No. 2 - Has the Respondent maintained adequate records?

November 22, 2017, Meeting Minutes

[21] The Applicant submitted that there are minor errors in the unapproved November 22, 2017, meeting minutes. This is despite her having submitted in her opening submissions that the content of the minutes was correct.

[22] The Respondent submitted that the minutes contain adequate details.

[23] The meeting meetings in dispute are unapproved. A unit owner has the right to challenge the contents of the minutes as part of the procedure for them being approved. Challenging the details of unapproved minutes is not an issue that the Tribunal can address. The Tribunal can only deal with allegations that meeting minutes do not contain adequate details once they are approved minutes. Only approved meeting minutes form part of a corporation's records. This again gives rise to the first issue and the reasons why the Respondent should approve meeting minutes within a reasonable period.

[24] For the reasons set out above, I decline to make a finding about the adequacy of the details contained in the November 22, 2017, unapproved meeting minutes. These minutes are not records of the board. As such, I do not have authority to make determinations about the adequacy of the details contained.

Is the Respondent keeping adequate records?

[25] The Applicant submits that the record practices of the Respondent are inadequate as evidenced by the November 22, 2017, meeting minutes not yet approved. The Applicant submits that because the minutes have not yet been approved, the Respondent's records, being the minute book are not complete, and the Respondent has taken no steps to rectify the problem.

[26] The Respondent submitted that the Act and its governing documents do not establish a timeline for which minutes need to be approved. The Respondent

relied on *Bashir v. TSCC 1821*, 2021 ONCAT 93 (“Bashir”) in support of its position that there is no required timeline to approve minutes or impose a penalty if the delay in approving minutes was not deliberate.

[27] The facts set out in Bashir differ than those in this matter. In Bashir, the delay in approving minutes was nearly one year (much less than in this matter) and found to be related to lack of board meetings during the COVID-19 pandemic. That is not the situation here. Rather, in this matter, the Respondent claims the delay was “inadvertent” and provides no plausible reason for the inadvertence. Further, the Respondent provided no response to the Applicant’s evidence that she frequently reminded it of the need to approve the meeting minutes.

[28] The Respondent’s governing documents and the Act do not set out a timeline as to when meeting minutes must be approved, however that does not relinquish the Respondent’s responsibility of keeping adequate records pursuant to section 55 (1) of the Act. Having considered the evidence before me, I find the Respondent’s records are inadequate as it failed to include approved meeting minutes for the owner’s requisitioned meeting of November 22, 2017. In making my finding, I considered the fact that this type of meeting minutes has special status due to their role in the governance of the corporation provide an important opportunity for owner to raise, and discuss important issues related to the management of their investment in the corporation. As such, the Respondent’s records should adequately reflect the happenings at these types of meetings as to promote an open book principle. Unit owners should be able to reflect on the meetings and have an accurate record of what transpired. My finding and analysis are consistent with the guidance of the Court in *McKay v. Waterloo North Condominium Corp. No. 23*, 1992 CanLII 7501 (ON SC), (“McKay”) where it is stated:

> The Act embodies a legislative scheme of individual rights and mutual obligations whereby condominium units are separately owned and the common elements of the condominium complex are co-operatively owned, managed and financed. In the interest of administrative efficiency an elected board of directors is authorized to make decisions on behalf of the collectively organized as a condominium corporation, on condition that the affairs and dealings of the corporation and its board of directors are an open book to the members of the corporation, the unit owners.
>
> ...members of a condominium corporation have a unique interest in how the corporation is managed. The legislature has made them personally responsible for money judgments against the corporation. It attempted to balance this potentially heavy liability with the protection of a duty imposed on the corporation to keep "adequate records" and an unqualified right in the members to "inspect the records" on reasonable notice and at any reasonable time.

Issue No. 3 - Should a penalty be ordered against the Respondent?

[29] Under 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 section 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."

[30] Under section 1.44 (3) of the Act, the Tribunal has authority to award a penalty of up to $5000. What penalty is appropriate depends on the specific facts in each case. It is important to outline the basis for a penalty under the Act. In previous Tribunal decisions it has been held that the purpose of a penalty is to impress upon condominium corporations the seriousness of their legal responsibilities to comply with the provisions of the Act and to provide unit owners with a remedy when there has been non-compliance.

[31] The Applicant submitted that a penalty should be ordered against the Respondent for refusing to provide her, without a reasonable excuse, the approved November 22, 2017, meeting minutes and the mandatory board response form.

[32] The Respondent submitted that they did not refuse to provide the Applicant with records. It further submitted that the Tribunal does not have the authority to order a penalty for it not using the mandatory board response form. The Respondent submitted that in *Boodram v.* PSCC *843*, 2022 ONCAT 126, "the Tribunal held that it did not have the authority to award a penalty if the condominium failed use the board response form because that did not constitute a refusal of records". The Respondent further submitted that it has not refused without reasonable excuse to provide records to the Applicant.

[33] I have found that the Respondent has refused without reasonable excuse to provide the Applicant with the approved November 22, 2017, meeting minutes in response to her April 18, 2023, request for records. This refusal stems from the Respondent not having a reasonable explanation for not approving the minutes for more than five years. This is a situation for which I find a small penalty against the Respondent is warranted.

[34] In determining the quantum of the penalty, I have considered the length of the delay, the number of records not provided, and the type of record. Considering these factors, I find that a penalty in the amount of $200 is appropriate and proportional.

Issue No. 4 - Should costs be awarded?

[35] The Applicant has requested that the Respondent reimburse her the cost of filing this application.

[36] The Tribunal's Rule 48.2 states:

> If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

[37] As the Applicant was successful in this application, I am ordering the Respondent to reimburse the Applicant $200 for the fee paid to file this application.

D. ORDER

[38] The Tribunal Orders that:

1. Under section 1.44 (1) 1 of the Act, Peel Condominium Corporation No. 27 is ordered to ensure that the unapproved minutes of the November 22, 2017, owners' requisitioned meeting are approved at the next AGM or sooner if another opportunity arises.

2. Under section 1.44 (1) 6 of the Act, within thirty (30) days of this order, Peel Condominium Corporation No. 27 shall pay to the Applicant, Ann Richards, a penalty in the amount of $200.00.

3. Under section 1.44 (1) 4 of the Act, within thirty (30) days of this Order, Peel Condominium Corporation No. 27 shall pay the Applicant, Ann Richards, $200 for the cost of filing this application.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: October 6, 2023