

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 23, 2023

CASE: 2023-00411R

Citation: Balasubramaniam v. Metropolitan Toronto Condominium Corporation No. 812, 2023 ONCAT 152

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

Member: Dawn Wickett, Member

The Applicant,

Palaniyappa K. Balasubramaniam

Represented by Sriram Rangan, Paralegal

The Respondent,

Metropolitan Toronto Condominium Corporation No. 812

Represented by Sundeep Jhamtani, Agent

Hearing: Written Online Hearing – September 26, 2023 to October 11, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant is a unit owner in Metropolitan Toronto Condominium Corporation No. 812 (“MTCC 812”). The Applicant brings this application to the Tribunal alleging MTCC 812 failed to respond to his June 12, 2023, request for records and refused without reasonable excuse to provide him with a copy of the records.

[2] The Applicant’s request for records sought to examine the following:

1. Core records as follows:
 - a. Record of owners and mortgagees;
 - b. Periodic information certificates from the past 12 months;
 - c. Budget for the corporation’s current fiscal year, including any amendments;

- d. Most recent approved financial statements;
 - e. Most recent auditor's report;
 - f. The current plan for future funding of the reserve fund;
 - g. Minutes of meetings held within the last 12 months; and
2. Non-core records being bank statements of the corporation for the period January 2021 to May 2023.
- [3] During Stage 2-Mediation, the Respondent provided the Applicant with some of the records, except for:
- a. Most recent financial statements
 - b. Meeting minutes for the last 12 months (May 2022 to June 2023)
 - c. Bank statements for January 2021 to May 2023
- [4] The Applicant further submits the Respondent has not responded to his request for records using the mandatory board response form as per section 13.3 (6) and (7) of the Ontario Regulation 48/01 ("O. Reg 48/01").
- [5] The Applicant seeks an order requiring the Respondent to provide the outstanding records and the mandatory board response form. The Applicant further requests that the Tribunal impose the maximum penalty of \$5,000 against the Respondent because this is the second time MTCC 812 has refused to provide records to him without reasonable excuse. The Applicant would also like orders requiring the Respondent to reimburse him his legal cost (\$1,582) and the application filing fee (\$200) he paid to bring this matter to the Tribunal.
- [6] The Respondent did not participate during the hearing. It did not provide any evidence and did not respond to my messages. At the conclusion of the hearing, the Respondent's agent, who is the condominium manager, uploaded a closing submission.
- [7] In the closing submission, the condominium manager submitted that he did receive the Applicant's request for records by email and brought it to the attention of the MTCC 812's board of directors. The condominium manager submitted that because of "unforeseen circumstances and the unavailability of various Board Members" the request was not fulfilled, and the mandatory board response form was not completed. It is the Respondent's position that since having provided the

Applicant with some of the documents in Stage 2-Medation, the only ones left to provide are the bank statements and the board meeting minutes. The condominium manager submitted that he has made “various” requests for these records from the board, and he still has not received them so he cannot provide a copy to the Applicant.

- [8] The condominium manager submitted that he can “guarantee that if another request for records is sent in the future that I will take the initiative to have the matter dealt with in the required timeframe”. The condominium manager also submitted that no penalty should be ordered against MTCC 812, or in the alternative only a “minimum” penalty should be ordered because “we have not intentionally wanted this matter to reach this stage”.
- [9] For the reasons that follow, I find MTCC 812 has refused without reasonable excuse to provide records to the Applicant. I further find that MTCC 812 has not complied with its obligations under O. Reg 48/01 because it has not responded to the Applicant’s request within thirty days using the mandatory board response form. Because of MTCC 812’s refusal to provide records to the Applicant without reasonable excuse, I am ordering the maximum penalty of \$5,000 against it. I am also ordering MTCC 812 to reimburse the Applicant his legal costs and application filing fee.

B. BACKGROUND

- [10] This is the second time the parties have been before the Tribunal on the same issue, being a request for records made by the Applicant. The Respondent did not participate in the first Tribunal proceeding.
- [11] In the first Tribunal proceeding, the Tribunal found that the Respondent refused to provide the Applicant with records without reasonable excuse (2019 ONCAT 3). The Respondent was ordered to provide the records to the Applicant within thirty days of the date the order was issued. The Respondent was also ordered to pay a penalty to the Applicant in the amount of \$2,000 because it “willfully disregarded, or was willfully blind to, its legal requirements relating to the Applicant’s request for records”.
- [12] The Respondent failed to comply with Tribunal’s order and the Applicant filed a case with the Ontario Superior Court of Justice (“OSCJ”) for enforcement. Several months after the Applicant filed his case with the OSCJ, the Respondent provided the records which were the subject of the Tribunal order. Upon completion of the court proceeding, the OSCJ ordered the Respondent to pay the Applicant \$14,000 for legal costs.

C. ISSUES & ANALYSIS

Issue No.1 - Is the Applicant entitled to the records he requested? Did the Respondent refuse to provide records to the Applicant without reasonable excuse? Did the Respondent fail to use the mandatory board response form?

- [13] There is no dispute that the Respondent failed to respond to the Applicant's June 12, 2023, request for records, within thirty days of receiving the request. There is also no dispute that the Respondent did not respond to the Applicant's request using the mandatory board response form. Further, the Respondent does not dispute that it has not provided the Applicant with a copy of all the records he is entitled to receive as a unit owner. The records that the Respondent has not yet provided to the Applicant are the meeting minutes for May 2022 to June 2023, the most recent financial statements and the corporation's bank statements for January 2021 to May 2023.
- [14] Having considered the evidence before me, I find the Respondent has breached its obligation under section 13.3. (6) and (7) of the O. Reg 48/01 because it did not reply to the Applicant's request for records, nor did it use the mandatory board response form. Given the passage of time since the Applicant made his request for records, and the fact that I will be ordering the Respondent to provide the remaining records, I see no need to make an order for the Respondent to now provide the completed mandatory board response form.
- [15] With respect to the records the Respondent has not yet provided to the Applicant, I find the Applicant is entitled to receive these records pursuant to section 55 (3) of the *Condominium Act, 1998* (the "Act"). There is no evidence before me that the financial statements, meeting minutes and bank statements are records exempt under section 55 (4) of the Act. Therefore, as a unit owner, the Applicant is entitled to receive a copy of the records.
- [16] Now that I have found the Applicant is entitled to receive a copy of the records he requested, I turn my mind to whether the Respondent refused to provide the records without reasonable excuse.
- [17] Having considered the evidence before me, I find the Respondent refused to provide the records to the Applicant without reasonable excuse. In making my finding, I considered the fact the Respondent did not provide persuasive reasons for not fulfilling its obligations under the Act. Stating that the records were not provided to the Applicant because of the board's unavailability and unforeseen circumstances, are not reasonable excuses. I say this because despite board members being unavailable or other unforeseen circumstances, the Respondent

had thirty days to respond to the Applicant's request. They also had thirty days to provide the core records and sixty days to provide the non-core records. I do not accept that in this amount of time, the Respondent was not able to fulfill the request or delegate the task to an employee of the corporation. Rather the evidence demonstrates the Respondent blatantly ignored its responsibilities under the Act, despite the consequences imposed against it during the previous Tribunal and OSCJ proceedings based on similar facts.

Issue No. 2 - Should a penalty be imposed against the Respondent?

- [18] 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."
- [19] Under section 1.44 (3) of the Act, the Tribunal has authority to award a penalty of up to \$5000. What penalty amount 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.
- [20] The Applicant submitted that the maximum penalty of \$5,000 should be ordered against the Respondent because this is the second time it has refused to provide records to him without reasonable excuse. The Applicant further submitted that the Respondent needs to be sent a strong message about its failure to comply with its obligations under the Act.
- [21] The Respondent submitted that no penalty, or a "minimum" should be ordered against it because it did not want this matter to reach "this stage".
- [22] I have found that the Respondent has refused without reasonable excuse to provide the Applicant with the meeting minutes for May 2022 to June 2023, the most recent financial statements and the corporation's bank statements for January 2021 to May 2023. This refusal occurred despite consequences for similar behaviour having been imposed against the Respondent by this Tribunal. In the previous case involving these parties, the Tribunal imposed a \$2,000 penalty. The evidence in this matter demonstrates that the Respondents have not learned from past errors and continue to demonstrate a complete disregard for their obligations under the Act.

[23] 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. I have also considered the Respondent's repeated non-compliance under the Act regarding requests for records. Considering these factors, I find that a penalty in the maximum amount of \$5,000 is appropriate.

Issue No. 3 - Should costs be awarded?

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

[25] The Tribunal's Rule 48.1 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.

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

[27] The Applicant seeks an order requiring the Respondent to reimburse him his legal fees for having to bring this matter to the Tribunal for resolution. The Applicant claims his legal fees total \$1,582 which is inclusive of HST.

[28] The Applicant submitted that the Respondent's behaviour warrants an order requiring it to reimburse him the full amount because the Respondent is a "repeated offenders" who refused to participate in the hearing.

[29] The Respondent did not provide any submissions on the Applicant's request for legal fees.

[30] The Tribunal's Rule 48.2, provides:

The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[31] The Tribunal's Practice Direction, "CAT Practice Direction: Approach to Ordering Costs" (the "Practice Direction"), states that a determination of costs, including indemnification, shall consider,

(i) whether a party's conduct was unreasonable, for an improper purpose, or caused a delay or expense;

(ii) the conduct of all parties and representatives requesting costs;

(iii) the potential impact an order for costs would have on the parties;

(iv) whether the parties attempted to resolve the issues in dispute before the CAT case was filed;

(v) the provisions of the condominium corporation's declaration, by-laws and rules, including whether the parties had a clear understanding of their respective requirements and/or the potential consequences for contravening them; and

(vi) whether the costs are reasonable and were reasonably incurred.

[32] In making my finding about costs, I have considered many factors. First, I considered the Respondent's conduct in this proceeding. The Respondent did not participate in the hearing, and just before the deadline it submitted a closing submission. The Respondent did not provide any reasonable explanation for this behaviour. Secondly, the Respondent did not make reasonable attempts to work with the Applicant to try and resolve the issues in dispute prior to the case being filed with the Tribunal. Thirdly, this is the second time the Applicant has needed to seek legal action against the Respondent for its failure to fulfill its obligations under the Act. Finally, I also considered the fact the amount being claimed by the Applicant is modest and reasonable for having a legal representation throughout the Tribunal proceeding. For these reasons, I find it appropriate to order the Respondent to reimburse the full amount of the Applicant's legal fees in the amount of \$1,582.

[33] The evidence in this matter, as well as the previous legal proceedings certainly demonstrates that the Respondent either does not understand its legal obligations, or it simply has a blatant disregard for its obligations. Neither of these reasons are acceptable, nor excuse the Respondent's conduct. Requests for records are typically straightforward. If a corporation responds to requests for records according to its legal obligations, it is more likely than not that the requests will not need to be brought to the Tribunal for resolution.

[34] There is an expectation that all directors have an understanding of the Act and its regulations, as well their obligations under the Act. For these reasons, under subsection 1.44 (1) 7 of the Act, I am ordering that each of the current board members takes or retakes the mandatory director training prescribed under section 29 (2) (e) of the Act within 30 days of the date of this decision and provide the Applicant with an attestation confirming completion. I encourage the Respondent to do better going forward.

[35] I note that the Tribunal has no authority over condominium managers. However, I will note that a condominium manager has a responsibility to provide reliable and responsive service in a professional, knowledgeable and skilled manner. This includes being well informed about the requirements of the Act and its Regulations, and a board's obligations, both when responding to a records request and when participating in a CAT hearing as a representative of a condominium board.

D. ORDER

[36] The Tribunal Orders that:

1. MTCC 812 provide the Applicant with the following records within thirty (30) days of this Order:
 - a. The board meeting minutes for May 2022 to June 2023.
 - b. MTCC 812's most recent financial statements.
 - c. MTCC 812's bank statements for January 2021 to May 2023.

The records will be provided in electronic format where available. If not available electronically, the records will be provided in paper copy.

2. Within thirty (30) days of this Order, MTCC 812 shall pay a penalty in the amount of \$5,000 to the Applicant.
3. Within thirty (30) days of this Order, MTCC 812 shall pay \$200 to the Applicant for the cost of filing this application.
4. Within thirty (30) days of this Order, MTCC 812 shall pay \$1,582 to the Applicant for the legal costs incurred for this proceeding.
5. If the penalty and costs (application fee and legal fees) are not paid to the Applicant within thirty (30) days of this Order, the Applicant is entitled to off set these amounts against the common expenses attributed to his unit(s) in accordance with section 1.45 (3) of the Act.
6. Under s. 1.44 (1) 7 of the Act, and within thirty (30) days of the date of this Order, each of the current directors of MTCC 812 shall take or retake, as the case may be, the mandatory director training course provided by the CAO as prescribed pursuant to s. 29 (2) (e) of the Act. MTCC 812 shall provide the

Applicant with an attestation confirming the directors' completion of the courses within thirty (30) days of the date of this decision.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: October 23, 2023