

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 27, 2023

CASE: 2022-00766R

Citation: Bolanos v. Carleton Condominium Corporation No. 141, 2023 ONCAT 202

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

Member: Marisa Victor, Member

The Applicant,
Socorro Bolanos
Self-Represented

The Respondent,
Carleton Condominium Corporation No. 141
Represented by David Lu, Counsel and Mitchell Robinson, Counsel

Hearing: Written Online Hearing – September 13, 2023 to December 14, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Socorro Bolanos, is the owner of a unit in the Respondent, Carleton Condominium Corporation No. 141. The Applicant submitted two Requests for Records on July 21, 2022 and October 8, 2022, respectively (the “Requests”), under the *Condominium Act, 1998* (the “Act”).
- [2] The only records that remain in dispute from the Requests are the Respondent’s operating bank account statements for January 2017 and April 2017.
- [3] For the reasons that follow, I find that the Respondent has refused to provide the two missing records without a reasonable excuse, but no penalty is awarded. The Respondent is required to make inquiries with the bank about the missing documents and pay the Applicant’s cost of filing this application.

B. ISSUES & ANALYSIS

- [4] The issues as determined in Stage 2 and agreed upon by the parties in Stage 3 are:
1. Is the Applicant entitled to receive copies of the requested records?

2. Should the Respondent be required to pay a penalty?
3. Is the Respondent entitled to charge a fee to produce the records?
4. Are the records the Applicant received appropriately redacted as per the Act?
5. Should the Applicant be awarded any costs?

Issue 1: Is the applicant entitled to receive copies of the requested records?

- [5] The parties agree that the bank statements for the months of January 2017 and April 2017 were not provided, and that the Applicant was entitled to receive those records.
- [6] The Applicant submits that following her Requests, it took the Respondent almost a year to locate the other requested bank statements for February and March 2017. She states that the bank statements for January 2017 and April 2017 were never found.
- [7] The Respondent explained that the condominium corporation changed property management companies in May 2017. As a result of that change, it also switched from TD Bank to its current banking provider. It says that it no longer has on-line access to its bank statements from TD Bank.
- [8] The Respondent states that it conducted a thorough search of its existing records which were in boxes but could not locate those bank records. In September 2022, a past board member contacted a current board member and advised that they had located some of the missing bank statements in their email account. The banking records for January 31, 2017 to March 31, 2017 were then obtained and provided to the Applicant. This was during Stage 3 of this proceeding.
- [9] The Respondent submits that it cannot provide the two months of missing bank statements because they are not in its possession. It concludes that because these records are not in its possession, they do not exist. Therefore, it states that it has a reasonable excuse for refusing to provide the records.
- [10] In addition, the Respondent states that in lieu of the requested documents, it has provided alternative records. These include journal entries from April 2017 and the corporation's financial statements from May 2017. It says that that it has taken all reasonable steps to provide the Applicant with the records requested.
- [11] Section 55 (1) 1 of the Act requires the corporation to keep financial records. Section 55 (2) 1 sets out that the retention period for financial records is "at least

six years from the end of the last fiscal period to which they relate or such longer period that is prescribed.”

- [12] I find that the Respondent has refused to provide this record and that refusal was without a reasonable excuse.
- [13] I disagree with the Respondent that the requested records are not in its possession and therefore do not exist. The Respondent was required by the Act to maintain its financial records and to do so for a period of seven years. Since one of the past board members had some of the documents, it is reasonable to assume that at one point in time the Respondent was in possession of all of the missing records. But it has not retained them. There is no evidence before me that shows these records do not exist. Further, there was no evidence that the Respondent approached TD Bank to determine the cost of re-obtaining its missing records. The only evidence provided was that the Respondent did not have on-line access to the records.
- [14] I understand the reason for the missing record due to the change in condominium manager and banking provider. I also understand that the Respondent has tried to provide the Applicant with alternative documents in lieu of her request for the banking statements.
- [15] However, this Tribunal has previously held that the failure of a past condominium management provider to properly handle records and record requests will not typically be a reasonable excuse for a condominium not to provide requested records. I agree with that reasoning here.
- [16] As a remedy, the Applicant requested an order that the board be required to comply with the Act and the Regulations going forward. She also requested that the board be required to take the mandatory director training program offered by the Condominium Authority of Ontario (“CAO”).
- [17] The Respondent responded that it is already required to comply with the Act and Regulations. It submits that the condominium management provider has changed since 2017, as have the board members, and that therefore past record problems will not repeat. It also states that the current board members have already taken the CAO course.
- [18] Given the parties’ submissions, I will not order that the current board members re-take a course they have already taken, especially as it does not remedy the problems of the past.

[19] However, I will order that the Respondent shall inquire whether TD Bank can provide it with the missing records and provide those records to the Applicant, if available. The Respondent may ask the Applicant to pay any reasonable fee associated with the retrieval of these documents. The Respondent shall provide to the Applicant copies of its correspondence to the bank on this issue. All of this shall be done within 30 days.

Issue 2: Should the respondent be required to pay a penalty?

[20] The Applicant does not seek a penalty in this matter on the basis that it will hurt her condominium community. The Respondent submits that no penalty is warranted in this case.

[21] Based on the evidence before me, and noting that the Applicant is not seeking a penalty, I will not order one.

Issue 3: Is the respondent entitled to charge a fee to produce the records?

[22] The Respondent is entitled to charge a fee for the delivery of non-core records pursuant to section 13.3 (8) (1) of O. Reg. 48/01. The bank statements in issue are non-core documents and therefore a fee may be charged.

[23] In this case, the Respondent initially included an estimated fee of \$3,385.20 to complete the Requests. This included a rate of \$30/hr for labour and \$0.10 per page for photocopying of paper records. Nevertheless, the Respondent then decided to provide the records requested to the Applicant free of charge. It estimated that this amounted to 1877 pages of documents.

[24] Given that the documents have been provided free of charge, this issue is moot.

Issue 4: Are the records the applicant received appropriately redacted as per the act?

[25] The Applicant states that the Respondent has been inconsistent with its redactions. She says that in some documents the unit numbers have been redacted, in others, they have not. She states there are also some missing headings from some of the records provided.

[26] The Respondent submits that the records provided were appropriately redacted in accordance with section 55 (4) of the Act. The Respondent states that it has redacted the documents to remove unit-specific information.

[27] In response to the Applicant, the Respondent also states that any failure to remove

a unit number from a record can be attributed to administrative and/or human error. It says that of the 1877 pages of redacted documents provided, the Applicant could only point to three pages that contained unit numbers that should have been redacted.

[28] The Respondent further submits that the inadvertent redaction of headings was the result of a technical glitch. It provided the Applicant with the headings.

[29] I accept the Respondent's explanation that these errors were inadvertent, and that unit numbers were unredacted on only three pages. Given the significant number of documents provided, the breach shown in a few pages is *di minimus*.

[30] I find that the technical glitch that resulted in the removal of headings to be moot, since the headings were then provided to the Applicant.

[31] Therefore, I decline to make an order with regard to this issue.

Issue 5: Should the applicant be awarded any costs?

[32] Under section 1.44 (1) 4 of the Act, the Tribunal may direct a party to pay the costs of another party to a proceeding.

[33] 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.

[34] The Applicant seeks \$200 for costs for the filing fees incurred in filing this CAT application.

[35] The Respondent states that Stage 3 of the CAT hearing was unnecessary because all the records except the two missing bank statements had already been provided. It states that the bank statements from January 31, 2017 to March 31, 2017 were located during Stage 3 and were provided then, but it states they would have been provided even if that matter had not proceeded to Stage 3. The Respondent states it should not have to pay the filing fees as it incurred unnecessary legal expenses in responding to the Applicant's Stage 3 hearing.

[36] The Applicant is entitled to her filing costs in this matter up to and including Stage 3, for a total of \$200. The Respondent was still providing documents during Stage 3, but more importantly, the Applicant was correct that the two records she sought were refused without a reasonable excuse. The Applicant was partly successful in her application, therefore she is entitled to her filing costs.

[37] In conclusion, I would like to commend both parties for their professionalism in this case. This is not the first proceeding between these parties. Nevertheless, both parties were respectful and courteous in their communications and reasonable in their requests for remedies.

C. ORDER

[38] The Tribunal Orders that:

1. Under subsection 1.44 (1) 7 of the Act and within 30 days of the date of this decision, the Respondent shall inquire directly with TD Bank to get a copy of its missing records and provide those records to the Applicant, if available. The Respondent may ask the Applicant to pay any reasonable fee associated with the retrieval of these documents. The Respondent shall provide to the Applicant copies of its correspondence with the bank on this issue.
2. The Respondent is ordered to pay the Applicant costs of \$200. 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) in accordance with section 1.45 (3) of the Act.

Marisa Victor
Member, Condominium Authority Tribunal

Released on: December 27, 2023