

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 31, 2024

CASE: 2023-00287N

Citation: Toronto Standard Condominium Corporation No. 2637 v. Valerio et al., 2024 ONCAT 16

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

Member: Nicole Aylwin, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2637
Represented by Mohiminol Khandaker, Counsel

The Respondents,

Fulvio Valerio
Self-Represented

Lola Mancini
Represented by Charlene Lewin, Paralegal

Hearing: Written Online Hearing – August 17, 2023 to January 15, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] Toronto Standard Condominium Corporation No. 2637 (“TSCC 2637”) submits that Fulvio Valerio, who is tenant in a unit in TSCC 2637, has repeatedly breached the provisions in its governing documents that prohibit unreasonable noise or nuisance and cannabis smoking in the condominium. TSCC 2637 further submits that the owner of the unit in which Mr. Valerio resides, Lola Mancini, has failed to take all reasonable steps to ensure that her tenant, Mr. Valerio, complies with the *Condominium Act, 1998* (“the Act”) and TSCC 2637’s governing documents.
- [2] TSCC 2637 requests that the Tribunal order Mr. Valerio to comply with its governing documents and order him to cease creating unreasonable noise inside the unit and smoking cannabis inside the unit and/or on the exclusive-use balcony belonging to the unit. They further request that the respondents jointly and severally pay TSCC 2637’s costs in this matter pursuant to the indemnification provisions in its declaration and rules.

- [3] Mr. Valerio denies that he is causing unreasonable noise and nuisance. He takes the position that the noise complained about is not emanating from his unit, but rather is a result of other owners, residents and guests using the condominium amenities that are housed on the same floor as his unit including: the gym, saunas, a party room, and public washrooms. He asserts that his floor is generally noisy and he himself has experienced loud noise that is a nuisance. Regarding the cannabis, he claims the cannabis smoke is not coming from his unit.
- [4] As to Ms. Mancini's position on these matters, I have little evidence before me. While Ms. Mancini did have a representative join the case and participate in the initial case conference, Ms. Mancini's representative stopped participating in the case after the conference and no evidence or submissions were made by Ms. Mancini or her representative on the issues despite having ample opportunity to do so.
- [5] For the reasons set out below, I find that Mr. Valerio has failed to comply with TSCC 2637's governing documents and order him to comply with the provisions in the governing document that relate to unreasonable noise and nuisance and cannabis smoking. More specifically, I order him to immediately cease smoking cannabis in his unit and/or on the unit's balcony. I further order him to cease creating an unreasonable nuisance in the form of noise and order him to refrain from playing loud music and singing karaoke between the hours of 11pm and 7am.
- [6] Regarding Ms. Mancini, while I see from the evidence that the landlord/tenant relationship between Mr. Valerio and Ms. Mancini is fraught with issues – most of which are not within the purview of this Tribunal and are more properly addressed by the Landlord and Tenant Board ("LTB") – Ms. Mancini is still required to fulfill her responsibilities under the Act as they relate to ensuring the compliance of her tenant with the Act and governing documents of the corporation. The only action Ms. Mancini appears to have taken is the filing of an application with the LTB, which in this case is not enough for me to conclude that she has taken all reasonable steps to ensure her tenant, Mr. Valerio, complies with the Act and TSCC 2637's governing documents. Thus, I order her to provide TSCC 2637 with a written update of any action she takes in response to any further complaints regarding noise or cannabis smoking by her tenant and order her to provide a written update on the status of the LTB application to TSCC 2637.
- [7] Having found that both respondents have failed to comply with TSCC 2637's governing documents and the Act, I order them to pay jointly and severally compensation to TSCC 2637 in the amount of \$508.50 as well as \$200 for Tribunal filing fees, and legal costs in the amount of \$5000.

[8] Finally, the evidence from all parties clearly shows that there is a very high level of acrimony between Mr. Valerio and Ms. Mancini, and between Mr. Valerio and TSCC 2637. Perhaps as a result, a significant amount of time was spent attempting to present evidence and arguments that demonstrated each other's "bad behavior" or their own "good behavior" – much of which was unrelated to the issues of compliance properly in front of me. So, while I have reviewed all the evidence, in this decision I comment only on that which is relevant.

B. ISSUES & ANALYSIS

Issue No. 1: Is Mr. Valerio creating a nuisance, annoyance or disruption in the form of noise and smoke and/or odour contrary to TSCC 2637's governing documents and the Condominium Act, 1998?

[9] TSCC 2637 has several provisions in its governing documents that restrict the creation of noise or nuisance that may disturb the quiet enjoyment of other units, these include its rule 6 and rule 8:

6. Owners, their families, guests, tenants, invitees, licensees, visitors, and servants shall not create or permit the creation of or continuation of any. Noise or nuisance which, in the opinion of the board or the manager, may or does disturb the comfort or quiet enjoyment of the units or common elements by other owners, their families, tenants, invitees, licensees, guests, visitors, servants and persons having business with them.

8. No noise caused by any instrument or other device, or otherwise, which in the opinion of the board may be calculated to disturb the comfort of the other owners shall be permitted.

[10] And Section 26 (a) of the declaration, which provides that "No Unit shall be occupied or used by any one in such a manner as is likely to damage the property or that will unreasonably interfere with the use or enjoyment by other Owners of the common elements and the other Units..."

[11] TSCC 2637 also has rules restricting the smoking of cannabis. The "Rule Concerning Cannabis", which came into effect in 2018, reads, in part:

(a) The smoking of cannabis is prohibited everywhere on the condominium property, including without limitation in all residential units, the guest suites(s) all common elements, including common areas, hallways, stairways and elevators, and all exclusive common use element areas, including balconies or terraces.

(b) Smoking of cannabis shall include the inhaling vaping breathing, carrying or possession of any lighted or activated cigarette, electronic or e-cigarette, cigar,

pipe vaporizer or inhalant-type device and/or other product containing any amount of cannibals or other similar heated or lit product.

...

(d) Any unit owner who enters into a lease with a tenant of a unit after the effective date of this rule must include a provision in the lease requiring any tenant and/or other authorized occupants of the unit to comply with this rule. Further the unit owner shall be responsible for taking any steps necessary to ensure that his or her tenant complies with this rule at the unit owner's expense.

- [12] According to TSCC 2637 Mr. Valerio has failed to comply with these rules as required by s. 26(b) of TSCC 2637's declaration and s. 119(1) of the Act, both of which require all owners and occupants of a unit to comply with the Act and the condominium's declaration, by-laws and rules.
- [13] TSCC 2637 argues that Mr. Valerio's failure to comply with the governing documents has resulted in the creation of a nuisances in the form of a) unreasonable noise and b) in the form of the smoke and odour.
- [14] Section 117 (2) (a) of the Act prohibits individuals from creating or permitting an activity to be created in a unit or the common elements if the activity results in the creation or continuation of any unreasonable noise that is a nuisance, annoyance or disruption.
- [15] Section 117 (2) (b) of the Act, prohibits "any other prescribed nuisance, annoyance or disruption", which, under s. 26 of Regulation 48/01 ("O.Reg 48/01"), includes smoke and odour.

Noise

- [16] To support the claim that Mr. Valerio is causing a nuisance in the form of unreasonable noise TSCC 2637 submitted 10 incident reports authored by condominium security guards. These reports document the investigation of excessive noise emanating from Mr. Valerio's unit. In many cases the documented investigations carried out by security were done in response to noise complaints from Mr. Valerio's neighbours. In other instances, a security guard on regular patrol heard loud music from the hallway and investigated on their own accord. TSCC 2637 also submitted several email complaints from residents which describe blasting music and karaoke singing coming from the unit at times such as 12am, 1am and 5am.
- [17] The incident reports demonstrate that when investigating a complaint security

would knock on Mr. Valerio's door to request the volume (most often of music) to be lowered. In some cases, security reported compliance with this request, while in other cases it is reported that Mr. Valerio either refused to open the door or refused to turn down the volume allowing the noise to continue unabated. The dates on these incident reports range from January 2022 though to September 2023 and, in most cases, the reports document noise primarily in the form of loud music, at what may reasonably be considered quiet hours, i.e. after 10pm and before 7am.

- [18] Mr. Valerio's position regarding the noise is that he is being unfairly targeted and that the floor is generally noisy due to the amenities located on the floor. He asserts that he is being blamed for the noise made by others. The evidence does not support this claim. What it shows is that condominium security has investigated complaints of noise specifically from Mr. Valerio's unit by visiting the unit and observing the noise themselves and then documenting these instances. And, while this case is not about noise from other units, to the extent that Mr. Valerio has reported noise that he claims he doesn't want to be blamed for, the evidence shows that TSCC 2637 has investigated some such claims and documented the results; results which do not suggest that the noise complained about by Mr. Valerio would be mistakable with the loud music and other noise emanating from his unit.
- [19] Finally, Mr. Valerio argues that because the City of Toronto's Noise By-Law restricts loud sounds between 11pm to 7am it is inappropriate for security to knock on his door outside of these hours to ask him to reduce the noise. He argues that the noise by-law allows him to make noise at a certain level during these hours. While it is the case that those living in a condominium community should expect some noise during typical daytime hours, and perhaps even an occasional night of louder noise due to an event or gathering, the by-law cited by Mr. Valerio does not equate to permission to create an unreasonable noise and nuisance at any time of day (including daylight hours) which is contrary to the rules of the condominium or the Act. Choosing to live in a condominium (either as an owner or a tenant) that has rules and provisions that restrict noise means the resident must abide by these rules. In this case, Mr. Valerio is failing to do so.
- [20] Based on all the above, I find that Mr. Valerio is creating a nuisance in the form of unreasonable noise which is contrary to both 117(2) (a) of the Act and s. 26 (a) of TSCC 2367's Declaration and I will order Mr. Valerio to abide by TSCC 2637's rules regarding noise at all times. Additionally, given that most of the complaints from Mr. Valerio's neighbours cite loud music and karaoke singing in the overnight hours, I also order him specifically, and without diminishing the generality of the

order with respect to creating no unreasonable noise at all hours, to cease playing loud music and singing karaoke between the hours 11pm and 7am.

Cannabis Smoking

- [21] TSCC 2637 also claims that Mr. Valerio is failing to comply with its rules which prohibit the smoking of cannabis anywhere on condominium property, including unit terraces and/or balconies and is causing a nuisance in the form of smoke and odour. This claim arises from complaints received by management from other residents that describe cannabis smoke coming specifically from Mr. Valerio's unit and migrating into the hallway. These complaints which are primarily from the spring of 2023 describe the smell as anywhere from "strong" to "intolerable".
- [22] Again, Mr. Valerio claims that he is being unfairly targeted and that he is not smoking cannabis in his unit. To support this claim, he provided evidence of one instance where he was not home but was still blamed for the smell of smoke. He notes that he had to go to significant lengths to demonstrate to management that he was not the cause. I accept that, in this instance, Mr. Valerio was wrongly accused of being the source of smoke. Nonetheless, this one instance is not enough to convince me that Mr. Valerio is being wrongly accused overall. This is because in an email exchange submitted into evidence by Mr. Valerio, he indicates to management that he was unaware that he could not smoke cannabis on the balcony of his unit and admits to doing so. Further, even after becoming aware of this fact, Management continued to receive complaints from different units that specifically identify Mr. Valerio's unit as the source of the smoke, and I find these complaints credible.
- [23] Thus, while I note that TSCC 2637 should fully investigate all complaints of cannabis smoke and verify to the best of its ability the source of any smoke, based on Mr. Valerio's own admission that he has smoked cannabis on the balcony and subsequent complaints of other unit owners specifically identifying his unit as the source, there is enough evidence to conclude that, on the balance of probabilities, Mr. Valerio has not complied with the rules that prohibit cannabis smoking and is causing a nuisance, annoyance or disruption that disturbs the quiet enjoyment of other units. Thus, I order him to cease smoking cannabis in his unit and/or his unit's balcony.

Issue No. 2: Has Ms. Mancini failed to comply with the provisions in TSCC 2637's governing documents and the *Condominium Act, 1998* related to her responsibilities for her tenant?

- [24] Mr. Valerio is not the only person who has compliance responsibilities under the

Act in relation to his unit and conduct. As an owner, Ms. Mancini is required under s. 119 (2) of the Act to “take all reasonable steps to ensure that an occupier of the owner’s unit and all invitees, agents and employees of the owner or occupier comply with [the] Act, the declaration, the by-laws and the rules.” This provision of the Act is also reinforced in s. 26 (b) of TSCC 2637’s declaration, which states, in part, that the “Owner of each Unit shall comply and shall require all residents, tenants, invitees and licensees of his Unit to comply with the Act, the Declaration, the by-laws, the Rules...”.

- [25] According to TSCC 2637, Ms. Mancini has not complied with these provisions. It argues that she has not taken all reasonable steps to ensure that Mr. Valerio abides by the governing documents of the corporation and has permitted the creation and continuation of nuisances in the form of unreasonable noise and smoke and odour.
- [26] As noted in the introduction, Ms. Mancini failed to participate in this hearing beyond the initial case conference call, thus she has forfeited her right to challenge the evidence in front of me. I must decide this issue in absence of any evidence or submissions from her.
- [27] While Mr. Valerio did provide some submissions on this issue, the content of those submissions focused nearly solely on Mr. Valerio’s belief that Ms. Mancini is, generally speaking, a poor landlord. They do not speak to the question of Ms. Mancini’s actions as they relate to compliance with the governing documents or the Act.
- [28] TSCC 2637 referred me to two Tribunal cases on this issue, *Toronto Standard Condominium Corporation No. 2138 v. Palmer et al.* 2022 ONCAT 104 (“Palmer”) and *Ambrose v. Campeau et al.* 2023 ONCAT 75 (“Ambrose”). In Palmer, the Tribunal found that although Mr. Palmer had initiated eviction proceedings against his tenant, this alone was not sufficient to fulfill Mr. Palmer’s obligation to take all reasonable steps to ensure that his tenant complied with the condominium rules. In Ambrose, the Tribunal found that the owner had failed to address the concerns raised about his tenant in a timely way, i.e. he was slow to initiate eviction proceeding despite having sufficient knowledge of the problems with the tenants.
- [29] The facts in this case are like Palmer and Ambrose in so far as the only action that appears to have been taken by Ms. Mancini to address the non-compliance of her tenant, comes in the form of the initiation of eviction proceedings. In July of 2022, Ms. Mancini’s counsel sent a letter to TSCC 2637 in response to enforcement letters sent to Mr. Valerio in May and July of 2022. In this letter, Ms. Mancini’s counsel advises TSCC 2637 that they have been pursuing the eviction of Mr.

Valerio for “several months” and have filed the appropriate paperwork with LTB. No timeline is provided as to when the paperwork was filed or where the case stands. I also note that this letter was sent to TSCC 2637 over 1.5 years ago and there is no evidence that any further communication or updates have been provided to TSCC 2637 by Ms. Mancini or her counsel.

- [30] Beyond initiating eviction proceedings, it is unclear what steps TSCC 2637 believes that Ms. Mancini should or could have taken to ensure that Mr. Valerio abided by the provisions in the governing documents, particularly given the fact that the evidence demonstrates that Mr. Valerio has been unwilling to alter his behavior even after being made aware of his responsibilities by the corporation.
- [31] Nonetheless it is still incumbent upon Ms. Mancini to take all reasonable steps to exact compliance from her tenant. In this case, the only evidence of any step taken is the very general communication with TSCC 2637 indicating that paperwork has been filled with the LTB. After this, Ms. Mancini appears to have ceased all communication with the condominium regarding incidents and issues related to the non-compliance of her tenant or the eviction proceeding – leaving little evidence to conclude that she was actively working to address Mr. Valerio’s non-compliance. When combined with the lack of any evidence to demonstrate that Ms. Mancini took any other steps to address the issues either before this letter or after, I cannot conclude that Ms. Mancini fulfilled her responsibility to take all reasonable steps to ensure her tenant is aware and abides by the rules.
- [32] Under s. 1.44(2) of the Act, the Tribunal can make an order that requires a party to the proceeding to take a particular action. To ensure Ms. Mancini is meeting her obligations regarding compliance going forward, I order that she provide TSCC 2637 with a written update of any action she takes in response to any further complaints regarding noise or cannabis smoking by her tenant and order her to provide a written update on the status of the LTB proceeding to TSCC 2367 within 30 days of this decision.

Issue 3: Is TSCC 2637 entitled to an order requiring the respondents to pay its costs incurred as a result of non-compliance with governing documents and the Act?

- [33] TSCC 2637 is requesting the Tribunal order the respondents to pay costs of \$2203.50 for expenses incurred by TSCC 2637 in trying to obtain their compliance with its governing documents (expenses prior to the commencement of this application, or “pre-CAT” costs), and legal costs for participating in this proceeding.

Costs for an Act of Non-Compliance

[34] Section 1.44 (1) 3 of the Act allows the Tribunal to award compensation for damages incurred by another party to the proceeding as a “result of an act of non-compliance.”

[35] According to TSCC 2637 it incurred damages in the amount of \$2203.50, attempting to enforce compliance prior to the onset of this Tribunal proceeding. According to TSCC 2637 this amount is comprised of legal work such as reviewing client documents, receiving instructions from the client, drafting and revising a compliance letter, finalizing the letter and sending it to the respondents.

[36] TSCC 2637 argues that these costs are recoverable pursuant to s. 10(a)(i) of its declaration which reads:

Each Owner shall pay to the Corporation his proportionate share of the common expenses, and the assessment and collection of the contributions toward the common expenses may be regulated by the board pursuant to the by-laws of the Corporation. In addition to the foregoing, any losses, costs or damages incurred by the Corporation by reason of a breach of any Rules and by-laws of the Corporation in force from time to time by any Owner, or by members of his family and/or their respective tenants, invitees or licensees, shall be borne and paid for by such Owner, and may be recovered by the Corporation against such Owner in the same manner as common expenses.

[37] Additionally, s. 14 of the TSCC 2637’s rules read as follows:

Any loss, cost or damages incurred by the Corporation by reason of a breach of any rules and regulations in force from time to time by any owner, his family, guests, servants, agents or occupants of his unit shall be borne by such owner and may be recovered by the condominium corporation against such owner in the same manner as common expenses.

[38] In this case, I have found that both respondents have failed to comply with the Act and the governing documents of the corporation, and I find an award of damages for an act of non-compliance appropriate and recoverable as per TSCC 2637’s declaration.

[39] TSCC 2637 tried several times to alert Mr. Valerio to his responsibilities and the rules using means that did not incur costs. For example, management sent an email to Mr. Valerio in February 2022 advising him of the complaints and asking him to abide by the rules. Management then sent more formal letters on May 30 and July 4 of 2022 advising Mr. Valerio of his responsibilities and indicating that the matter would be escalated to legal counsel with costs being charged back to the unit should the behavior continue. On Ms. Mancini’s part, she was obviously

aware of the letters from management since her counsel sent a response to TSCC 2637 indicating as much. Nonetheless, neither respondent appeared to take any meaningful action to address the compliance issues.

[40] It was only after attempting to resolve the issues with little cost, that TSCC 2637's counsel sent a legal letter to the respondents. The legal letter was clear that the respondents would be held responsible for the cost of any future compliance actions as well as the cost of the letter.

[41] To support its claim for the \$2203.50 in pre-CAT costs, TSCC 2637 referred me to cases such as *Durham Condominium Corporation No 80 v Occeston*, 2022 ONCAT 103 ("Occeston") and *Toronto Standard Condominium Corporation No. 2804 v. Micoli et al*, 2023 ONCAT 21 ("Micoli")¹, wherein the Tribunal made 'pre-CAT' costs awards in the amount of \$2500 and \$18,239.60 respectively. I find the facts in this case different from both cases.

[42] In *Micoli*, the respondents were found to be a "highly disruptive presence" and the amount of legal work undertaken prior the commencement of the CAT Stage 3 – Tribunal Decision, was significant. And, while I recognize that TSCC 2637 feels that Mr. Valerio has behaved in ways that are highly disruptive, much of the evidence in front of me regarding this 'disruptive behavior' is not directly tied to the issues of noise, smoking, and nuisance. Thus, I have not given this evidence any weight. In this case, while I have found that Mr. Valerio's behavior as it relates to the issues in front of me has caused a nuisance, annoyance or disruption and is in violation of the rules, and while it may make him a poor neighbour, it is not close to being as egregious as the tenants in the *Micoli* case.

[43] While the facts regarding *Occeston* are more similar, they still differ insofar as prior to the commencement of the Tribunal application, the applicant's lawyer communicated with the respondent on more than one occasion to secure compliance. Additionally, there was evidence that over a three-month period there was likely some communication between the parties and the condominium's legal counsel in an attempt to resolve the issues. Here, only a single legal letter from TSCC 2637's legal counsel was sent and there is no evidence that beyond this legal letter TSCC 2637's legal counsel was actively involved in discussions with the respondents around compliance.

[44] As has been noted in other Tribunal cases, it can be unfair for all condominium

¹ I am aware that aspects of the *Micoli* decision were varied by the Divisional Court, however these changes are not relevant to the reasoning or decision made in regard to this issue in this case.

owners to pay for the costs incurred when one unit owner or occupier fails to comply with the rules and the condominium must attempt to secure compliance. In this case, I agree. However, I find that the costs of \$508.50 is what is reasonable and proportionate in this case. This is the amount that TSCC 2637's legal counsel estimated it cost to produce the legal letter (\$450 + HST) it sent to the respondents in July 2022 (as evidenced in the letter). There is no apparent justification for why the cost of the letter would be estimated to be \$450.00 + HST but is now being claimed at over \$2000, particularly when the description of the tasks associated with "pre-CAT" cost primarily refer to the drafting of this letter.

Legal Costs Related to this Proceeding

- [45] TSCC 2637 also requests an order to recover their legal costs of these proceedings on a full indemnity basis in the amount of 18,948.72, which includes the fees to file this application at the Tribunal.
- [46] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding." Section 1.44 (2) states that an order for costs "shall be determined...in accordance with the rules of the Tribunal."
- [47] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:
- 48.1 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.
- 48.2 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 behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.
- [48] TSCC 2637 was successful in this case and therefore, in accordance with Rule 48.1 of the Rules of Practice, I will order the respondents to pay the cost of the Tribunal fees in the amount of \$200.
- [49] When considering the request for the remaining legal costs, I am guided by the Tribunal's "Practice Direction: Approach to Ordering Costs" which includes, among other factors to be considered, whether the parties attempted to resolve the issues before the case was filed, the provisions of the governing documents and whether

the parties had a clear understanding of the potential consequences for contravening them, and if the costs are proportional to the nature and complexity of the issues in dispute.

- [50] TSCC 2637 claims that Mr. Valerio and Ms. Mancini should be responsible for their legal costs as both have engaged in unreasonable conduct due to their failure to comply with the Act. They submit that both respondents were aware of the cost consequences should they fail to comply with the governing documents and, again, that other unit owners should not be responsible for the costs of enforcement, which include the legal fees spent participating in the Tribunal process.
- [51] To support this position, TSCC 2368 referred me to the Tribunal decisions, *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48 (“Psofimis”) and *Chan v. Toronto Standard Condominium Corporation No. 1834*, 2011 ONSC 108 (“Chan”).
- [52] In Psofimis, the Tribunal found that the Respondent, Mr. Psofimis, willfully ignored the rules and acted in bad faith when he signed a written agreement prior to the onset of the Tribunal hearing, stating that he would not contravene the condominium’s pet rule in the future and then blatantly continued to do so. As such, the Tribunal found he was responsible for 100 percent of the legal fees incurred by the Applicant who was forced to bring the case to the Tribunal to enforce its rules. In Chan, the court found that, Ms. Chan, the owner of a unit, “flagrantly” breached the rules when she installed additional interior locks on her unit door without permission from the corporation and without providing a key to the corporation and again when she rented her unit in a manner contrary to the rule that allowed the unit to only be used as a “private single family dwelling”.
- [53] TSCC 2637 argues that Mr. Valerio and Ms. Mancini have acted similarly to the respondents above. I disagree.
- [54] I do not find that Mr. Valerio’s conduct meets the same level of disdain for the rules as that of Mr. Psofimis. While I have found that Mr. Valerio has caused a nuisance, annoyance or disruption in the form of noise and cannabis smoke contrary to the corporation's declaration and rules, it is a reach to suggest that, in this case, Mr. Valerio has exuded the same bad faith or a “wilful disregard” of the rules that should attract a costs award on a 100 percent scale as in Psofimis. It is also worth noting that in Psofimis the request for costs and the cost awarded at 100 percent were a fraction of those being claimed here, i.e. \$3926.75 versus \$18,948.72.

- [55] In Chan, while the court did award the applicant condominium corporation costs in the amount \$41,706.28 on a full indemnity basis, again, the behavior of the respondent, Ms. Chan, was far more egregious than Mr. Valerio's or Ms. Mancini's – whose Act of non-compliance, in this case, is limited to being passive rather than actively bucking the rules, as was the case with Ms. Chan.
- [56] It is also worth noting that enforcing compliance – which includes, at times, litigating – is part of “doing business” for a condominium corporation. Not all issues of non-compliance will or should result in a condominium being awarded the full or even partial legal costs associated with enforcing their rules. This is the kind of activity for which unit owners contribute to the common expenses. Consistent with this, the Tribunal's Rule 48.1 is clear on the fact that “[t]he CAT generally will not order one Party to reimburse another Party for legal fees or disbursements (“costs”) incurred in the course of the proceeding.”
- [57] Costs awards are discretionary and in deciding on the appropriate amount, I have weighed all the factors above, as well as the fact that both Mr. Valerio and Ms. Mancini were aware of the costs consequences for failing to comply and the fact that had Mr. Valerio taken seriously the noise and smoking complaints made by his neighbours and heeded the early requests by the TSCC 2637 that he come into compliance, this proceeding and the costs associated with it may have been avoided. Further, I have considered that Ms. Mancini's failure to adequately respond to the complaints regarding her tenant, despite her responsibility to do so, left the Corporation little choice but to apply to the Tribunal for relief. However, I have also considered the factors that limit the recovery due to the applicant. The issues in this case were straightforward and the hearing was uncomplicated. Although Mr. Valerio did request that the Tribunal provide him with longer than typical times to respond to submissions, such an accommodation had little bearing on the amount of work required by the applicant to participate in the proceeding. Thus, in this case find it appropriate to award TSCC 2637 costs in the amount of \$5000 to be paid jointly and severally by Mr. Valerio and Ms. Mancini.

C. ORDER

[58] For the reasons set out above, the Tribunal Orders that:

1. Mr. Valerio abide by TSCC 2637's rules regarding noise (at all times) and that he immediately cease playing loud music and singing karaoke between the hours of 11pm and 7am.

2. Mr. Valerio immediately cease smoking cannabis in his unit and/or his unit's balcony and refrain from smoking cannabis anywhere on condominium property.
3. Ms. Mancini provide TSCC 2637 with a written update of any action she takes in response to any further complaints regarding noise or cannabis smoking by Mr. Valerio. She is to provide this update to TSCC 2637 within 15 days of becoming aware of a complaint.
4. Ms. Mancini provide a written update on the status of the LTB proceeding to TSCC 2367 within 30 days of this decision.
5. Ms. Mancini and Mr. Valerio jointly and severally pay to TSCC 2637 the following amounts within 30 days of this decision:
 - a. Compensation in the amount of \$508.50 under s. 1.44 (1) 3 of the Act; and
 - b. Costs in the amount of \$5200 under s. 1.44 (1) 4 of the Act.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: January 31, 2024