

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 19, 2025

CASE: 2024-00620R

Citation: Tartakovsky-Guilels v. York Region Condominium Corporation No. 829, 2025 ONCAT 49

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

Member: Nicole Aylwin, Member

The Applicant,

Yesenya Tartakovsky-Guilels

Represented by Jacob Oziel, Agent

The Respondent,

York Region Condominium Corporation No. 829

Represented by Andrea Lusk, Counsel

Hearing: Written Online Hearing – December 4, 2024, to March 6, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Yesenya Tartakovsky-Guilels is a unit owner of York Region Condominium Corporation No. 829 (the “Respondent”). The Applicant asserts that the Respondent has refused to provide her records, to which she is entitled, without a reasonable excuse and that the Respondent is not keeping adequate records as per the *Condominium Act, 1998* (“the Act”). She asks the Tribunal for several orders including an order directing the board of directors to refresh their training, as well as orders regarding the production of the specific records and an order that the Tribunal impose a penalty on the Respondent in accordance with section 1.44(1)6 of the Act. She has also requested costs.
- [2] The Respondent takes the position that it has provided the Applicant with all records to which she is entitled and maintains that it is keeping adequate records.
- [3] For the reasons set out below, I find that the Respondent has refused to provide the Applicant with some records without a reasonable excuse. However, I decline

to award a penalty in this case. I award the Applicant costs in the amount of \$200.

B. BACKGROUND

- [4] This case deals with three records requests made by the Applicant. These requests are dated May 11, 2024, July 16, 2024, and September 29, 2024. In each of these requests, the Applicant requested minutes of board meetings held within the last 12 months. The May request also contained a request for the Record of Owners and Mortgagees and the July request contained a request to examine the Respondent's by-law 3.1(q).
- [5] The Applicant confirmed at the outset of the hearing the records at issue were the minutes and by-law 3.1(q).
- [6] The parties agree that the Respondent did not use the mandatory board response form when responding to the three requests from the Applicant. However, on June 3, 2024, in response to the Applicant's May request, the Respondent provided the Applicant with minutes for the period of February 2023 – February 2024. It submits that it sent to the Applicant all the minutes that had been approved by the board at the time of the Applicant's request. It further maintains that no further minutes were approved by the board at the time of the Applicant's July and September requests, thus there were no minutes to provide in response to these requests.
- [7] The Applicant takes the position that the board has been conducting meetings and making decisions online and by email and failing to keep records of such meetings and actions. She asserts that this is the reason that the Respondent has not provided her with any minutes beyond February 2024.
- [8] The Respondent acknowledges conducting some board business virtually and approving certain items by email, however it denies the allegation that it has not been properly minuting board business. According to the Respondent, the board approved some items via email which were later ratified at meetings. However, the reason it has not provided any further minutes to the Applicant is because the board has yet to approve the minutes recorded at those meetings. In response to a question from me, the Respondent indicated there were six sets of minutes within the period of the Applicant's requests that remained in draft form waiting approval.
- [9] Regarding the request for by-law 3.1(q), the Respondent submits that upon receiving the request for this record in July, the Applicant was advised that all the Respondent's governing documents, including the by-laws were available online. They further submit that a copy of this by-law was provided to the Applicant during the Stage 1 – Negotiation phase of this Tribunal process.

[10] On its face, this dispute appears to be a straightforward dispute over records, and there are certainly records issues to be determined. However, it is clear from the evidence and submissions provided to me that the Applicant also wishes to have her concerns over governance addressed via this records dispute. Her governance concerns include: how and when the board of directors is holding meetings, if the board is making its decisions by email in breach of the Act, whether the board followed the appropriate procedures when adopting new rules, and the legitimacy of some of the decisions the board made regarding her and her unit. It is also clear that the Applicant and the Respondent have an acrimonious relationship, and that the Applicant is aggrieved by the conduct of the board towards her, which she perceives to be unfair.

[11] Nonetheless, the Tribunal does not have the authority to address such governance issues in the context of this records dispute, and these issues will not be addressed here. The only issues to be addressed in this case are:

1. Has the Respondent refused to provide the Applicant records without a reasonable excuse?
2. If so, should a penalty be imposed and in what amount? Should any other orders be made?
3. Has the Respondent failed to keep adequate records as per the Act? If so, should any orders be made as a result?
4. Should costs be awarded?

[12] While I have carefully reviewed all the evidence and submissions provided to me, I refer only to those relevant to my decision. Additionally, although the parties appeared to have agreed on certain facts at the outset of the hearing, it became clear over the course of the hearing that many of those facts were still in dispute and those that were relevant would need to be determined by me.

C. ISSUES & ANALYSIS

Issue No. 1: Has the Respondent refused to provide the Applicant records without a reasonable excuse?

Board Meeting Minutes

[13] When taken together, the May, July and September requests encompass minutes for the period of May 2023 – end of September 2024.

- [14] As noted above, in response to the Applicant's May request, the Respondent provided meeting minutes for the period between February 2023 – February 2024. No other approved meeting minutes have been provided, leaving the minutes for the period between March 2024 – September 2024 outstanding.
- [15] The Respondent does not dispute the Applicant's entitlement to the minutes she requested. However, it argues that, as per previous decisions of the Tribunal such as *Bashir v. Toronto Standard Condominium Corporation No. 1821*, 2021 ONCAT 93 ("Bashir"), the Applicant is only entitled to minutes that have been approved by the board. The Respondent submits she is not entitled to draft minutes. The Respondent further submits that the Act does not set out a timeline for the approval of minutes, and thus the board's lag in approving minutes is does not breach the Act. For these reasons, the Respondent maintains that the Applicant has received all the minutes to which she is entitled, and no records were refused to her.
- [16] The Applicant argues that the extended delay in approving the minutes constitutes a refusal. The Applicant notes that this case is distinguished from Bashir in several ways. In Bashir, the COVID 19 pandemic prevented regular meetings of the board which delayed the approval of minutes, and a turnover of directors further delayed approvals. However, in this case the Applicant points out that there has been no turnover in board members and by its own admissions the board has held meetings and conducted business of the corporation, including the ratification of decisions made by email during this period. The Applicant asserts that given this, it is difficult to believe, and she finds it to be unreasonable that the board has been unable to approve any minutes since March 2024.
- [17] Consistent with previous decisions of the Tribunal, I find that the Applicant is not entitled to draft minutes. However, approved meeting minutes are records 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.
- [18] The Respondent submits there are six sets of minutes still in draft form for a period dating back to March 2024 – which is one year ago. Other than the evidence that the board is "catching up" on the approval of minutes from spring 2024, The Respondent has provided no indication of when these minutes might be approved.
- [19] I accept the Respondent's evidence that the board has been dealing with a significant construction lien and deficiency matter that has taken up much of its time and attention. However, I agree with the Applicant that it is difficult to understand how despite testimony from board member Denise Price, that during

the period between March 2024 and October 2024 the board held meetings either virtually or in person, and regularly transacted business of the corporation, it has failed to approve minutes in a timely manner. I find it unrealistic that Respondent wait nearly a year to obtain a copy of approved meeting minutes when the board has, by its own account, been meeting or transacting business regularly during this period. In the absence of a reasonable explanation such a delay, I find that in this case, such a delay in providing approved minutes of board meetings constitutes a refusal without a reasonable excuse.

By-law 3.1(q)

- [20] In the July 2024 request, in addition to the minutes, the Applicant requested a copy of by-law 3.1(q). Ms. Price, testified that in response to this request, Jacob Oziel, the Applicant's husband and her representative in this proceeding, was advised that the corporate documents of the corporation were posted online, and had been since 2019. Mr. Oziel claims he was not notified of such. Regardless, I accept that that the Applicant was provided with a copy of this by-law during the Stage 1 – Negotiation phase of the Tribunal process. Moreover, it was uploaded as evidence in this proceeding, meaning the Applicant is in receipt of this document and likely has been for a significant portion of this Tribunal process.
- [21] The Applicant is entitled to receive a copy of the corporation's by-laws on request. In this case, the Respondent did not provide this directly, however, I do not find that in this case this failure amounts to a refusal. I accept that Ms. Price believes that the Applicant was provided with the information regarding the online access to the corporation's documents, but the fact remains that there is no evidence that the Respondent replied to the request by providing this information. Had the board completed the mandatory Board response form, it may have explained there that the by-law was posted online. The board should not have assumed that the Applicant knew or ought to have know that the documents were posted online. Nonetheless, there is no evidence that the Respondent sought to refuse the Applicant a record to which she was entitled.
- [22] The Applicant has requested that I order the Respondent to provide her with this record. However, it is unclear why she has made this request. She already has the by-law in her possession. Additionally, even if she was not previously aware that the corporate documents of the Respondent were accessible online, she is now and can access this document online. Thus, I see no reason to order the Respondent to provide this record to the Applicant at this point.

Issue No. 2: Should a penalty be imposed on the Respondent for refusing to provide records without a reasonable excuse? Should any other orders be made?

[23] 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.

[24] Under section 1.44(3) of the Act, the Tribunal has authority to award a penalty of up to \$5000. The Applicant has requested that the maximum penalty be awarded in this case as she believes the Respondent has intentionally withheld records from her and willfully disregarded its responsibilities to provide records under the Act. The Applicant referred me to such cases as: *Anvari v. Carleton Condominium Corporation No. 95*, 2021 ONCAT 24 ("Anvari") and *Tharani Holdings Inc. v Metropolitan Toronto Condominium Corporation No. 812*, 2019 ONCAT 3 ("Tharani").

[25] The Respondent argued that a penalty is not appropriate as they did not refuse records as the minutes requested remained in draft and thus were not records to which the Applicant was entitled. Further, it argues that the by-law was always available to the Applicant and there was no intent to deny the Respondent a record to which he was entitled.

[26] The imposition of a penalty by the Tribunal is discretionary. As noted in previous Tribunal decisions, not every refusal, even those without any excuse, will give rise to a penalty. Whether or not a penalty is appropriate will depend on the facts in each case.

[27] I have reviewed the cases cited by the Applicant in support of her submissions that the Respondent has willfully disregarded its responsibilities under the Act; however, the evidence in this case is very different than the cases to which I was referred. Given the unique facts in this case, I find that no penalty is warranted. In prior Tribunal cases, it has been noted that one of the purposes of the penalty is to impress upon condominium corporations the seriousness of their obligations to comply with the provisions of the Act and to provide unit owners with a remedy when those obligations are not met. This is not necessary in this case. The evidence in this case demonstrates that the Respondent is aware of their obligation to maintain and provide approved meeting minutes. It is also now aware that a significant delay in providing minutes can, in some cases, be deemed a refusal.

[28] The evidence also provides, that the Respondent is aware of their obligation to

respond on the mandated response form and provide the necessary accompanying statements, and it has used the mandated form to respond to a subsequent records request made by the Applicant.

- [29] However, while I do not find a penalty to be appropriate under the Act, I do find that an order ensuring the Respondent provides the Applicant the records to which she is entitled, without the Applicant having to make a subsequent request, is appropriate. Under section 1.44(7) of the Act, the Tribunal may make an order directing whatever other relief the Tribunal considers fair in the circumstances. In this case, I will order that within 14 days of the date of this decision the Respondent will provide the Applicant, in writing, with the date of the board meeting at which it expects to approve the six sets of draft minutes that remain outstanding from her requests. The Respondent will then provide the Applicant with the six sets of approved minutes within seven days of their approval at that meeting.
- [30] The Applicant has also requested that I order the Respondent provide her with any emails that form the basis of decisions recorded in the minutes. There is no evidence before me that the unspecified emails the Applicant seeks in relation to minutes that are still in draft form are a record of the corporation. I decline to make any such order.
- [31] Finally, the Applicant has also requested an order that the board of directors retake the mandatory director training provided by the Condominium Authority of Ontario. Based on my findings in this case I see no reason to make this order.

Issue No. 3: Has the Respondent failed to keep adequate records as per the Act?

- [32] According to the Applicant, the Respondent has failed to keep adequate records as per the Act, as it has not been keeping minutes of discussions and decisions that the board has made by email. She asserts that the records are inadequate because records that “should exist do not”. Tied up in these allegations of inadequate records are claims that raise governance concerns. For example, the Applicant asserts that the board has made decisions about her unit that have not been properly recorded, and that the board decision to approve new rules was not valid.
- [33] The Tribunal has no jurisdiction to address such claims. The question before me is only about records – and the adequacy of records, in this case, minutes.
- [34] The Applicant’s claims that the minutes of the Respondent are inadequate are not about records she has received but about those she has yet to receive. Her

claims of inadequacy seem to be based on a 'what if' perspective. The Applicant also makes very clear that she has specific ideas about what ought to be in the draft minutes and included with them (i.e. all email correspondence showing the basis for board decisions). The Applicant assumes that the information and/or details she expects and wants to be in the minutes will not be and thus, thus makes the claim that the Respondent has not kept adequate records.

[35] The evidence indicates that there are six sets of minutes waiting to be approved by the board for the period in which the Applicant alleges the decisions she is interested in had been made. The Respondent maintains that these records will provide an adequate recording of the decisions and business transacted by the board. I hope they do, and I would advise both parties to consider reviewing the many decisions that the Tribunal has released addressing the principles of adequacy particularly as they relate to minutes.

[36] While I understand that the delay in approving the minutes has led to both the speculation and escalating disagreements between the parties over what the minutes 'ought' to contain, I cannot decide in advance of the approval of these minutes issues related to adequacy.

Issue No. 4: Should costs be awarded?

[37] Section 1.44(2) of the Act states that an order for costs "shall be determined ...in accordance with the rules of the Tribunal".

[38] 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.

[39] The Applicant has requested costs in the amount of \$200 as reimbursement for her Tribunal fees. The Respondent has requested costs in the amount of \$1000.

[40] The Applicant was successful in her claims insofar as I have found that the delay

in the provision of minutes is tantamount to a refusal and rectifying the situation has required an order from this Tribunal. Thus, I will award the Applicant costs in the amount of \$200.

[41] I find there is no basis for an award of costs to the Respondent in this case.

D. ORDER

[42] The Tribunal Orders that:

1. Within 14 days of the date of this decision the Respondent will provide the Applicant, in writing, with the date of the board meeting at which it expects to approve the six sets of draft minutes that remain outstanding from the Applicant's request. The Respondent will then provide the Applicant with the six sets of approved minutes within seven days of their approval at that meeting.
2. Within 30 days of the date of this decision, the Respondent will pay the Applicant costs in the amount of \$200.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: March 19, 2025