



HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Rozza Kovaleva

Applicant

-and-

Olga Pichakchi and Metropolitan Toronto Condominium Corporation 1000

Respondents

INTERIM DECISION

Adjudicator: Laurie Letheren
Date: February 9, 2017
File Number: 2014-18080-I
Citation: 2017 HRTO 175
Indexed as: **Kovaleva v. Pichakchi**

APPEARANCES

Rozza Kovaleva, Applicant)	Self-represented
)	
)	
Olga Pichakchi and Metropolitan)	
Toronto Condominium Corporation)	Timothy Duggan, Counsel
1000, Respondents)	
)	

INTRODUCTION

[1] This is an Application filed on June 27, 2014, under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 (the “Code”), alleging harassment and discrimination in the social area of services because of age.

[2] The applicant alleges that the respondents discriminated against her because of her age in the context of her membership on, and subsequent removal from, the Board of Directors (the “Board”) of the Metropolitan Toronto Condominium Corporation 1000 (“MTCC”).

[3] The applicant has made a number allegations about the conduct of the personal respondent and the Board. In addition to alleged harassment and discrimination by the personal respondent, the applicant alleges that she was the subject of adverse decisions by the Board, including being removed as a signatory of cheques for the Board, being removed as president of the Board and being removed from the Board altogether based on her age.

[4] Originally the applicant only named Olga Pichakchi as the respondent. In Interim Decision 2016 HRTO 369, the Tribunal determined that since there are a number of alleged incidents that appear to involve the Board directly, the organizational respondent should be added as a party.

[5] The Tribunal held one day of hearing during which time the applicant provided evidence about her allegations.

[6] At the conclusion of the applicant’s evidence, the Tribunal, on its own initiative, directed a Summary Hearing be held to determine whether there is a reasonable prospect that the Application can succeed. *In Pellerin v. Conseil scolaire de district catholique Centre-Sud*, 2011 HRTO 1777, the Tribunal confirmed that it may be appropriate at a later stage in a proceeding to have the parties address whether an Application ought to be dismissed on the basis that it has no reasonable prospect of

success. Frequently, the Tribunal will hear submissions regarding whether an Application ought to be dismissed as having no reasonable prospect of success after hearing the applicant's case-in-chief, although it may hear such submissions at other points in the hearing process as well.

LINK BETWEEN DECISIONS MADE BY RESPONDENT AGE BY APPLICANT

[7] The applicant alleges that her *Code* rights were breached when she was removed as a signing officer for the Board; when she was removed as president of the Board; and when her membership on the Board was revoked. She alleges that the personal respondent made discriminatory comments about her on the basis of her age and that this age based prejudice influenced the Board's decisions.

Applicant's Evidence

[8] The applicant testified that she had served as a Board member for 10 years at the time she was removed from the Board.

[9] On January 21, 2014, the personal respondent was elected as a Board member. Minutes of this meeting that were introduced into evidence show that a motion to appoint the applicant as president and the personal respondent as secretary was carried by the Board. The applicant testified that at this time there were five Board members.

[10] It was the applicant's evidence that after a February 2014 Board meeting, she and the personal respondent were in an elevator and the personal respondent told the applicant that the Board was not a place of old people and that she thought younger people were needed as Board members. The applicant stated that she told the personal respondent that she would leave the Board at end of her term in 2016. She states that she was 70 at time this happened.

[11] Documents indicate and it was the applicant's testimony that the Board called a meeting for March 17, 2014. The applicant testified that at this March 17, 2014 meeting

the superintendent was dismissed from his position. She testified that she opposed this decision. She testified that at this meeting she was removed as signing officer; and her access to the building office was restricted. In cross-examination, the applicant agreed that there were disagreements between her and the other Board members and they were no longer working together. She stated, "I know they wanted to get rid of me because we were disagreeing and I was not going to sit still and keep quiet." She admitted that the superintendent had brought a lawsuit against other Board members and she supported him on this.

[12] The applicant testified that after the Board's business was concluded for the meeting on March 17, 2014, the personal respondent spoke to her in Russian, saying, "old bitch. I would not tolerate old grandmas who support criminals." In cross-examination, she stated that she had never heard any Board members talk about her age and she never raised that fact that she thought she was experiencing discrimination on the basis of her age with the Board. She admitted that in February and March 2014, there was a lot of disagreement between her and the other Board members.

[13] The applicant stated that the next Board meeting was on April 1, 2014. The applicant's evidence was that some Board members had raised issues about whether the March 17, 2014 meeting had been properly called. As a result, there was a motion to ratify the decisions made on March 17, 2014 passed at the April 1, 2014 Board meeting. In cross-examination, the applicant agreed that no one had mentioned anything about her age at this April 1, 2014 meeting and she did not say anything at this meeting about the decision to remove her as signing officer being made because of her age. She agreed that she had the opportunity to talk at the April 1, 2014 meeting before the March 17, 2014 decisions were ratified.

[14] The applicant testified that at the April 1, 2014 meeting, there was a discussion about the appropriateness of having her as a Board president when she was voicing opinions that were completely separate and different from those of the Board's majority. She stated that she did not agree that it was a problem for her as a Board member to voice opinions that conflicted with opinions of other Board members. The applicant

testified that the Board voted to remove her as president of the Board at this meeting. The applicant did not present any evidence that her age was discussed during this meeting. In cross-examination, she agreed that she and the other Board members were no longer working together. She admitted that in fact, she was working against the decisions of the Board and her evidence was, "I know this is why they wanted to get rid of me".

[15] In cross-examination, the applicant was asked why she had nominated the personal respondent to be president after she was removed. She testified in response that she had made this motion as a joke, saying "then you go and be president."

[16] The applicant testified that at the end of the April 1, 2014 meeting and after the vote to remove her as president and all Board business was complete, the personal respondent said to her in Russian, "Old bitch you are not wanted here anymore."

[17] The applicant testified that on April 5, 2014, she went to police to advise them that she was being insulted. She stated that the police told her to go to the justice of the peace but she did not go because she cared about the personal respondent's son who has friends in the building and whose school is close to the building.

[18] The applicant testified that on May 1, 2014, she saw the personal respondent, the building manager and another Board member outside the building. She stated that she approached them to ask why she was not given any cheques to sign. She testified that in response to this question the personal respondent said, in Russian and in English, "Old bitch, you old bitch, you do not see too well and we do not trust you. I made a motion not to let you in the office." She stated that both of the others laughed.

[19] The applicant testified that on the morning of May 24, 2014 she saw the personal respondent in a convenience store and the personal respondent said to her "Old bitch. I will fry you to death." She testified that it was around that time she called legal advisors who told her she could apply to the Tribunal for discrimination because of age.

[20] The applicant testified that on May 31, 2014, she was in elevator when the personal respondent entered. Upon seeing the applicant she said, “Old Bitch you need to get out from this building because I have terminated you.”

[21] On June 17, 2014, the Board held a meeting of all the building’s unit owners. The minutes of this meeting state that the meeting was held because the Board had received a requisition to have a Board member removed prior to the expiration of her term. In the applicant’s testimony, she agreed this was the reason why the June 17, 2014 meeting had been called and stated that the request was to have her removed.

[22] The applicant stated that at this meeting the owners were told why the request had been made to have the applicant removed from the Board. The applicant testified that the Chair told the owners that one reason to remove a Board member was if that person had failed to act in good faith. The applicant testified that the Chair of the June 17, 2014 meeting had listed a number of allegations that were being made against her. These included: that she had threatened Board members to resign or she would take action; she provided the former superintendent with Board information which he had used in his litigation against the Board, management and the Board’s legal representatives; she had called an illegal meeting to attempt to have the superintendent of the building reinstated to this position and this had cost the building extra money; and she had cancelled Board insurance, which left the Board open to liability. The applicant stated that she disagreed with all these allegations and there was no basis for these allegations. She did not provide any evidence to demonstrate how these allegations were connected to her age. She did not provide any information to demonstrate the motivation for having the requisition to have her removed from the Board was because of her age. She agreed that she had the opportunity to speak at the June 17, 2014 meeting before the vote to have her removed from the Board was held. She agreed that she had not raised any concerns that she was experiencing discrimination on the basis of her age when she spoke to the Board and the owners prior to the passing of the motion to remove her from the Board. In cross-examination, she stated that the other Board members had talked and came up with other reasons try to show that she was

acting in conflict with the Board. She stated, “There was a democratic vote but they used intimidation.” She provided no details of evidence to show that her age was a factor in this intimidation by the other Board members.

[23] The minutes show that the owners voted 46 to 2 to remove the applicant as a Board member.

[24] In cross-examination, the applicant was shown a document titled “Director’s Code of Ethics”. The applicant agreed that she had signed this document and that by doing so she had agreed to abide by decisions of the majority of Board members even if she disagreed with these decisions. She stated that at the time of signing she agreed but “after, I no longer agreed to sit and be silent.”

[25] In cross-examination, the applicant testified that from February 2014 to the end of the June 2014 meeting where she was removed as a member of the Board, she never mentioned to any unit owner or any other Board member that she was being harassed or experiencing discrimination on the basis of her age. She agreed that she had been given an opportunity to speak at the April 1 and June 17, 2014 meetings and she has not mentioned anything about age discrimination or harassment at these meetings.

[26] In response to my question about the evidence she was relying on to demonstrate that the Board members who voted to remove her signing authority and remove her as president had made this decision based on her age she stated, “I was being called Old Bitch. [The personal respondent] told me plainly this was her strong belief, I do not know why other [Board members] were biased I think so, and she was influential lady and probably she influenced, they voted on her motion.”

[27] When I asked if anyone at a Board meeting had ever said she was too old to be on the board the applicant answered, “[The personal respondent] said she would not tolerate me.” She later stated, “I still do not know who had advised the [Chair] to come up with those allegations. I was not present when the vote [to remove her from the

Board] happened. They wanted to kick me out and then invented this.” Again she did not provide any evidence to demonstrate that her age was a factor in the unit owners’ decision to remove her from the Board.

ANALYSIS AND DECISION

Are Services Engaged in the Facts

[28] The respondents submit that the incidents alleged in this Application do not engage any social area of services. The respondents rely on the Tribunal decision in *Cooper v. Pinkofskys*, 2008 HRTO 390 at para. 9-10, to assert that “‘service’ must mean something which is of benefit that is provided by one person to another or to the public.” The respondents submit that the fact of being a signing officer, a board president or a board member is not something that is being provided as benefit to the applicant. They submit that it is the applicant who is trying to provide the service.

[29] I do not agree that services would not include the opportunity to be a member of the Board or the opportunity to hold different positions on the Board. The Tribunal has interpreted the term “services” to include membership in private association and organizations. See for example: *Huang v. 1233065 Ontario Inc. (Ottawa Senior Chinese Cultural Association)*, 2006 HRTO 1, and *Barclay v. Royal Canadian Legion, Branch 12* (1997), 31 CHRR D/486.

Connection between Actions of the Board and the Applicant’s Age

[30] The respondent submits that the applicant has provided no evidence to demonstrate that her age was in any connect to the decisions made by the Board.

[31] A successful claim of discrimination requires an applicant to show, on a balance of probabilities, that one of the prohibited grounds of discrimination was a factor in the disadvantage or adverse treatment she alleges she experienced. The applicant must show that her age was one of the factors in why the respondents made the decisions to

remove her as a signing authority, remove her as president or revoke her membership on the Board.

[32] Considering this test of discrimination, the Tribunal has considered whether this Application should continue after hearing the applicant's evidence and prior to hearing any evidence of the respondents. The issue that the Tribunal is whether, assuming that the applicant's evidence is accepted to be true, does the Application have a reasonable prospect of demonstrating that her allegations amount to a *Code* violation. (See: *Pellerin v. Conseil scolaire de district catholique Centre-Sud*, 2011 HRTO 1777 at paras. 19 and 20, and *Dabic v. Windsor Police Service*, 2010 HRTO 1994 ("*Dabic*") at paras. 8-9)

[33] The parties sought to introduce a number of documents and proposed that their witnesses would discuss the Board's by-laws and the improper procedures that the Board allegedly undertook. As well, the respondents attempted to question the applicant about her involvement and actions in another proceeding. As I stated to the parties at the commencement of the hearing, the Tribunal does not have the general power to inquire into claims of unfairness or inconsistent application of policies and procedures outside the areas and grounds listed in the *Code*. Importantly, the Tribunal's mandate is not to correct general unfairness, but to deal with alleged discrimination on *Code* grounds.

[34] In addition, as the Tribunal indicated in *Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389, for an application to continue in the Tribunal's process following a summary hearing, there must be a basis beyond mere speculation and accusations to believe that an applicant could show discrimination on the basis of one of the grounds alleged in the *Code*.

[35] In considering what evidence is reasonably available to the applicant, the Tribunal must be attentive to the fact that in some cases of alleged discrimination, information about the reasons for the actions taken by a respondent are within the sole knowledge of the respondent. Evidence about the reasons for actions taken by a

respondent may sometimes come through cross-examination of the people involved. The Tribunal must consider whether there is a reasonable prospect that such evidence may lead to a finding of discrimination. However, when there is no reasonable prospect that any such evidence could allow the applicant to establish prima facie case on a balance of probabilities, the application is be dismissed.

Removal as Signing Officer

[36] The applicant was removed as a signing office of the Board during the March 17, 2014 meeting. The applicant's evidence was that the personal respondent had made comments that applicant was old and called her an "old bitch" prior to this meeting. The applicant's evidence about this meeting was that she was removed from her role as signing officer at same time as the Board made the decision to terminate the building superintendent. It was her testimony that she had disagreed with the decision to terminate the superintendent's employment. She did not provide any evidence that her age was discussed during the meeting when the motion to remove her as signing officer was passed. She agreed that she had never heard any Board member discuss her age and she did not raise with the Board the fact that she believed she was being discriminated on the basis of her age. She admitted that there was a great deal of disagreement between her and the other Board members at this time. It was her evidence that it was after the Board's business for this meeting was completed that the personal respondent spoke to her in Russian, saying, "old bitch. I would not tolerate old grandmas who support criminals."

[37] The March 17, 2014 vote was ratified during the April 1, 2014 meeting. The applicant presented no evidence that her age was discussed prior to the vote to ratify the March 17, 2014 decision to remove her as signing officer. She did not provide any evidence to indicate that she had raised concerns about age discrimination at this meeting, although she had an opportunity to raise this if she had wanted at the time that the March 17, 2014 vote was discussed and prior to ratification.

Removal as Board President

[38] In the April 1, 2014 meeting, the Board also voted to remove the applicant as president of the Board. The applicant's testimony was that there were statements made by other Board members that it was not proper for the applicant, as a Board member, to be acting separately and in contrast to opinions and decisions of the Board. She stated that she did not agree that it was a problem for her to be acting against decisions of the Board. The applicant did not present any evidence about other points of discussion prior to the vote. She did not present any evidence that her age was discussed during this meeting or that she raised with the Board members any concern about age discrimination by the Board in making its decision. In cross-examination, she agreed that she and the other Board members were no longer working together. She admitted that in fact she was working against the decisions of the Board and her evidence was, "I know this is why they wanted to get rid of me".

[39] It was the applicant's evidence that after the vote to remove her as president was carried and after the meeting business had ended, the personal respondent made comments to the applicant about her being an "old bitch".

Conclusion on the Incidents of Removing the Applicant as Signing Officer and Board President

[40] For the purposes of this analysis of whether the Application has a reasonable prospect of success, I must accept that at the end of the March 17, 2014 and the April 1, 2014 meetings, the personal respondent made the statements saying the applicant was an "old bitch". The applicant alleges that the personal respondent had influence over the decisions of the other Board members. The temporal connection of these statements made by the personal respondent to the Board's votes to remove the applicant as signing officer and then as Board president present circumstantial evidence that could reasonably support the applicant's allegations that these age-related comments influenced the Board's decisions. In particular, the comment made at the end of the March 17, 2014 meeting, "old bitch. I would not tolerate old grandmas who

support criminals” could reasonably have influenced the decisions made by the other Board members at the April 1, 2014 meeting.

[41] I find that that the respondent’s evidence on the circumstances of these Board decisions should be heard and the applicant should have an opportunity to cross-examine the respondent’s witnesses on their evidence.

[42] Having found that this circumstantial evidence could reasonably support the applicant’s allegations, does not mean that the Application will ultimately be successful. I have made no findings on the evidence. I have only determined that there are reasonable inferences that may be drawn from the evidence. (See *Reece v. Toronto (City)*, 2016 HRTO 1494.)

[43] The parts of this Application made with respect to the allegations about the removal of the applicant as signing officer for the Board and the removal of the applicant as Board president are not dismissed.

Decision to remove the Applicant from the Board

[44] The applicant’s own testimony was that prior to the point where the owners voted to remove her from the Board, those in attendance had been advised of a number of allegations that were being made about her conduct. Nothing in these allegations could be seen as age-related. She did not provide any evidence to demonstrate how these allegations were connected to her age. She did not provide any evidence to demonstrate the motivation for having the requisition to have her removed from the Board or the basis for the owners vote to remove her from the Board was in any way based on her age. She agreed that she had the opportunity to speak at the June 17, 2014 meeting and she had not raised any concerns that she was experiencing discrimination on the basis of her age when she spoke at this meeting prior to the vote on the motion to remove her from the Board. In cross-examination, she stated that the other Board members had talked and came up with other reasons to try to show that

she was acting in conflict with the Board. She stated, “There was a democratic vote but [the Board members] used intimidation.”

Conclusion on the Decision to Remove Applicant from Board

[45] I do not find that there anything beyond the applicant’s own belief to demonstrate that the decision made by the owners to remove her from the Board was connected to her age. Even if I accept that the Board members used intimidation to influence the owners to vote to remove her from the Board, the applicant has not pointed to any evidence to show a connection between this intimidation and her age. Her own evidence was that although she disagreed with the allegations of misconduct, these were the reasons presented to the owners as to why she should be removed from the Board. Unlike the other allegations made by the applicant, there is no evidence that the owners, other than those on the Board, had heard the personal respondent’s comments about her being an “old bitch”. The applicant only alleged that the Board members were biased and that the personal respondent had influence over the Board members. The applicant did not present any evidence that could support a finding that she has a reasonable prospect of success in demonstrating that the owners’ decision to remove her from the Board was related to her age.

[46] As was previously stated, in order for the Tribunal to find that the applicant’s *Code* rights have been breached, the alleged adverse treatment must be linked in a substantive way to a *Code* ground. As the Tribunal stated in *Villella v. Brampton (City)*, 2011 HRTO 1085 at para. 10:

The applicant must show more than mere subjective suspicion to establish a link between the respondent’s alleged conduct and the grounds pleaded. There must be at least some objective facts and circumstances to support the theory linking the respondents’ action with the *Code*.

[47] Based on the reasons stated above, I have concluded that applicant has presented no evidence to link the decision made by the owners to revoke her membership on the Board to her age in any substantive manner. Accordingly, the part

of the Application in which she alleges that she experienced a breach of her *Code* rights when her membership on the Board was revoked is dismissed.

ORDER

[48] The part of the Application in which the applicant alleges that she experienced a breach of her *Code* rights when her membership on the Board was revoked is dismissed.

[49] The parts of this Application made with respect to the allegations about the removal of the applicant as signing officer for the Board and the removal of the applicant as Board president are not dismissed.

[50] The Registrar will canvass the parties for mutual agreeable dates in April and May 2017 for one day of hearing.

[51] The Tribunal will hear the evidence of the respondent's witnesses at the next hearing day that relates to the issues of whether the applicant experienced a breach of her *Code* rights when she was removed as a signing officer for the Board and when she was removed as Board president.

Dated at Toronto, this 9th day of February, 2017.

“Signed by”

Laurie Letheren
Vice-chair