



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**B E T W E E N:**

**Rozza Kovaleva**

**Applicant**

**-and-**

**Metropolitan Toronto Condominium Corporation 1000 and Olga Pichakchi**

**Respondents**

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## DECISION

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**Adjudicator:** Laurie Letheren

**Date:** October 25, 2017

**File Number:** 2014-18080-I

**Citation:** 2017 HRTO 1410

**Indexed as:** **Kovaleva v. Metropolitan Toronto Condominium Corporation  
1000**

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**APPEARANCES**

Rozza Kovaleva, Applicant )  
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Sajjad Najem, Paralegal

Metropolitan Toronto Condominium Corporation 1000 and Olga Pichakchi, Respondents

Timothy Duggan, Counsel

## 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 has made a number of allegations about the conduct of the personal respondent and the Board members of the Metropolitan Toronto Condominium Corporation 1000 (“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 because of her age.

[3] On November 10, 2016, the Tribunal held one day of hearing during which time the applicant provided evidence about her allegations. At the conclusion of the applicant’s evidence, the Tribunal, on its own initiative, directed a hearing be held to determine whether there is no reasonable prospect that the Application can succeed.

[4] After considering the applicant’s evidence and hearing the parties’ submissions on the issue of whether the applicant had no reasonable prospect of succeeding on all the allegations she had made, the Tribunal ordered in Interim Decision, 2017 HRTO 175, that 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in which the applicant alleges that she experienced a breach of her *Code* rights when her membership on the Board was revoked was dismissed.

[5] The Tribunal ordered that the hearing would continue and the Tribunal would hear the evidence of the respondent’s witnesses that was relevant to the applicant’s allegations that the respondents breached her *Code* rights on the basis of her age when she was removed as signing officer for the Board, removed as Board president and that she experienced harassment.

## REQUESTS FOR ORDER

[6] Prior to resuming the hearing, the applicant filed a Request for Order During Proceedings (“the Request”) that the Tribunal dismiss the respondents’ Response on the basis that the respondent condominium corporation had filed a Small Claims Court application that contained some of the allegations that were in its Response to this Application. She also requested an adjournment of the August 10, 2017 hearing date.

[7] The Request was addressed at the commencement of the August 10, 2017 hearing. At that point, the applicant clarified that what she was seeking was an Order from the Tribunal that the respondent condominium corporation withdraw its Small Claims Court action that was filed against her. She also clarified that she was asking for a Reconsideration of Interim Decision 2017 HRTO 175, dated February 9, 2017, and an adjournment of the August 10, 2017 hearing day in order that she can properly prepare and bring additional witnesses and documents. Her legal representative advised that he had not had enough time to prepare.

[8] The respondents opposed the Request that the Tribunal order the condominium corporation to withdraw its Small Claim’s Court action on the basis that that the applicant had not made these arguments to the Court and had filed a counter claim. The respondent submits that hearing should not be adjourned. The applicant’s representative advised the respondent and the Tribunal that he had been retained by the applicant more than two months prior to August 10, 2017, and therefore had time to properly prepare.

[9] The respondents further submitted that the Request for Reconsideration was far out of time and that the reasons for the Request for Reconsideration did not meet any of the grounds that would allow the Tribunal to grant the Reconsideration. The applicant had closed her case on November 10, 2016, and she had not provided any grounds for it to be re-opened.

## Analysis and Decision

[10] The Tribunal does not have any jurisdiction over the matters filed with the Small Claims Court. It therefore does not have the power to order the respondent to withdraw the Small Claims Court action filed with that Court. The Request for an Order that the respondent withdraw the Small Claims Court action is denied.

[11] Section 45.7 of the *Code* provides the Tribunal with the authority to reconsider its decisions. Further to its power to make rules, the Tribunal has issued Rules governing Requests for Reconsideration. Most relevant to this Request for Reconsideration is Rule 26 which states:

26.1 Any party may request reconsideration of a final decision of the Tribunal within (thirty) 30 days of the date of the decision.

[12] Although this Request for Reconsideration was brought before the Tribunal had made a final determination on the Application, I am proceeding with the Request to Reconsider Interim Decision 2017 HRTO 175 on the basis that this Interim Decision was a final decision on the allegation that the applicant experienced a breach of her *Code* rights when her membership on the Board was revoked.

[13] On the basis of delay alone, the Tribunal may deny the Request for Reconsideration. See *Liu v. Country Herbs*, 2011 HRTO 1166.

[14] A Request for Reconsideration filed beyond the 30-day deadline will not be granted unless the Tribunal determines the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. The applicant provided no reasons for the delay in filing the Request for Reconsideration.

[15] I have determined that the applicant has provided no good faith reason for the delay in making this Request for Reconsideration and it is therefore denied.

[16] Even if the Request for Reconsideration were not out of time, I would have found that the applicant has not established that there are grounds to grant the Request. The applicant appears to be attempting to re-litigate the issues that were determined in the Interim Decision and is seeking to better or differently prepare for the hearing of the evidence now that she has representation. These reasons do not meet the grounds for granting a Reconsideration Request.

[17] The applicant has not detailed factors that outweigh the interest in maintaining the finality of the Decision.

[18] It appears that the reason that the applicant filed the Request is because she disagrees with the Tribunal's Decision. A Request for Reconsideration is not an opportunity to reargue the Application.

**DID THE APPLICANT EXPERIENCE A BREACH OF HER *CODE* RIGHTS WHEN SHE WAS REMOVED AS SIGNING OFFICER AND BOARD PRESIDENT OR WHEN SHE WAS HARASSED?**

[19] When the hearing resumed on August 10, 2017, I heard evidence from the respondents' witnesses, Olga Pichakchi and James Hennessy, who are members of the Board.

[20] The applicant's representative had not been present during the November 10, 2016 hearing date when the applicant provided her evidence. He therefore did not hear the applicant present her evidence or know how she framed the evidence around the issues she had raised. He also was not present to hear her submissions on the issue of whether all or part of the Application should have been dismissed on the basis that she had no reasonable prospect of success.

[21] At the August 10, 2017 hearing, there were numerous occasions where I had to warn the applicant's legal representative that the line of questioning and his manner of questioning during the cross-examination were inappropriate and bordering on abuse of process. For example, the representative insisted on pursuing a line of questioning

about the witness' personal matters and her educational background in an attempt to discredit her after I had directed him to end the line of questioning a number of times. On a number of occasions during the cross-examinations, he argued with the witness and with me and despite my asking him to change his tone, the representative persisted. He also inferred that the respondent's legal counsel had coached witnesses and inferred that one of the witnesses must be ill and that is why she was not remembering and accused her of lying.

[22] Section 40 of the *Code* requires the Tribunal to adopt practices that allow for the most fair, just and expeditious resolution of an Application. Rule 1.7(w) allows the Tribunal to take the steps it deems necessary to ensure an Application is resolved in this manner. This includes confining the evidence to that which it deems to be related or relevant to the issues in dispute. In addition, the Tribunal may give direction that it considers proper to prevent questioning of witnesses in an abusive manner (See: Social Justice Tribunals Ontario, Common Rule A8.1)

[23] Despite my warnings, the applicant's representative persisted with his line of questioning and his argumentative tone and manner. His cross-examination of Ms. Pichakchi was extending to three times the length of time that had been taken in the direct examination and he was not taking my directions on lines of questions that were irrelevant. In order to ensure a fair, just and expeditious and non-abusive proceeding, I directed him that his time for further cross-examination was limited and eventually I directed him to end his cross-examination of Ms. Pichakchi. When I warned him during his cross-examination of Mr. Hennessy about the tone and relevance and advised him of a time limit to continue, he abandoned the cross-examination.

### **Applicant's Evidence of November 10, 2016**

[24] The applicant testified that she had served as a Board member for 10 years. She was president of the Board for several years until there was a vote to remove her on April 1, 2014.

[25] 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.

[26] 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.

[27] Documents entered as exhibits 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.

[28] 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.



[29] 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, at the April 1, 2014 Board meeting, there was a motion to ratify the decisions made on March 17, 2014. This motion was passed. 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.

[30] 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."

[31] 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."

[32] 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."

[33] 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.”

[34] In cross-examination, the applicant testified that 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.

[35] 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.”

### **Olga Pichakchi**

[36] Ms. Olgalive Pichakchi provided evidence that she has lived in the condominium building since 2003. She has been a director on the Board since January 2014 and she is the secretary and signing officer.

[37] Ms. Pichakchi testified that on March 17, 2014, she was present at the meeting when the Board members decided to remove the applicant as signing officer. She stated that the decision had been made because most of the Board members felt that the applicant could not be trusted because she was working against the interests of the Board. It was Ms. Pichakchi’s evidence that prior to this meeting, the applicant had confirmed to the other members that she would hold back a final cheque payable to the superintendent until all the work he was doing had been completed but she then gave him the cheque the following day. She stated that the applicant had also signed work contracts for the superintendent that were not authorized by the Board. Ms. Pichakchi stated that this left the condominium corporation with a number of work deficiencies and payments for work that was not required.

[38] Ms. Pichakchi testified that after the decision was made to terminate the superintendent, the applicant held meetings outside of the Board to try to have the decision to terminate reversed; she cancelled an insurance policy for the corporation without authority; and she supported the superintendent when he filed a number of civil claims against the Board and the condominium corporation.

[39] It was Ms. Pichakchi's evidence that her decision to vote in favour of the motion to remove the applicant as a signing officer had nothing to do with the applicant's age and everything to do with her actions.

[40] Ms. Pichakchi denied ever saying that she did not think the board of directors was a place for old people. She stated that being on the board of directors is a hard job that requires a lot of time so those who are older and do not have young family or jobs may be good persons to be on boards. She stated that she would have liked the applicant to continue in the role if she had been supporting the Board and not the superintendent. She stated that as a director of the Board, it was her duty to watch out for best interest of the corporation and keep it in a good financial shape.

[41] Ms. Pichakchi also denied calling the applicant an "old bitch" at the end of the March 17, 2014 meeting or later saying "old bitch you are not wanted here any more" or ever calling the applicant an "old bitch." She stated that the words "old bitch" are not part of her vocabulary in her spoken English or Russian.

### **James Hennessy**

[42] Mr. James Hennessy testified that at the time of the hearing he was the president of the condominium's board of directors and he had been a director for 21 years. He had not lived in the building since 2007 but he owns a unit which he rents out.

[43] Mr. Hennessy testified that there had been a number of complaints received from owners about the work that was being done by the superintendent. The applicant had been the president at the time of the complaints and she had stated that these owners

were lying when they made these complaints. He stated that he and other directors decided to investigate and found that the complaints were supported by their findings. He stated that the superintendent had been asked to rectify the problems but the performance did not improve.

[44] It was his evidence that at the March 17, 2014 directors meeting, the directors voted to terminate the superintendent for various reasons. The applicant was the only director to vote against this decision.

[45] It was Mr. Hennessey's evidence that he and other Board members had been having concerns that the applicant was breaching board confidentiality because the applicant had sent emails to the superintendent that were about confidential Board matters. He stated that it became obvious that the applicant was supporting the superintendent rather than advancing the interests of the Board and the owners. The other Board members no longer trusted the applicant and in his opinion, that is why the motion to remove her as signing officer was made and why it was passed on March 17, 2014.

[46] Mr. Hennessey testified that on March 17 or 18, 2014, the applicant called him and threatened that if he did not change his vote on the termination of the superintendent that she would act as a witness in a court case the superintendent would file against him. He stated that it was at that point obvious to him that she was not acting as a president should. He stated that about a week later the applicant posted a notice in the building that she was going to have a Board meeting to remove him and Ms. Pichakchi as directors and rehire the superintendent. A lawyer became involved to advise the applicant to cease these actions but apparently the applicant continued and convened such a meeting. The applicant then sent an email to the owners stating that the meeting had been held and that both Mr. Hennessey and Ms. Pichakchi had been removed as directors, that she was on the Board and that she had appointed two new Board members.

[47] He testified that because of her actions, the directors had a discussion at the April 1, 2014 board meeting about her duties and conduct as a board member. He stated that her conduct was the reason that he had voted in favour of removing the applicant as Board president. It was his understanding that other Board members had voted in favour of removing the applicant as president because of this conduct as well.

[48] It was his evidence that the decisions to remove the applicant as a signing officer and to remove her as president had nothing to do with age.

[49] He testified that he had never heard Ms. Pichakchi speak Russian during a Board meeting but he had heard the applicant speak Russian with another Board member. He had been told by the applicant that the language she was speaking was Russian. He had never heard Ms. Pichakchi say that the applicant was old. He testified that he had never heard Ms. Pichakchi call the applicant an “old bitch.”

## **ANALYSIS AND DECISION**

### **Are Services Engaged in the Facts?**

[50] In Interim Decision 2017 HRTO 175, I found that the incidents alleged in this Application do engage the social area of services.

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

[51] 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 bears the onus to show that her age was one of the factors in why the respondents made the decisions to remove her as a signing officer and as president of the Board and that she experienced harassment on the basis of her age in the service of being a member of the Board, a signing officer for the Board and president of the Board.

[52] I find that the applicant has not demonstrated on a balance of probabilities that the respondents breached her *Code* rights when she was removed as a signing officer and when she was removed a board president or that she experienced harassment on the basis of her age in this service.

[53] This finding is based on my assessment of the credibility and reliability of the witnesses' evidence and the propensity of the evidence which I have found demonstrates that the applicant's age was not a factor in the decisions made by the Board. I accept the respondents' evidence that the applicant was removed as a signing officer and as president for non-discriminatory reasons. I have also accepted Ms. Pichakchi's evidence that she never called the applicant an "old bitch" or stated that the applicant was too old to be a Board member.

[54] In assessing credibility and reliability, I have applied the test set out by the British Columbia Court of Appeal in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA). In particular, when making credibility findings I have sought to determine which account of the facts in relation to each issue is "in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable" in the circumstances.

[55] Other factors for assessing credibility and reliability include the witness's motives, the witness's relationship to the parties, the internal consistency of their evidence, and inconsistencies and contradiction in relation to other witnesses' evidence: *Cugliari v. Telefficiency Corporation*, 2006 HRTO 7.

[56] I accept the evidence of Ms. Pichakchi that she had not said that the applicant was too old to be a Board member or and called her an "old bitch." The applicant did not present any evidence to support her testimony on what Ms. Pichakchi had allegedly said to her or about her even though she has alleged that on at least one occasion, these statements had been made when others were present. Ms. Pichakchi's denial was supported by the evidence of Mr. Hennessy who stated that he had never heard

Ms. Pichakchi say such things during any Board meeting and that he had never heard Ms. Pichakchi speak Russian during a Board meeting.

[57] The applicant contradicted herself when she claimed that on March 17, 2014, Ms. Pichakchi had spoken to her in Russian saying “old bitch. I would not tolerate old grandmas who support criminals” but then in cross-examination agreed that no one had mentioned anything about her age at the March 17 or April 1, 2014 meetings and that she did not say anything during these meetings about her age being a factor in the decisions to remove her as a signing officer or to remove her as the Board president. She agreed that she had the opportunity to talk during these meetings.

[58] I accept the evidence of Ms. Pichakchi and Mr. Hennessy about the actions of the applicant and I accept their evidence that it was the applicant’s actions that lead the directors to vote to remove her as signing officer and as Board president. The evidence of Ms. Pichakchi and Mr. Hennessy was that the applicant was opposed to the decision to terminate the superintendent and acted in opposition to the other Board members is consistent. Both described how they and other Board members believed that the applicant could not be trusted because she was supporting the superintendent rather than supporting the interests of the Board and the owners.

[59] I accept the evidence of Mr. Hennessy as credible and reliable when he stated that on April 1, 2014, the Board members had a discussion about the applicant’s conduct and that their concern about the inappropriateness of her conduct as a Board member was the reason why there was a motion to remove her as president that was voted upon and carried. The minutes of the April 1, 2014 meeting indicate that prior to motion to remove the applicant as board president was made, there was a discussion about the president being separate from the majority in her opinions and voice.

[60] The applicant’s evidence did not contradict the evidence of Ms. Pichakchi and Mr. Hennessy. She agreed that she and the other board members were no longer working together. She admitted she was working against the decisions of the Board. She stated that although she had signed a document in which she had agreed to abide

by the decisions of the majority of the Board members, she no longer agreed that it was a problem that she, as the president of the Board, was taking action that worked against the Board's decisions and interests. However, she admitted, "I know this is why they wanted to get rid of me." It was her evidence that the Board members had a discussion about the appropriateness of her remaining as Board president when she was voicing opinions that were contrary to those of the Board majority.

## **ORDER**

[61] The Application is dismissed.

Dated at Toronto, this 25<sup>th</sup> day of October, 2017.

*"Signed by"*

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Laurie Letheren  
Vice-chair