

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** October 14, 2021

**CASE:** 2020-00391R

**Citation:** Bashir v. Toronto Standard Condominium Corporation No. 1821, 2021 ONCAT 93

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

**Member:** Marc Bhalla, Member

**The Applicant,**

Khalid Bashir

Represented by Youssef Khalid, Agent

**The Respondent,**

Toronto Standard Condominium Corporation No. 1821

Represented by Sachin Lingaratnam, Agent

**Hearing:** Written Online Hearing – August 13, 2021 to October 6, 2021

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] This case is about entitlement to unapproved board meeting minutes. The Applicant is an owner of the Respondent condominium corporation. On September 8, 2020, the Applicant made a Request for Records asking the Respondent for board meeting minutes over the past 12 months. The Respondent replied on September 28, 2020 and indicated that it would provide the Applicant with approved minutes by email.
- [2] After receiving minutes of a November 13, 2019 board meeting, the Applicant followed up with the Respondent for more minutes. The Respondent stated that no other board meeting minutes were approved for the 12 months in question.
- [3] A board meeting was held on January 21, 2020. The Applicant wanted minutes of that meeting as well. The Respondent did not provide them, claiming the minutes were not yet approved by the board. The Applicant considers this a refusal without reasonable excuse and seeks both costs and penalties.
- [4] In this decision, I find that the Respondent refusing to provide unapproved board meeting minutes is not a refusal to provide a record.

## **B. BACKGROUND**

- [5] The Respondent's board of directors met only twice during the 12-month period for which the Applicant requested minutes. Challenges posed by the COVID-19 pandemic were among the reasons for this. Then, new directors who were not present at the January 21, 2020 board meeting were hesitant to approve the meeting's minutes. The minutes were not approved until a board meeting of February 25, 2021.
- [6] Once the January 21, 2020 board meeting minutes were approved, the Respondent provided them to the Applicant. This occurred when this case was in Stage 2 – Mediation. The focus of this case is on the period of time prior to the minutes being approved by the board.
- [7] In the hearing, the Respondent made references to communications in Stage 1 – Negotiation and Stage 2 – Mediation. This is inappropriate and has been disregarded. Communications in prior stages of this Tribunal's process are confidential. They have not been taken into consideration.
- [8] The hearing accommodated the stated availability of the parties. While I limited the submissions of the parties, they were ample and cited much caselaw. This decision does not speak to every submission and case presented to me. It captures what I considered to be most relevant to decide the issues.

## **C. ISSUES & ANALYSIS**

### **Issue 1: Did the Respondent fail to keep a record or refuse to provide a record that the Applicant is entitled to without reasonable excuse?**

- [9] There is no dispute that the Applicant is entitled to board meeting minutes. The issue is *when* board meeting minutes qualify as a record. The Applicant suggests unapproved minutes are a record the Respondent refused to provide without reasonable excuse. The Respondent suggests that the minutes did not become a record the Applicant was entitled to until they were approved by the board.
- [10] The Applicant cites *Greasley v. Peel Condominium Corporation No. 55, 2021 ONCAT 33*. In the case, the Tribunal deemed a five-month delay in the provision of records by a condominium corporation to be a refusal to provide records. The Applicant also points me to *McKay v. Waterloo North Condominium Corp. No 23, 1992 CanLII 7501 (ONSC)* which states that records must be adequate to meet record-keeping obligations. The Applicant also cited *Surinder Mehta v Peel Condominium Corporation 389, 2020 ONCAT 9*. The case says record-keeping obligations include providing records when requested.

- [11] The Applicant submits that keeping and providing minutes are key to a condominium corporation being an “open book”. They claim that failing to provide minutes because they have not been approved is a refusal to provide a record without reasonable excuse.
- [12] The Applicant claims the Respondent could have approved the minutes of the January 21, 2020 board meeting earlier. While the Applicant identifies opportunities the Respondent may have had to approve the minutes earlier, the evidence before me shows they were not approved until February 2021.
- [13] The Respondent did not involve legal representation in the case. It instead engaged its lawyer to offer an opinion. The Respondent relies on the lawyer’s opinion that draft board meeting minutes are not records. *Lagan v. CCC 331* (“Lagan”), 2020 ONCAT 30, *Smith v. MTCC 773*, 2019 ONCAT 24 and *Stewart v. TSCC 1959*, 2012 CarswellOnt 10003 (ONSC) are cited to support this. In the Lagan case, this Tribunal held that draft owners’ meeting minutes did not constitute a record. The Respondent suggests the same principle applies to minutes of board meetings and that minutes must be approved to qualify as a record.
- [14] The Applicant tried to distinguish cases referenced by the Respondent from this case. The Applicant points to the Respondent’s By-law No. 1, which requires that board meeting minutes be certified by the Respondent’s secretary and the meeting chair. The Applicant suggests that there was plenty of time for this to be done. Section 6.18 of the by-law speaks to what minutes of the Respondent’s board meetings are to contain. It does not speak to when such minutes must be completed. The Respondent’s practice of having the meeting chair and secretary certify board meeting minutes once they have been approved by the board is reasonable.
- [15] While I appreciate the significance of the delay, there is nothing before me that proves the Respondent deliberately delayed the approval of the minutes. The delay was due to a lack of board meetings taking place because of the COVID-19 pandemic and the minutes not being approved when initially presented for approval at a board meeting, as a result of a change in directors.
- [16] The Applicant was not entitled to the January 21, 2020 board meeting minutes before they were approved. The minutes were not a record of the Respondent before they were approved and certified as stated in the by-law. The Respondent did not refuse to provide a record that the Applicant was entitled to.

**Issue 2: Should a penalty be awarded in this case?**

[17] The Respondent has not refused to provide a record without a reasonable excuse. Consideration of a penalty is not warranted.

**Issue 3: Should costs be awarded in this case?**

[18] The Applicant feels they should be awarded \$200 in filing fees. They suggest they would not have received records to which they were entitled had they not come to this Tribunal. The Respondent provided the January 21, 2020 board meeting minutes to the Applicant before this case moved to Stage 3. While I am not convinced that the Applicant had to proceed to a Stage 3 hearing, I cannot fault the Applicant for filing this case in the circumstances.

[19] I accept the Respondent's submission that there is no required timeline for the board to meet. I understand that the COVID-19 pandemic impacted the board's ability to meet. I also understand the complication that resulted from a change of directors. Still, the amount of time it took the board to approve meeting minutes fairly gives rise to concerns of the Applicant.

[20] Minutes of board meetings inform unit owners about the decisions their board makes. They are a record owners are entitled to. Rarely should a condominium need more than a year to approve board meeting minutes. It is reasonable for a unit owner to have concern about record keeping and decision making when that is the case. The Respondent could have better communicated the situation to the Applicant in the interest of transparency.

[21] The Applicant received the minutes in question during Stage 2 – Mediation. While I accept that the Applicant felt they had to file this case, they did not have to bring the case to a Stage 3 hearing to receive the minutes. I award the Applicant their filing fees for Stage 1 – Negotiation and Stage 2 – Mediation only. A total of \$75.

**D. ORDER**

[22] In accordance with Section 1.44(1)4 of the *Condominium Act, 1998*, the Tribunal Orders the Respondent to pay \$75 of the Applicant's filing fees. If this full amount is not provided to the Applicant within 30 days of this Order, the Applicant is entitled to set-off the amount against the common expenses attributable to the Applicant's unit(s) as set out in Section 1.45(3) of the Act.

Released on: October 14, 2021