CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 10, 2023
CASE: 2022-00254N
Citation: Toronto Standard Condominium Corporation No. 2804 v. Micoli et al., 2023 ONCAT 21

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

Member: Michael Clifton, Vice-Chair

The Applicant,
Toronto Standard Condominium Corporation No. 2804
Represented by Jonathan Miller, Counsel

The Respondents,
Frank Micoli
Represented by Adelina Micoli, Agent

Ilan Philosophe
Represented by Jonathan Roth, Counsel

Hearing: Written Online Hearing – October 25, 2022 to January 19, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Respondent, Ilan Philosophe, is the tenant of a unit in the Applicant condominium corporation. The unit is owned by the Respondent, Frank Micoli. Mr. Micoli and his representative, Adelina Micoli, barely participated in these proceedings.

[2] The Applicant provided evidence of several complaints from other residents of the condominium, and numerous incident reports filed by security staff at the condominium, pertaining to Mr. Philosophe and another resident of the unit identified as Ms. Caroline Hermann. The issues ranged from the nuisance or annoyance of objects being left in the hallway, disruption or annoyance of staff, breach of various rules or standards relating to handling of condominium property, non-compliance with the condominium's COVID-19 regulations, to frequent, significantly noisy incidents both in their unit and on the common elements that were serious enough to cause significant concern amongst their neighbours.

[3] The provisions of the condominium's governing documents that the Applicant states pertain to the incidents in this case are sections 16(a) and 16(b) of the

declaration, and Rule 6 of the rules, which read as follows:

> Declaration, Section 16(a)
>
> *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 or that may result in the cancellation or threat of cancellation of any policy of insurance referred to in the Declaration or in such a manner as to lead to a breach by any Owner or by the Corporation of any provision of any easements or rights registered against the property or any zoning by-law respecting such Units or any provision of the Easement and Cost Sharing Agreement. In the event the use made by any Owner of his Unit results in any premiums of any insurance policy insuring the interest of the Corporation being increased or cancelled, such Owner shall be liable to pay to the Corporation all of such increase in premiums payable as a result thereof, or shall be liable to pay to the Corporation all other costs or expenses it incurs as a result thereof.*
>
> Declaration, Section 16(b)
>
> *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, the Easement and Cost Sharing Agreement and any rights and easements registered against the property.*
>
> Rule 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.*

[4] The evidence of the Applicant relating to Mr. Philosophe's violation of these provisions is credible, consistent, and fulsome. Mr. Philosophe's counsel raised objections to some of the Applicant's evidence, but such concerns were not sufficient to prevent my reaching the conclusion that Mr. Philosophe and his co-resident, Ms. Hermann, are a highly disruptive presence in the condominium, causing nuisances that unreasonably interfere with and disturb the comfort or quiet enjoyment of other residents and the condominium's staff.

[5] The Applicant also cites the duty of the Respondent, Mr. Micoli, to indemnify it under sections 9 and 29 of the declaration, which state, respectively,

> *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.*

and

> *Each Owner shall indemnify and save the Corporation harmless from any loss, costs, damage, injury or liability which the Corporation may suffer or incur resulting from or caused by any act or omission of such Owner, or any resident, tenant, invitee or licensee of his Unit, to or with respect to the common elements or to any Unit or any part of the Building, except for any loss, costs, damage, injury or liability insured against by the Corporation and for which insurance proceeds are in fact payable. Each Owner shall also indemnify and save the Corporation harmless from any loss, costs, damage, injury or liability which the Corporation may suffer by reason of any breach of any Rules or by-laws in force from time to time by any Owner, his family, guests, tenants, licensees, invitees, customers or occupants of his Unit. All payments to be made by any Owner pursuant to this Section are deemed to be additional contributions toward the common expenses payable by such Owner, and are allocated and recoverable as such.*

[6] Mr. Philosophe says that he intends to vacate the unit in the near future. It will likely be better for all parties that he does. In the meantime, for the reasons set out below, I order that Mr. Philosophe cease all disruptive, noisy, annoying, and nuisance-causing conduct both while in his unit and while anywhere else on the condominium property. I further order that Mr. Philosophe ensure that any co-resident of his unit, including but not limited to Ms. Hermann, conduct themselves likewise. I also order that Mr. Micoli comply with his statutory obligation to take all reasonable steps to ensure that Mr. Philosophe and any other resident of his unit conduct themselves in accordance with the condominium's declaration and rules and these orders, as required by the *Condominium Act, 1998* (the "Act"). I award costs and compensation in favour of the Applicant, which was wholly successful in this case.

B. PRELIMINARY ISSUES

[7] Mr. Philosophe made two requests to adjourn this hearing. The first, made on November 8, 2022, was based upon an assurance that he intended to vacate the unit at some point in the near future. Mr. Micoli's representative supported this request, so long as Mr. Philosophe would enter into an N11 form of agreement to vacate the unit by the end of February 2023. This was the only apparent participation in these proceedings by or on behalf of Mr. Micoli. On November 9, 2022, I informed the parties that Mr. Philosophe's reasons did not present a sufficient ground for adjournment.

[8] Mr. Philosophe's second request for adjournment was made just a few hours after

I provided that ruling on November 9, 2022. The second request related to an incident that occurred at the condominium in October 2022, during an earlier stage of the CAT proceedings in this case. Mr. Philosophe's counsel advised that, as a result of that incident, criminal charges were laid against Mr. Philosophe. He cited concern that his client's rights in relation to those charges could be violated by the continuation of these proceedings. I determined that there was no legal reason to delay or discontinue these proceedings, as Mr. Philosophe's counsel had contended. I ordered that any evidence and submissions about or relating directly to that incident would be prohibited in these proceedings and would not form part of the case record. The parties have complied with this direction, and I have not admitted into evidence any items directly pertaining to the incident in question. After this second adjournment request, I advised Mr. Philosophe and his counsel that it would likely serve to expedite this case if they focussed on presenting a cogent defence against the Applicant's allegations, rather than making further efforts to delay the proceedings. No further requests for adjournment were made.

C. EVIDENCE & ANALYSIS

[9] The parties do not disagree on the validity of the condominium's governing documents, or that it is appropriate for the condominium to seek to reasonably enforce the provisions at issue in this case. The dispute in this case is solely about whether, on a balance of probabilities, such enforcement is justified on the facts of this case, and what orders of this Tribunal should follow from the determination of that question. In my analysis of that issue, I do not expressly refer to each individual submission or item of evidence. Though some are particularly described, I have given due regard to each alleged fact and argument presented by the parties in reaching my conclusions here.

[10] Mr. Philosophe moved into the unit in July 2021. In short order, there were incidents relating to his conduct that caused nuisances, annoyances, or disruptions for other residents and the condominium's staff. This began with Mr. Philosophe leaving containers of food and other debris in the hallway of the condominium. At least four security incident reports relate to such issues within the first two months of Mr. Philosophe's occupancy. Soon, there were also issues relating to noisy disturbances in Mr. Philosophe's unit and complaints that he treated condominium staff as his personal delivery service, rather than coming to the lobby of the building himself to pick up food deliveries when they arrived.

[11] The condominium, through its condominium manager, wrote to Mr. Philosophe in September 2021, stating it had received numerous resident complaints regarding cardboard boxes, waste materials, and food deliveries being left outside the unit door in the common element hallway, and some noise incidents. The letter instructed Mr. Philosophe to cease the conduct and that staff would no longer be delivering food packages or disposing of waste on his behalf. The condominium charged a fee of $100 for cleaning services provided up to that time.

[12] In the weeks that followed, the condominium's security staff recorded numerous

further incidents of noisy disturbances coming from the Respondent's unit. On November 11, 2021, the condominium's legal counsel delivered further letters to Mr. Philosophe and to Mr. Micoli, outlining the complaints and concerns. The letters cited the "foul smells and tripping hazards" due to items left in the hallways, and "excessive noise" coming from the unit. The noise incidents included "loud and excessive screaming, yelling, shouting, arguing, swearing, throwing items, banging, and slamming noises." Among the dozen incidents specifically described in the letters was an occurrence where Ms. Hermann, "verbally abused the concierge when told that a food delivery would not be brought up to the unit." The Applicant's counsel described this as part of "a consistent pattern of abuse and aggression toward Corporation staff."

[13] If such incidents and conduct had then ceased, this case would likely not have come before the Tribunal. However, since November 11, 2021, and despite further warnings and requests for compliance, the condominium's security staff have recorded approximately 30 additional incidents and received several complaints from residents. Such records indicate a continuous and somewhat escalating series of disruptive conduct, though a few of the incidents (such as failing to comply with rules relating to courtesy and cleanliness in the condominium's gym) might be viewed as relatively innocuous if they were not part of an ongoing pattern of disturbing and inconsiderate behaviour. I note that the evidence submitted in this case includes not only staff's incident reports, but also copies of written complaints from other residents, the witness statements and examination of Karl Wightwick, a supervising member of the condominium's security staff, and of Jean Deschenes, a member of the condominium board, a video recording in which excessive noise including argumentative yelling is heard coming from within the Respondent's unit, and video evidence of one incident of highly aggressive, threatening conduct by Mr. Philosophe and Ms. Hermann toward the condominium's staff which occurred during the course of these proceedings.

[14] The Applicant notes that despite being informed of all these issues, it appears that the Respondent, Mr. Micoli, has taken no steps to obtain his tenant's compliance or to have him evicted from the property. They state that "he relies on the Corporation to prosecute this Application for his benefit" and is otherwise complacent with respect to his ownership responsibilities. In the absence of any contrary evidence or submissions from Mr. Micoli or his representative, I accept the Applicant's statements in this regard.

[15] Mr. Philosophe's counsel contends that the Applicant is wrongfully using this Tribunal in a "punitive" manner in order to "force the Tenant out of his residence". He suggested that the entire case is "motivated by animus toward the Tenant stemming from an initial altercation" with one staff member of the condominium.

[16] Details of this alleged altercation were not provided, and the Applicant denies it is the case; however, it is consistent with the pattern of conduct and incidents revealed in the evidence overall to accept that there might have been some initial incident between Mr. Philosophe and a staff member. I note that in letters written

by Mr. Philosophe's counsel to counsel for the condominium in November and December 2021, he makes the same allegation that there is "a personal animus" or "personal vendetta" against Mr. Philosophe on the part of "one or more of [the condominium's] agents". Again, details are not set out in the letters, but it is reasonable to accept that some actual event might underlie those suggestions. However, given the preponderance of the evidence of aggressive, disrespectful, discourteous, and disruptive conduct by Mr. Philosophe and Ms. Hermann over a period that extends well past whatever early incident might be being referenced, the allegation that the entire case is motivated solely by such alleged animus is not persuasive and does not in any event provide a reasonable defence against the allegations in this case.

[17] Counsel for Mr. Philosophe also identified several concerns relating to the evidence produced by the Applicant, particularly the staff incident reports which formed the vast majority of it. He compared the evidence to "a house of cards" that could be "collapsed on the slightest scrutiny". I have considered each of those concerns, which are addressed in the following eight paragraphs of this decision.

[18] First, Mr. Philosophe's counsel alleged that much of the evidence contained mainly "hearsay (in some cases double or triple hearsay)" and was therefore not reliable. However, on review of the documents and the answers provided by the Applicant's witness, Mr. Wightwick, when cross-examined by Mr. Philosophe's counsel, it appears that most incident reports include some first-hand knowledge of the matters described and most of them were also subject to what appears to have been a reasonably objective secondary investigation of the facts that were reported.

[19] Counsel further complained that such incident reports were often generated on the initiative of staff themselves and were not produced on the basis of a complaint or concern expressed by another resident of the building. Whether reports are generated on the initiative of the condominium staff does not, in and of itself, undermine their probable veracity or credibility. In this case it is particularly understandable if some reports were generated in this way, given that a number of incidents solely involved Mr. Philosophe and/or Ms. Hermann and staff. In this regard, the fact that staff generated some reports on their own initiative based on their own direct experiences would appear to contradict counsel's suggestion that the incident reports were mainly based on hearsay.

[20] In relation to the investigation of the reported incidents, counsel complained that in all cases Mr. Philosophe himself was not interviewed to confirm or correct the description of the events. This appears to be true but does not undermine their credibility. Further, Mr. Philosophe has had the opportunity in these proceedings to rebut the evidence in the reports, yet I find he has not been able to demonstrate that, on a balance of probabilities, they are inaccurate or not credible.

[21] Counsel correctly noted that occasionally the incident reports themselves demonstrated that a resident's complaint was not verified. Not only is this correct

but it increases the probability that the reports overall are fair and reasonably objective records of what staff actually observed, rather than motivated by an "animus" or "vendetta" against Mr. Philosophe, as his counsel contended. This, of course, bolsters the credibility of those reports in which complaints are verified, which are substantially greater in number than those in which they are not.

[22] Counsel also correctly noted that some complaints seem exaggerated. Counsel cited as a particular example the allegations relating to a mess left by Ms. Hermann in the condominium's gym facilities, which video evidence suggested was in fact relatively minor (though I note that the video evidence neither supports nor disproves the allegation that she neglected to sanitize the equipment after use). As I have already suggested, while these complaints provide evidence of a breach of the condominium's rules, the incidents in and of themselves are relatively innocuous. In this case, it is not their individual significance (or lack thereof) that justifies their inclusion; it is the fact that they are evidence of a pattern of annoying and disruptive conduct that unreasonably interferes with the comfort and quiet enjoyment by other residents of the condominium property. It is this persistent pattern of misconduct – a pattern described by the Applicant's counsel as "chronic" – that brings the parties before this Tribunal.

[23] Mr. Philosophe's counsel also raised the concern during his cross-examination of Mr. Wightwick that certain other of the incident reports included in the Applicant's evidence did not, in fact, relate to a breach of the condominium's declaration or rules. These included a couple of incident reports relating to violations of a trespass order that the condominium had issued against Ms. Hermann, and one that describes Ms. Hermann phoning the building concierge to have them determine for her whether Mr. Philosophe or his vehicle were on the property. Counsel correctly suggests that these do not constitute matters that fall within this Tribunal's jurisdiction.

[24] Though no tally was provided by Mr. Philosophe's counsel, based on my own review of the documents it appears that considering all the incident reports that indicate a complaint was not verified, or do not deal with a matter within the Tribunal's jurisdiction, or that seem on their face to be exaggerated, the overall number of valid, relevant, and persuasive incident reports is not significantly reduced.

[25] Another observation by Mr. Philosophe's counsel is that some incidents described in the reports (such as the complaint relating to misplaced and unsanitized gym equipment) relate more to the conduct of Ms. Hermann than Mr. Philosophe. This observation is not relevant. The Applicant was not required to name Ms. Hermann as a party in this case, and counsel for Mr. Philosophe appears not to consider the facts that the conduct of a secondary resident or guest of a unit may be the responsibility of the primary resident or tenant, and that, in any event, the conduct of both residents is the responsibility of Mr. Micoli as the owner of the unit. That some of the incidents are about Ms. Hermann's conduct in particular and not Mr. Philosophe's does not reduce or resolve the allegations against him or diminish

the relevance of such incidents to this case.

[26] In addressing more substantive aspects of the case, counsel for Mr. Philosophe stated that his client has been treated as a “second class resident”. This claim includes not just the alleged “vendetta” and “animus”, for which no specific evidence was provided, but also the fact that the condominium made a decision to no longer take food deliveries to the Respondent’s unit, which Mr. Philosophe’s counsel claimed was an ordinary service granted to other residents. The Applicant’s witness, Jean Deschenes, clarified, however, that staff would only provide this service when it was convenient for them to do so and that it was not a regular part of their job description. I also find that the frequency with which such deliveries to Mr. Philosophe’s unit were left for long periods in the hallways, causing odour and obstacles affecting other residents, and the frequency with which staff was required to clean up boxes and delivery items that were afterwards left by the Respondents, provide a reasonable justification for the condominium’s decision. Rather than suggesting that Mr. Philosophe and Ms. Hermann were being treated as “second class” residents, the evidence in this case demonstrates that they exhibited an inappropriate sense of entitlement and treated both staff and their neighbours with disdain and disrespect.

[27] Counsel also initially argued that the incidents described in the Applicant’s evidence did not “rise to the level required for a breach” of the condominium’s declaration or rules. He argued that the “sporadic instances of arguments or music playing… have not *unreasonably* interfered with other residents’ use and enjoyment of the common elements or other units” (emphasis in the original). Based on the evidence, including other residents’ complaints and videos of the kind of issues complained of, I cannot agree with this conclusion. The nature of the noise related incidents in particular, which typically took place late at night when other residents were trying to sleep, were not the kind of regular, day-to-day sounds that neighbours in a multi-unit property should reasonably be expected to tolerate. The nature and repetitive occurrence of the other nuisances complained of, and the repeated cases of aggressive, disrespectful conduct toward condominium staff, likewise do not constitute a level of interference that should be considered to be reasonably acceptable.

[28] Mr. Philosophe’s counsel also stated, in the alternative, that although noise complaints might have been valid, the evidence did not demonstrate Mr. Philosophe’s “obstinance” since it appears that, when requested by condominium staff to reduce noise, he typically did so. To the contrary, acquiescence after a request is made – aptly described by Applicant’s counsel as compliance performed “for the minimum amount of time to satisfy security in the moment” – does not demonstrate compliance. Mr. Philosophe’s obstinate non-compliance is, instead, demonstrated by the frequent recurrence of excessive noise over the course of his tenancy, which made such repeated requests necessary.

[29] Lastly, counsel submitted that the decreasing frequency of reported incidents over time suggests Mr. Philosophe “has taken proactive steps to comply with – and has

substantially complied with – the Applicant's Declaration and rules as they concern noise." It appears that the number of reported incidents has decreased since the first six months of Mr. Philosophe's tenancy; however, this reduction does not suggest substantial compliance. Despite such reduction, the causes for complaint have been ongoing and are unchanged in character (other than to note that it appears the intensity of the conduct complained of has increased). It by no means follows that a reduction in the frequency of incidents, in and of itself (no other supporting evidence was given), proves that "proactive steps" toward compliance are being taken, any more than a temporary lull in the weather guarantees that the storm has passed.

[30] Based on the evidence and submissions before me, I find that the Respondents, Mr. Philosophe and Mr. Micoli, have created or permitted the creation of noise and other nuisances that disturb the comfort and quiet enjoyment of the units or common elements by other owners and residents of the condominium, contrary to the cited provisions of the Applicant's declaration and rules.

[31] I therefore order that the Respondent, Ilan Philosophe, immediately cease from all conduct, both within his own unit and either in or with respect to the common elements, that creates noises and other nuisances interfering with other unit owners' and residents' ordinary use and enjoyment of the condominium property. I further order that he take reasonable steps to ensure that each other resident or guest of his unit complies with the same standard for conduct on the property. I also order that Frank Micoli comply with his obligations as a condominium unit owner to take all reasonable steps to ensure that every resident or guest of his unit comply with these standards and with the governing documents of the condominium generally.

D. COSTS & INDEMNIFICATION

[32] As noted above, the Applicant seeks indemnification from Mr. Micoli under sections 9 and 29 of the condominium's declaration due to his failure to take reasonable steps to manage the non-compliant conduct of his tenant. The Applicant also seeks costs of these proceedings from both Respondents. In total, the Applicant seeks recovery of over $45,000, including legal fees, tax, and disbursements, based upon a submitted bill of costs.

[33] It is by now a trite observation that, under s. 1.44 (1) 4 of the Act and the Tribunal's rules, a successful party is entitled to reimbursement of its Tribunal fees. The Applicant has been entirely successful in this case and is entitled to a costs award of $200, which I award as a joint and several liability of the two Respondents.

[34] It is also generally well understood that the Tribunal will not award reimbursement of legal fees to any party but may elect to do so upon consideration of the factors set out in the Tribunal's rules and its practice direction, "Approach to Ordering Costs," which came into effect on January 1, 2022. I have considered such factors and, for the reasons set out further below, I order that the Respondent, Mr. Micoli,

shall pay additional costs under s. 1.44 (1) 4 to the Applicant in the amount of $8,551.50.

[35] The Tribunal may also make an order under s. 1.44 (1) 3 of the Act "directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of $25,000 or the amount, if any, that is prescribed." Further, s. 1 (1) (d) (iv) of Ontario Regulation 179/17 grants the Tribunal jurisdiction over provisions in a condominium's declaration, by-laws, or rules that govern indemnification regarding disputes relating to noise, nuisances, and other matters. Based upon these provisions and the reasoning below, I order the Respondents, Ilan Philosophe and Frank Micoli, jointly and severally, to pay compensation to the Applicant in the amount of $18,239.60.

Applicant's Bill of Costs

[36] Before explaining my reasoning for the awards stated above, it may help to provide a brief description of the Applicant's bill of costs.

[37] The bill of costs categorizes the legal expenses incurred by the Applicant in relation to this case into five chronological stages:

1. File Opening and First Demand Letter (October 16, 2021 to November 10, 2021);

2. Discussions with Opposing Counsel and Preparation of CAT Application (November 11, 2021, to April 20, 2022);

3. CAT Stage 1 (April 21, 2022, to June 27, 2022);

4. CAT Stage 2 (July 5, 2022, to October 20, 2022); and

5. CAT Stage 3 (from October 24, 2022).

[38] In total, the bill of costs describes over 128 hours' work relating to this case. Of that time, over 53 hours pertain to these Stage 3 proceedings alone. The balance of work done between October 16, 2021, and October 20, 2022, was about 75 hours.

[39] The work was performed by four lawyers and one articling student. Three of the lawyers may be considered senior counsel, two of them having nearly 20 years' practical experience each. The majority of work is done by the least senior of those three, comprising over 93 hours. About 3 hours was performed by junior counsel, and just under 10 hours by an articling student. Their billing rates range from $120 to $450 per hour.

[40] The work involved in the case includes review and drafting of correspondence, consultation with the client, review of evidence, legal research, preparation for and

participation in these Tribunal proceedings, and the preparation and issuance of a trespass order against Ms. Hermann. However, the bill of costs does not specify with any detail what amount of time was spent on each of these different types of work. For example, I cannot determine from the bill of costs the time spent on legal research versus time spent in correspondence with opposing counsel.

[41] The total cost of the legal services covered by the bill of costs, including taxes and disbursements, is $45,163.92. Mr. Philosophe's counsel has stated he finds the amounts set out in the bill of costs excessive. Overall, I agree, though, as I note below, this seems more particularly so in relation to the time spent on the Stage 3 proceedings than on the balance of the case.

Award for Compensation Under s 1.44 (1) 3

[42] For the purposes of awarding compensation, I have not considered the amounts incurred for Stage 3, as these are dealt with separately in my costs order below.

[43] Sections 9 and 29 of the declaration of the condominium place full responsibility to indemnify the condominium on the shoulders of the owner of the unit. As summarily written in section 9,

> *…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.*

[44] I find it is appropriate to hold Mr. Micoli responsible to indemnify the Applicant in accordance with the basic intent of these provisions. However, given that the conduct complained of was caused by Mr. Philosophe and his co-resident, Ms. Hermann, it is not fair to hold Mr. Micoli solely responsible for that indemnification. Relying on s. 1.44 (1) 3 of the Act, I am not restricted to making an order for compensation only against Mr. Micoli based on the indemnity clauses in the declaration. I therefore order that both Respondents are jointly and severally required to compensate the Applicant. The remaining question to be determined is what amount should be paid by them.

[45] For the purposes of awarding compensation, a key consideration is whether the costs incurred are reasonably described as arising "as a result of" the Respondent's non-compliance. With respect to compensation for legal expenses, this requires consideration of the proportionality of those expenses to the case and issues at hand. As noted above, more than 75 hours' legal work was incurred during the period of about one year between the start of counsel's involvement in this case and the commencement and completion of up to Stage 2 of these Tribunal proceedings. A small percentage of this time involved the junior lawyer or articling student; the vast majority of the work was performed by more senior counsel. The cost of this work was $28,060.92.

[46] The Applicant's bill of costs does not help me to determine exactly how time and costs were allocated amongst the various activities carried out by Applicant's counsel. It is therefore challenging to offer a precise assessment of their proportionality to the issues in the case. However, I note that such issues were not legally or factually complex. The efforts by Mr. Philosophe's counsel, when responding to the Applicant's initial demand letters, to complicate things with claims of victimhood on behalf of his client should not have significantly impacted the time or work required to assess the legal issues and determine the path forward for obtaining compliance. For these reasons, I do not find it appropriate to award full compensation to the Applicant of all amounts claimed in its bill of costs.

[47] In addition, though the Applicant states the trespass order against Ms. Hermann was part of their strategy to encourage compliance, I find it does not arise in a direct, rational, or necessary sense from the Respondents' actions and therefore should also be excluded from consideration for compensation. However, as the bill of costs mingles the amounts associated with it and time and fees relating to other activities that are appropriate for compensation, I cannot make a precise distinction between them.

[48] Due to the lack of certainty in the bill of costs, and weighing the principles of proportionality and causality, I award compensation in favour of the Applicant in the amount of $18,239.60, which is equal to just 65% of the amounts claimed in its bill of costs for the first four periods of legal services. This amount is required to be paid by the Respondents jointly and severally.

Further Costs Awarded Under s. 1.44 (1) 4

[49] A costs award under s. 1.44 (1) 4 of the Act relates only to the costs of Tribunal proceedings. It is not compensatory with respect to any other costs or damages incurred by the parties. In the Applicant's bill of costs, the only amounts that clearly relate solely to these proceedings are the amounts described as pertaining to Stage 3, which total $17,103.

[50] The Applicant states that over and above its Tribunal fees, it should be entitled to full recovery of those legal fees on the following bases:

1. Mr. Micoli's "laissez-faire" attitude toward the complaints about his unit's residents. The Applicant argues that if Mr. Micoli had been duly engaged in seeking his tenant's compliance, it is possible that this case would have been avoided. The Applicant notes that Mr. Micoli did commence an application at the CAT but failed to pursue it.

2. Mr. Philosophe's persistent misconduct despite multiple warnings and requests for compliance. The Applicant views Mr. Philosophe's conduct as wilful and expressing no courtesy or regard for his obligations to the condominium and his neighbours. The Applicant also cites the "physical

intimidation and threats" made by Mr. Philosophe and Ms. Hermann toward the condominium's staff as aggravating factors.

[51] The Applicant also noted Mr. Philosophe's two unsuccessful attempts to have these proceedings adjourned, describing them as unnecessary and unreasonable. They state,

> *When he was unsuccessful on his motions, the Tenant delivered a Notice of Appeal to the Divisional Court in an attempt to stay the proceedings. The motions and the appeal were all calculated to cause further delay in the proceedings. Notably, despite delivering the Notice of Appeal, the Tenant has not delivered any further documents with respect to the Appeal and appears to have abandoned it once the stay (the real relief he was seeking) was denied.*

[52] The Applicant cited the prior decisions of the Tribunal in *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48, and of the Ontario Superior Court of Justice in *Muskoka Condominium Corporation No. 39 v. Kreutzweiser*, 2010 ONCS 2463 (CanLII). In each of these cases substantial costs were awarded because of the persistent misconduct of a respondent with respect to compliance. In the latter case, the court concluded (at paragraph 16),

> *No part of these costs should be borne by the respondent's neighbours who are blameless in this matter. The Corporation declaration provides that any owner is bound to indemnify the corporation for any loss occasioned by his or her action. For these reasons it is appropriate that the corporations costs be on a full recovery basis.*

[53] Mr. Philosophe's counsel predictably does not agree with the Applicant's position, as it relates to his client. He argues that, with respect to Mr. Philosophe, there is no reason to deviate from the general principle that the Tribunal will not award legal fees, since his client took the proceedings seriously and participated in them reasonably. I agree that Mr. Philosophe's participation in these proceedings, as represented by counsel, was not inappropriate or disruptive.

[54] With respect to Mr. Philosophe's motions for adjournment and the subsequent appeal, his counsel states that despite initially seeking to appeal my decision not to grant the second request for an adjournment, Mr. Philosophe "respected that decision and properly abandoned the appeal". Whether or not these statements are true, the Respondent was entitled to bring those motions, and though I found that they did not present adequate grounds for adjournment, they did not prolong or complicate these proceedings to an extent that would justify imposing costs. The Respondent was also within his rights to appeal my ruling.

[55] Not all arguments put forward by counsel for Mr. Philosophe were as persuasive. He argued that the Applicant had "waived" the entitlement to seek costs from Mr. Philosophe because of earlier statements suggesting the Applicant sought costs only from Mr. Micoli. Even if the intention of such statements was to forfeit a right

of recovery from Mr. Philosophe, my discretion to award costs would not be bound by such statements. He also alleged that the Applicant did not negotiate a settlement in good faith during Stage 2 of the CAT proceedings. Counsel's submissions on this point likely disclosed more information about the Stage 2 proceedings than is appropriate, but, in any event, I do not find that the positions attributed to the Applicant fall outside of the range of what would be reasonable given the facts and outcome of this case. Neither of these arguments has influenced my decision that Mr. Philosophe should not be required to pay the Applicant's costs of these proceedings.

[56] Based on the foregoing considerations, I find no grounds under the Tribunal's rules or practice direction that justify a costs award against Mr. Philosophe other than the award for reimbursement of the Applicant's Tribunal fees. However, I find there is at least one reason that higher costs may be awarded against Mr. Micoli.

[57] A factor cited in the Tribunal's practice direction on costs is whether and how parties attempted to resolve issues before costs were incurred. The unrefuted testimony of the parties is that Mr. Micoli failed to take any reasonable steps to address the issue of his tenant's long-standing non-compliance. He may have commenced a CAT case against Mr. Philosophe but did not continue it. He was barely involved in these proceedings. There is no other evidence of any attempts by him to intervene, assist, or otherwise seek to resolve issues caused by his tenant's non-compliance. While his almost complete non-participation in these proceedings did not directly complicate or prolong them, it is reasonable to consider that his lack of reasonable efforts to address his client's misconduct placed the entire burden of enforcement, including the costs of this case, on the shoulders of the Applicant – or, in other words, on the shoulders of all of the other owners in the condominium – and that it would be fair and appropriate for him to bear a substantial portion of those costs.

[58] However, I find that this case was neither legally complex nor procedurally complicated. I also note that the majority of legal research, analysis of the case, and compilation of evidence would have been performed at earlier times and such tasks should not have contributed significantly to the time spent on these Stage 3 proceedings. Although, again, it is difficult to distinguish the time and costs associated with each separate activity carried out by Applicant's counsel, the time spent at this stage does appear more significantly disproportionate with the requirements of the case than time spent during the earlier periods of work described in the bill of costs.

[59] For all these reasons, I order that Mr. Micoli pay, as costs, the amount of $8,551.50, which is 50% of the amount the Applicant claims in its bill of costs for its work relating to these Stage 3 proceedings.

E. ORDER

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

1. The Respondent, Ilan Philosophe, shall immediately cease from all conduct, both within his own unit and either in or with respect to the common elements, that creates noises and other nuisances interfering with other unit owners' and residents' ordinary use and enjoyment of the condominium property contrary to the declaration and rules of the condominium – including, for clarity and without limiting the generality of the foregoing:

    a. that Mr. Philosophe shall not commit or cause loud arguments, yelling, swearing, slamming of doors, or throwing and banging of objects in his unit or on the common elements; and

    b. that Mr. Philosophe shall not leave delivery items (whether food or otherwise), boxes, waste, or any other items whatsoever, anywhere in the common passages, including hallways, and shall promptly pick up and dispose of such items himself without imposing upon staff of the condominium; and

2. Mr. Philosophe shall from this time take reasonable steps to ensure that each other resident or guest of his unit complies at all times with the same standards and obligations that are set out in paragraph 1 of this order; and

3. The Respondent, Frank Micoli, shall comply with his obligations as a condominium unit owner to take all reasonable steps to ensure that every resident or guest of his unit complies with the governing documents of the condominium generally and, particularly but without limiting the generality of that requirement, the standards and obligations that are set out in paragraph 1 of this order; and

4. Mr. Micoli shall pay to the Applicant within 30 days of the date of this order costs in the amount of $8,551.50, under s. 1.44 (1) 4 of the Act and in accordance with the Tribunal's rules and practice direction on costs; and

5. Mr. Micoli and Mr. Philosophe are jointly and severally required pay the Applicant the following amounts within 30 days of the date of this order:

    a. Compensation in the amount of $18,239.60 under s. 1.44 (1) 3 of the Act; and

    b. Costs in the amount of $200 under s. 1.44 (1) 4 of the Act.

Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: February 10, 2023