

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 4, 2024

CASE: 2023-00402R

Citation: Nash v. Oxford Standard Condominium Corporation No. 142, 2024 ONCAT 3

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

Member: Jennifer Webster, Member

The Applicant,

Brian Nash

Self-Represented

The Respondent,

Oxford Standard Condominium Corporation No. 142

Represented by Cedric Tomico, Agent

Hearing: Written Online Hearing – September 22, 2023 to December 4, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] Mr. Brian Nash (the “Applicant”) is a unit owner and former board member of Oxford Standard Condominium Corporation No. 142 (“OSCC 142”). He brings this application to the Tribunal alleging that OSCC 142 failed to respond to his June 5, 2023 request for records and refused without reasonable excuse to provide him with a copy of the records.

[2] In his request for records, Mr. Nash sought the following records:

- Record of owners and mortgagees;
- Periodic Information Certificates from the past 12 months;
- Record of notices relating to leases of units under s. 83 of the *Condominium Act, 1998* (the “Act”);
- Most recent approved financial statements; and
- Minutes of Board meetings held between November 2022 and June 5, 2023

(the date of the request for records).

- [3] Village Property Management (“VPM”) was the condominium management provider for OSCC 142 when Mr. Nash submitted his request for records. VPM responded to the request on July 7, 2023, requesting more time to respond. After Mr. Nash agreed to the extension, VPM provided a response on July 12, 2023. VPM did not use the mandatory board response form for its response to Mr. Nash. With this response, VPM delivered an operating budget for OSCC 142, but it provided no other records requested by Mr. Nash.
- [4] During Stage 2 – Mediation, OSCC 142 provided the Applicant with some additional records in response to his request. These records did not include any financial statements. However, during the hearing, OSCC 142 responded to Mr. Nash’s request for the most recent approved financial statements by uploading an unaudited financial report for the year ending June 30, 2023.
- [5] Mr. Nash submits that OSCC 142 has refused to provide records without a reasonable excuse and that the records provided are not adequate records. He requests that the Tribunal impose the maximum penalty of \$5000 against OSCC 142 for its refusal to provide records without a reasonable excuse. He also seeks a declaration that OSCC 142 is not keeping adequate records and an order requiring OSCC 142 to reimburse his Tribunal filing fees of \$200.
- [6] OSCC 142 does not dispute that Mr. Nash is entitled to the records he requested. However, it states that, due to extenuating circumstances related to Mr. Nash’s departure from the board and issues with its condominium management provider, it was not able to promptly respond to the request for records. OSCC 142 submits that it has now provided all the records that it is able to provide and that it did not refuse access to records without reasonable excuse. Therefore, OSCC 142 opposes an order for a penalty.
- [7] The issues to be decided are:
1. Has OSCC 142 provided all the requested records?
 2. Are the records provided by OSCC 142 to Mr. Nash adequate records?
 3. If OSCC 142 has not provided all the requested records, was the refusal to provide them without reasonable excuse?
 4. Should a penalty be imposed against OSCC 142?
 5. Should costs be awarded?

B. ISSUES & ANALYSIS

Has OSCC 142 provided all the requested records?

- [8] Mr. Nash requested five groups of records in his request. The parties made no submissions to me about his request for the Periodic Information Certificates, and I have no evidence about whether he received these records. More particularly, Mr. Nash is not seeking an order about the Periodic Information Certificates. Therefore, I will only consider whether OSCC 142 has provided the four other records to Mr. Nash.
- [9] It is clear that OSCC 142 has provided the record of owners and mortgagees, record of notices of leases, and all available minutes of board meetings. However, Mr. Nash disputes whether OSCC 142 had responded to his request for the most recent approved financial statements.
- [10] Mr. Nash acknowledges that he received financial statements for September, October and November 2022 when he was a member of the OSCC 142 board. He states that he found errors in these financial statements and that he resigned from the board on January 23, 2023 partly as a result of his concerns about the financial statements.
- [11] OSCC 142 submits that approved financial statements were not available at the time Mr. Nash made his request for records. Mr. Cedric Tomico, the president of OSCC 142, described that there were issues with the accounting work performed by VPM and no financial statements were available. OSCC 142 provided a witness statement from Judy Armstrong, the condominium manager for VPM. In this statement, Ms. Armstrong stated that VPM was entirely responsible for the failure to complete financial statements due to issues with the accounting companies it had hired. In July 2023, OSCC 142 ended its contract with VPM and entered a contract with G3 Property Solutions to provide condominium management services. G3 Property Solutions started its review and preparation of financial statements shortly after it was retained by OSCC 142 and produced an unaudited financial report for the year ending June 30, 2023, in November 2023.
- [12] During the hearing, OSCC 142 provided the unaudited financial report that was prepared by G3 Property Solutions. This report included a balance sheet, an operating income statement, bank reconciliations and an accounts receivable report.
- [13] I note that Mr. Nash's request for the most recent approved financial statements was a request for a core record. The core record is not a monthly financial

statement, but the annual financial statement that is approved by the board under section 66(3) of the Act. Although it may be that OSCC 142 will review and approve the financial report prepared by G3 Property Solutions in November 2023, it has not yet done so. I have no evidence about the date of the most recent approved financial statements, but I assume that Mr. Nash received and participated in the approval of the financial statements for the year ending June 30, 2022, given that he was a member of the board from April 2022 to January 2023, Therefore, based on the evidence before me, I do not conclude that OSCC 142 has failed to provide the most recent approved financial statements to Mr. Nash.

Are the records provided by OSCC 142 to Mr. Nash adequate records?

[14] Section 55 (1) of the Act requires that a condominium corporation keep adequate records. The question of what constitutes an adequate record has been considered in several court and Tribunal decisions. In *McKay v Waterloo North Condominium Corp. No. 23*, 1992 CANLII 7501 (ONSC), (“McKay”) the Court states:

The *Act* obliges the corporation to keep adequate records. One is impelled to ask – adequate for what? An examination of the *Act* provides some answers. The objects of the corporation are to manage the property and any assets of the corporation (s. 12 (1)). It has a duty to control, manage and administer the common elements and the assets of the corporation (s.12 (2)). It has a duty to effect compliance by the owners with the *Act*, the declaration, the by-laws and the rules (s. 12 (3)). Each owner enjoys the correlative right to the performance of any duty of the corporation specified by the *Act*, the declaration, the by-laws and the rules. The records of the corporation must be adequate, therefore, to permit it to fulfil its duties and obligations.

[15] Mr. Nash argues that the records provided by OSCC 142 are not adequate because they do not meet the standard of adequacy outlined in *McKay*. I will consider whether adequate records are being kept in relation to each record requested by Mr. Nash, with the exception of the Periodic Information Certificates.

Record of Owners and Mortgagees

[16] OSCC 142 provided a version of the record of owners and mortgagees to Mr. Nash during Stage 2 – Mediation and an updated version of this record during the hearing. Mr. Nash argues that the record is inadequate because it is missing some names and addresses, and it includes incorrect information. OSCC 142 submits that the record is as accurate as possible because it is compiled from the information supplied by the owners.

[17] A condominium corporation is required to maintain a record of owners and mortgagees under the Act. Section 46.1(3) of the Act describes that the record must contain:

- (a) the owner's name and the identification of the unit, if an owner, at any time, gives notice to the corporation in writing, setting out the owner's name and, in accordance with the regulations, identifying the owner's unit;
- (b) the owner's address for service if,
 - (i) an owner who has given the notice described in clause (a), notifies the corporation in writing, at any time, of the owner's name and address for service, including any change in the address for service, and
 - (ii) the owner's address for service is in Ontario;
- (c) the mortgagee's name, the identification of the unit and the mortgagee's address for service, if,
 - (i) a mortgagee, at any time, gives notice to the corporation in writing, setting out the mortgagee's name and, in accordance with the regulations, identifying the unit that is the subject of the mortgage,
 - (ii) under the terms of the mortgage, the mortgagee has the right to vote at a meeting of owners in the place of the unit owner or to consent in writing in the place of the unit owner,
 - (iii) the mortgagee notifies the corporation in writing of the right described in subclause (ii) and the mortgagee's address for service, including any change in the address for service, and
 - (iv) the mortgagee's address for service is in Ontario; and
- (d) any prescribed information.

[18] In both versions of this record submitted by OSCC 142, there is a list of owners' names, unit numbers, and addresses. Some of the entries also include phone numbers. Although Mr. Nash identifies that some of the information is missing or inaccurate, OSCC 142 maintains that the list is consistent with the information supplied by the owners. I have insufficient evidence to reach a conclusion on the accuracy of the entries on the list. I find that OSCC 142 is keeping an adequate record with respect to the record of owners and mortgagees.

[19] Mr. Nash further argues that OSCC 142 is failing to keep an adequate record of owners and mortgagees because there were differences between the two

versions, being the one uploaded in August, 2023 during Stage 2 – Mediation and the one uploaded in November, 2023 during Stage 3 – Tribunal Decision. I accept the explanation provided by OSCC 142 that the differences were caused by updates from owners. I do not find that the updating of the record between August and November 2023 is grounds for concluding that the record is not adequate.

Record of Notices relating to Leases under section 83 of the Act

- [20] Mr. Nash states that he received no records from OSCC 142 in response to his request for the record of notices relating to leases. OSCC 142 submits that this information was included in its record of owners and mortgagees and that it had indicated leased units on this record by highlighting these units in yellow.
- [21] Section 83(1) of the Act requires owners who lease their units or renew a lease to notify the condominium corporation that the unit has been leased, and to provide the corporation with the tenant's name, the owner's address, and a copy of the lease or renewal, or a summary. When an owner terminates a lease, they are required to notify the condominium corporation of the termination in accordance with section 83(2) of the Act.
- [22] Section 83(3) of the Act requires a condominium corporation to keep a record of the notices it receives under section 83(1) and 83(2) of the Act.
- [23] The record received by Mr. Nash does not meet the requirements of section 83(3) of the Act because it contains only a highlighted list of units that are leased units as part of a list of owners, without providing information about the type of notices and the date on which each notice was received. Therefore, I conclude that OSCC 142 is not keeping an adequate record of notices relating to leases.

Most Recent Approved Financial Statements

- [24] As described above, the most recent approved financial statements were not submitted as evidence in this hearing. Therefore, I make no finding with respect to the adequacy of this record.

Minutes of Board meetings from November 2022 to June 2023

- [25] Mr. Nash requested minutes of board meetings held between November 2022 and June 2023. He acknowledges that he received minutes of the meetings held in November and December 2022 in his capacity as a board member.
- [26] After Mr. Nash resigned from the board in January 2023, there remained two members on the board. VPM advised the OSCC 142 board that it could not

conduct any business until there were three board members. OSCC 142 relied on this advice and did not hold board meetings between February 2023 and June 2023. OSCC 142 now acknowledges that it was a mistake to rely on this advice. As soon as OSCC 142 understood that it could operate with two board members, it took action to change its condominium management company from VPM to G3 Property Solutions and to address the issues with its financial statements and other records.

- [27] In response to Mr. Nash's request for board meeting minutes, OSCC 142 provided minutes from February 2023 and a Notice to Directors in relation to a meeting that was proposed for April 3, 2023. The meeting proposed for April 3, 2023, was cancelled due to the board's belief that it could not operate without three board members.
- [28] Mr. Nash argues that the board continued to make decisions about the operation of the condominium corporation and that the board had an obligation to make such decisions at board meetings and to keep minutes of its meetings. He highlights section 32(1) of the Act which provides that no business may be transacted except at a meeting of directors at which a quorum of the board is present, and that section 32(2) of the Act indicates that a quorum of the board is a majority of the number of persons of which the board consists. Given that OSCC 142 has a board of three members, a majority of this number is two, and OSCC 142 did have quorum for meetings, despite not having three members of the board.
- [29] I accept that there are no minutes of meetings of the OSCC 142 board beyond the records it has provided to Mr. Nash, and that OSCC 142 cannot provide a record that does not exist. However, the Act requires that a board hold meetings to conduct its business and that a board keep adequate minutes of its meetings.
- [30] When considering the adequacy of board minutes, the Tribunal has adopted "a reasonably high standard of expectation for accuracy" in light of the "special place and purpose in helping to ensure that 'the affairs of the corporation and its board of directors are an open book to... the unit owners,' and in helping owners protect their 'unique interest in how the corporation is managed.'" (*Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, (2020 ONCAT 33)).
- [31] In *Mawji v. York Condominium Corporation No. 415*, 2021 ONCAT 72, the Tribunal summarized the principles outlined in its previous cases related to the adequacy of board meeting minutes, stating as follows:

These decisions establish that an adequate record of a board meeting is a document with sufficient detail to allow the owners to understand what is going

on this corporation, how decisions are made, when the decisions are made and what the financial basis is for the decisions.

- [32] The Tribunal found in *Mawji* that the board had conducted business without holding meetings, and it concluded that its minutes did not meet the standard of adequacy because the board's ad hoc decisions were not recorded in the minutes.
- [33] Similarly, the board of OSCC 142 has made decisions related to the business of the condominium corporation, particularly in relation to the change from VPM to G3 Property Solutions, and there are no minutes of any decisions from February 2023 forward. I find that OSCC 142 is not keeping adequate records in relation to its obligation to keep minutes of board meetings. I will order OSCC 142 to create a record of all decisions the board made outside of board meetings in 2023.

If OSCC 142 has not provided all the requested records, was the refusal to provide without reasonable excuse?

- [34] Section 1.44 (1) 6 of the Act states that the Tribunal may order the Respondent:

to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies ... if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

- [35] In this case, Mr. Nash submits that OSCC 142 has refused to provide records without a reasonable excuse. OSCC 142 argues that it relied on VPM to its detriment and has taken all reasonable steps to comply once it understood that it could conduct business with two board members. In addition, OSCC 142 states that it has provided all available records in response to Mr. Nash's request.
- [36] I do not find that OSCC 142 has refused Mr. Nash access to the records. Based on my review of the evidence and submissions, it is apparent that OSCC 142 has failed to keep adequate records due to inadvertence and a level of ignorance about the board's obligations under the Act. However, I do not find this equates to a refusal under s. 1.44(1) 6 of the Act.
- [37] Despite my conclusion that OSCC 142 has not refused records, I do find that it is not keeping adequate records, mostly due to the board's apparent lack of understanding of its responsibilities for record keeping under the Act. Therefore, I find that it is appropriate to make an order under s.1.44(1) 7 of the Act, which gives the Tribunal the authority to address the underlying issues that have likely given rise to the particular application. I am ordering that each of the current board members takes or retakes the mandatory director training prescribed under section

29(2)(e) of the Act within 30 days of the date of this decision and provide to Mr. Nash a written statement confirming completion.

Should a penalty be imposed against OSCC 142?

[38] Section 1.44(3) of the Act states that the Tribunal has the authority to award a penalty of up to \$5000 in circumstances where the Tribunal considers that a corporation has refused records without reasonable excuse.

[39] Mr. Nash asks the Tribunal to order the maximum penalty against OSCC 142, on the basis that the non-compliance is egregious and ongoing. Given that I have found that OSCC 142 did not refuse records, no penalty will be awarded.

Should costs be awarded?

[40] Mr. Nash was partially successful in this matter, and I am ordering OSCC 142 to reimburse him the amount of \$200 for the fees paid to file this application.

C. ORDER

[41] The Tribunal Orders that:

1. OSCC 142 create a record of all board decisions made outside of board meetings in 2023 and provide Mr. Nash with this record within 30 days of the date of this decision;
2. Within 30 days of the date of this decision, each of the current directors of OSCC 142 shall take or retake, as the case may be, the mandatory director training course provided by the Condominium Authority of Ontario as prescribed pursuant to s.29(2)(e) of the Act. OSCC 142 shall provide Mr. Nash with a written statement confirming the directors' completion of the course within 30 days of the date of this decision.; and
3. OSCC 142 shall pay costs of \$200 to Mr. Nash within 30 days of the date of this decision.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: January 4, 2024