

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 30, 2018

CASE: 2018-00018R

Citation: Jeff Berman v York Condominium Corporation No. 99, 2018 ONCAT 2

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

Adjudicator: Laurie Sanford, Member

The Applicant

Jeff Berman

Self-Represented

The Respondent

York Condominium Corporation No. 99

Akhil Desai, Agent

Hearing: April 11 - May 11, 2018

Written online hearing, with teleconference on May 9, 2018

REASONS FOR DECISION

A. OVERVIEW

- [1] Mr. Jeff Berman is a unit owner of York Condominium Corporation No. 99 ("YCC99"). He requested documents from YCC99 on two subjects. First, he requested certain records concerning expenditures from the YCC99 Reserve Fund for repairs to a swimming pool and to walkways. Second, Mr. Berman requested minutes from the August and September, 2017 meetings of the YCC99 Board of Directors. He also wanted documents showing what authority the Board of Directors had to take certain positions regarding the replacement of one of his windows. Mr. Berman asked for compensation for this hearing process due to alleged delays by YCC99 in providing the requested records.
- [2] Mr. Desai, who is the General Manager of the property management company which provides services to YCC99, takes the position that YCC99 responded to Mr. Berman's formal request for records within the time limit set out in the *Condominium Act, 1998* (the "Act"). Mr. Desai contends that compensation is not appropriate in this case.

- [3] For the reasons set out below, I find that Mr. Berman has now received the records he sought about the expenditures from the YCC99 Reserve Fund. He has received the minutes of the meetings in August and September, 2017 and answers to his subsequent records requests concerning those meetings. Mr. Desai went beyond the scope of these proceedings to provide Mr. Berman with answers to his questions, explanations of the records provided and a context for the Board of Directors' positions concerning Mr. Berman's window. Under the circumstances of this case, compensation to either User is not appropriate.

B. PRELIMINARY MATTERS

- [4] This hearing concerned a records request under section 55 of the Act. The online hearing was held from April 11 to May 11, 2018 and included a teleconference on May 9, 2018. At the teleconference, both Mr. Berman and Mr. Desai provided testimony, the documents which had been disclosed were reviewed, and questions raised by Mr. Berman were answered.
- [5] The Users agreed that there were three issues to be dealt with in this hearing, namely:
1. Is Mr. Berman entitled to receive more records about the Reserve Fund, and in particular, records about the impact of the 2016 pool repair and 2017 sidewalk repair on the Reserve Fund at the time of the repairs and currently? Mr. Berman questioned the sufficiency and availability of the Reserve Fund records provided by the YCC99 Board regarding these projects.
 2. Is Mr. Berman entitled to receive the August and September 2017 YCC99 Board minutes with no parts redacted that relate to his unit or of any vote that related to his unit's window replacement?
 3. Is Mr. Berman entitled to compensation or costs from YCC99 for the alleged delay and non-compliance with his records request?

C. ISSUES & ANALYSIS

Issue 1: Is Mr. Berman entitled to receive more records about the Reserve Fund?

- [6] The Users reviewed the documents that have been provided to Mr. Berman to the date of the teleconference showing the expenditures from the YCC99 Reserve fund related to the swimming pool and walkways. These documents may be summarised as follows:

1. Notice of Future Funding of the Reserve Fund including a Summary of the Reserve Fund Study dated November 2016;
 2. Invoice for the pool repair from the contractors;
 3. Invoices for the walkways repairs from the contractors; and
 4. Audited Financial Statements of YCC99, for the year ending December 31, 2016, including the Statement of Reserve Operations and Changes in Fund Balance for the year ended December 31, 2016.
- [7] In response to questions raised by Mr. Berman, Mr. Desai provided a statement confirming that the Audited Financial Statements of YCC99 for the year ending December 31, 2017 would be published by mid-May 2018, would be provided to Mr. Berman and would include a Statement of Reserve Operations and Changes in Fund Balance for the year ending December 31, 2017. This report is expected to include the expenses for the walkways.
- [8] Mr. Berman was advised that the answers to his specific questions concerning the impact on the Reserve Fund of the pool and walkways repairs would be given in the Reserve Fund Study that would be released in November 2019. Mr. Berman questioned the sufficiency of this reporting; specifically, the fact that he would have to wait 18 months for the specific answers he seeks.
- [9] Regulation Ont. 48/01 to the Act provides, in subsection 31(3), that a condominium corporation must do a Reserve Fund study every three years. Given that the last Reserve Fund study was done by YCC99 in November 2016, the timing of the next Reserve Fund study in November 2019 complies with the Act.
- [10] Interim reports of changes in the Reserve Fund are provided by YCC99 in its Annual Report. Having reviewed the report for 2016, I find that Mr. Berman now has the information he needs to make a reasonable estimate of the impact that the pool repair had on the Reserve Fund at the time the repairs were done. In the 2017 Annual Report, he will have the information he needs to make a similar estimate concerning the walkways repair. It is not unreasonable to ask Mr. Berman to wait until the full Reserve Fund study in 2019 for the detailed information that he seeks, given the requirements of the Act. Therefore, I conclude that Mr. Berman has all the records that YCC99 is obliged to provide him at this time concerning the Reserve Fund and the impact on it of the pool and walkways repair.

Issue 2: Is Mr. Berman entitled to receive the August and September 2017 YCC99 Board minutes with no redaction of any parts that relate to his unit or any vote that related to his unit's window replacement?

[11] The Users reviewed the documents that had been provided to Mr. Berman to the date of the teleconference concerning the YCC99 Board of Directors' meetings of August and September, 2017. These may be summarised as follows:

1. Minutes of the YCC99 Board of Directors' meeting held August 21, 2017 with redactions;
2. Minutes of the YCC99 Board of Directors' meeting held September 18, 2017, with redactions; and
3. A statement by Mr. Desai that the no portion of the August or September Board meetings that relate to Mr. Berman's unit have been redacted.

[12] Mr. Berman questioned whether the minutes of the meetings were the full minutes or merely a list of resolutions. Mr. Desai answered that the minutes Mr. Berman received were the full minutes.

[13] Mr. Berman asked for the vote tallies for the votes relating to his condominium unit. Mr. Desai said that all the resolutions concerning Mr. Berman's windows in the August and September, 2017 Board meetings were unanimous.

[14] Mr. Berman asked for a copy of the Declaration of YCC99 that addressed the authority of the Board to charge unit holders directly for repairs of common elements. Mr. Desai advised that the Declaration that Mr. Berman received on taking possession of his unit is still in effect. Mr. Berman said the Declaration was hard to read. Mr. Desai agreed but said that the copy Mr. Berman had was the cleanest copy available. He explained that the Declaration is an old one and the print quality is poor. Mr. Desai stated that nothing in the Declaration authorised him to make the offer that he did; that is, to replace Mr. Berman's window in 2017 if Mr. Berman paid 50% of the cost.

[15] Mr. Desai explained that he made the offer to expedite the replacement of Mr. Berman's window. Mr. Desai testified that the YCC99 Board ratified his decision to make the offer during its August 2017 meeting. Subsequently, Mr. Berman's lawyer wrote that the proposal to share costs was unacceptable. The YCC99 Board decided to withdraw their offer and to replace Mr. Berman's window in a sequence that depended on its age and condition relative to other windows in the condominium.

- [16] Mr. Berman noted that the August and September minutes do not expressly state that the YCC99 Board was withdrawing its offer to replace his window if he paid half the cost. Mr. Desai conceded that the minutes could have been clearer. He said that he had written a letter to Mr. Berman a day after the September Board meeting advising Mr. Berman that the Board's position was that the window would be replaced in accordance with YCC99's policy of replacing windows after a fixed period of time. Earlier in these proceedings, Mr. Desai advised that the policy was unwritten. During this proceeding, Mr. Desai provided a copy of the letter he had previously sent to Mr. Berman.
- [17] Considering the documents that have been disclosed and the explanations that Mr. Desai has given, I find that Mr. Berman has received the records sought concerning the August and September, 2017 YCC99 Board of Directors' meetings. He has also received supplementary documents, an explanation of the minutes and the context for the Board's actions. I conclude that YCC99 has met its obligations to disclose the records that Mr. Berman requested.

D. COSTS

- [18] The award of costs is in the Tribunal's discretion. Mr. Berman requests compensation, claiming YCC99 delayed in giving him the records he requested during the summer of 2017 and only provided those records as a result of this proceeding. Mr. Desai notes that Mr. Berman made a formal request for records on December 13, 2017 and received a response from YCC99 on January 8, 2018. This is within the 30 day requirement set out in Act and its regulations. Mr. Berman submits that the initial response from YCC99 was incomplete and contained numerous errors. Mr. Desai disputes this.
- [19] During the course of this proceeding, I found both Mr. Berman and Mr. Desai responsive. Mr. Desai was willing to provide documents that Mr. Berman wanted in addition to the ones originally set out in his request for records. Mr. Desai was also willing to answer Mr. Berman's questions and to provide explanations for YCC99's position concerning Mr. Berman's window. Initially, Mr. Desai did not respond when asked to produce YCC99's Declaration. During the teleconference, he explained that Mr. Berman already had the Declaration and that it was silent on the question Mr. Berman raised about the allocation of expenses for repair of common elements. I have no persuasive evidence of any delay on the part of YCC99 during this proceeding. Mr. Desai explained that the Minutes were not as clear as they might have been but I find no evidence of intentional error or attempt to mislead. I cannot speak to what may have occurred between the Users before

the formal request for records was made. In the circumstances of this case, I make no award for compensation or costs.

E. CONCLUSION

[20] It is the finding of this Tribunal that Mr. Berman has all the records which he requested and which YCC99 is obliged to provide him. Accordingly, no order will issue. This concludes the matter.

Laurie Sanford
Member, Condominium Authority Tribunal

RELEASED ON: May 30, 2018