

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 24, 2019

CASE: 2017-00011R

Citation: Shaheed Mohamed v. York Condominium Corporation No. 414, 2019 ONCAT 17

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

Member: Michael Clifton

The Applicant

Shaheed Mohamed

Self-Represented

The Respondent

York Condominium Corporation No. 414

Paul A. Robson, Counsel

MOTION ORDER

[1] The Applicant has brought a motion pursuant to Rule 30.3 of the CAT Rules of Practice (the “Rules”) for clarification of the order issued on June 7, 2018 following the hearing in this matter.

[2] Rule 30 of the Rules states:

30.1 The CAT may at any time correct a typographical error, a calculation error, or similar error in its Order or decision.

30.2 The CAT may at any time make minor changes to an Order or decision to clarify wording that is unclear or incorrectly stated.

30.3 A User has 30 days after receiving the Order or decision to ask the CAT to make this kind of minor correction or clarification. The User must deliver their request to the other Users and the CAT.

[3] The Applicant’s request for clarification stated as follows:

As I have communicate, the Small Claim Court was unable to enforce your order in full. I was recently legally advised to take this matter to Superior Court of Justice and I'm forced to send this request to have this case order edited in

order to clearly state as it was originally requested in the Reasons for Decisions (page 3, column 6), that; respondent provide all official bank statements prepared from the bank for the period of year 2010, to present. The respondent did provide some made up statements by their office, but they can not be reliable for auditing.

Hope this request will be taken in consideration.

- [4] When asked to reply to the Applicant's submissions, the Respondent's legal counsel answered as follows:

We find the Applicant's response to be unresponsive to your requests and further, we are unable to determine what the Applicant is trying to say. As such we are unable to provide you with any meaningful response to the Applicant's submissions as requested.

In any event we find your order to be clear and unambiguous. If the Applicant wishes to seek relief in another forum, he should advance his concerns in that forum.

- [5] Accompanying the submission from the Respondent's legal counsel was a statement prepared by the Respondent's property manager setting out the projected costs of providing the Applicant with the Respondent's bank records, which were proposed to be charged as fees to the Applicant for production of those records.
- [6] Upon reviewing these submissions, I find the meaning of the Applicant's request sufficiently clear. I understand that the Applicant requests clarification of the order so that it can be specifically enforced. Specifically, he is seeking clarification of the requirement for the Respondent to deliver copies of actual, or official, bank records relating to the Respondent's accounts for the period specified, rather than records created by the Respondent or its property manager. I do not find that the Respondent has provided a reasonable basis for objection to this request.
- [7] For the reasons below I have granted the request for clarification. I deal first with the preliminary issue of the timing of the Applicant's request and thereafter provide an explanation of the clarification that is made.

A. PRELIMINARY ISSUE

- [8] Rule 30.3 states that a User has 30 days from the date on which the order or decision is received to request a correction or clarification. The decision and order in this case were issued to the Users on or about June 7, 2018. The Applicant's

request was submitted to the CAT on or about April 1, 2019, which is substantially more than 30 days later.

- [9] The Applicant explained that after the decision and order was issued, he sought to enforce the order against the Respondent. For this purpose, the Applicant brought a claim in Small Claims Court, which concluded with an order for partial enforcement on March 27, 2019.
- [10] The Applicant indicates he was then advised by the Court that in order to fully enforce the order, clarification was needed, particularly with respect to the requirement for the Respondent to provide “official bank statements.” The Applicant more or less immediately (certainly, in much fewer than 30 days from receiving that advice) submitted a request for clarification to the CAT.
- [11] In the circumstances, it appears to me that the Applicant simply did not know within the 30-day time frame set out in the Rule that this clarification would be needed. As the Respondent’s legal counsel stated, “we find your order to be clear and unambiguous,” so it seems reasonable that the need for clarification would not have been evident to either User until the order was presented to the court for enforcement.
- [12] Rule 2.1 of the CAT Rules of Practice provides guidance as to how the rules should be applied:
 - 2.1 These Rules should be used in a way that:
 - (a) promotes the fair, just and efficient resolution of disputes;
 - (b) recognizes the Users’ needs for a clear and easy to use process; this includes Users with no legal representatives;
 - (c) encourages the Users to settle disputes without a hearing;
 - (d) supports fair, focused and efficient processes, that are flexible depending on the complexity of the case is and how much the outcome could affect the Users or others; and
 - (e) ensures that, if a hearing is needed, Users have a reasonable opportunity to be heard by an independent and unbiased decision maker.
- [13] I pay particular heed to the guidance set out in sub-clauses (a) and (d) of Rule 2.1, and consider this guidance in light of the provisions of section 4 of the Statutory Powers Procedure Act, which reads,

(1) Any procedural requirement of this Act, or of another Act or a regulation that applies to a proceeding, may be waived with the consent of the parties and the tribunal.

(2) Any provision of a tribunal's rules made under section 25.1 may be waived in accordance with the rules.

[14] I find that it would be unfair, unjust and inefficient to hold the Applicant to the 30-day period set out in Rule 30.3 and believe the foregoing provisions grant sufficient authority to me to waive that requirement in this case.

[15] Furthermore, I note that Rule 30.2 of the CAT Rules of Procedure provides that a clarification may be made by the CAT "at any time," which suggests that the formality of the Rule 30.3 request is not a necessary requirement for me to make the requested clarification.

B. ANALYSIS

[16] The portion of the order that the Applicant requests be clarified reads as follows:

[61] The Tribunal orders that:

1. The Respondent shall:

(a) immediately and in any event no later than one business day after payment of \$110.25 by the Applicant to the Respondent, deliver to the Applicant the financial records that the Respondent states it has already copied and prepared for pick-up by the Applicant;

(b) within seven (7) days of the date of issuance of this order, deliver to the Applicant in electronic format (either uploaded to the Applicant's Dropbox account or on a flash drive, at the Applicant's direction) and at no cost to the Applicant, all the Requested Core Records (other than the financial records);

(c) within thirty (30) days of the date of which the Applicant pays \$378.00 to the Respondent, deliver to the Applicant in electronic format (either uploaded to the Applicant's Dropbox account or on a flash drive, at the Applicant's direction) all of the Requested Non-Core Records (other than the financial records); ...

[17] A primary reason that clarification of the order is needed in this case is that, in drafting the order, I relied on terms that were defined in the body of the decision, but the order itself does not indicate where such definitions can be found. Therefore, this likely gave rise to the court's difficulty in determining the meaning of the terms it was being asked to enforce.

- [18] In particular, the terms “Requested Core Records”, “Requested Non-Core Records”, and “financial records” as used in the Order may have lacked specificity and been unclear.
- [19] “Requested Core Records” and “Requested Non-Core Records” are defined in paragraphs 11 and 12 of the decision, respectively. The term “financial records” is defined in paragraph 18 of the decision. It refers to financial records that the Respondent alleged it had already prepared copies of for the Applicant, though specifically what records these were is not described.
- [20] Defining with certainty which records comprised the financial records the Respondent had already prepared was not considered necessary for rendering either the decision or order in that case, since the order requires the Respondent to provide all of the records (i.e., every Requested Core Record and every Requested Non-Core Record) that were requested by the Applicant. The lack of clarity arises because the Order, standing alone, does not clearly articulate what is included in those categories without requiring the reader to refer back to the body of the decision.
- [21] Based on the descriptions of the records comprising the Requested Core Records and Requested Non-Core Records, the term “financial records” would have included any or all of the following records:
- a. The following Requested Core Records:
 - i. Budget for the Respondent’s current fiscal year;
 - ii. The Respondent’s most recent approved financial statements;
 - iii. The Respondent’s most recent auditor’s report;
 - iv. The Respondent’s current plan for future funding of the reserve fund; and
 - b. The following Requested Non-Core Records:
 - i. Official monthly financial statements from the bank, from November 2010 to October 31, 2017.
- [22] Once the defined terms used in the order are properly clarified and understood, then I would agree with the Respondent’s legal counsel that the order is “clear and unambiguous” with respect to the fact that the Respondent was required to have delivered official bank statements prepared by the Respondent’s bank (i.e., not other records prepared by the Respondent or its property manager that mimic or

replicate the information found in such bank statements) for the specified period of time, either pursuant to paragraph 1.a or 1.c of the order.

[23] Therefore the decision and order shall be amended to provide the necessary clarity for the Users that:

- a. Under paragraph 1.a of the order, the Respondent was to provide the Applicant with the financial records it stated it had already prepared for delivery to the Applicant, such that if these included some or all of the “Official monthly financial statements from the bank, from November 2010 to October 31, 2017,” then they were to have been delivered to the Applicant in accordance with that paragraph; and
- b. under paragraph 1.c of the order, the Respondent was to provide the Applicant with any remaining Requested Non-Core Records that the Applicant had, such that if these included some or all of the “Official monthly financial statements from the bank, from November 2010 to October 31, 2017,” then they were to have been delivered to the Applicant in accordance with that paragraph.

[24] On account of the Respondent’s submission regarding its fees for production of the requested bank records, I further clarify that the Respondent is not to charge any fees for their production other than the amounts already clearly set out in the order. If these have already been paid, no additional fees are to be charged for the production of the requested official bank statements.

[25] An amended decision and order, reflecting the changes outlined above, shall be issued with this Motion Order.

Michael H. Clifton
Member, Condominium Authority Tribunal

Released on: May 24, 2019