

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 9, 2019

CASE: 2017-00011R

CITATION: Shaheed Mohamed v. York Condominium Corporation No. 414, 2019 ONCAT 20

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] On May 24, 2019, I issued a decision on a motion brought by the Applicant pursuant to Rule 30.3 of the CAT Rules of Practice (the “Rules”) for clarification of the order originally issued in this case. I approved the Applicant’s motion and issued an amendment to the original order to provide the requested clarification.
- [2] Counsel for the Respondent (hereafter, “Counsel”) has requested review of that decision and reopening the case, pursuant to Rule 31.1 and 31.2 of the Rules, which read as follows:

31.1 The CAT may review its final Order or decision and reopen all or part of a Case if the decision was made after a User:

(a) failed to appear or participate in all or part of a Case; or

(b) failed to respond to a request or communication from the CAT.

31.2 A User has 20 days after receiving the final Order or decision to ask the CAT to review a decision under this Rule. The User must deliver their request to the CAT. The CAT-ODR system will notify other Users about the request. The User’s request must give details about:

1. why the User failed to appear or participate, or failed to respond; and
2. why it is unfair for the User if the Case is not reopened.

- [3] In conjunction with those rules, Rule 31.3 states, “The CAT may respond to the request for review without hearing from the Users, and the CAT does not have to give any reasons for its response.” I have not required the Applicant to make any submissions in response to this request.
- [4] Having carefully reviewed the submissions made by Counsel, I have determined that there is no basis for reopening or reviewing the decision in question. Although reasons are not required to be given, as this is the first time this kind of request has been considered, and in order to provide some clarity for the Users and Counsel, I set out the following summary of my reasons.
- [5] Rule 31.1 states that there are only two conditions on which review of a final order or decision, or reopening of a case, may be considered: failure by a User to appear or participate in all or part of a case; or, failure by a User to respond to a request or communication from the CAT. Neither condition is satisfied in this case.
- [6] Counsel submitted that “the Respondent was denied the ability to participate in the amending process by the CAT.” However, Counsel’s own submissions demonstrate this was not the case.
- [7] Counsel acknowledges having received copies of all submissions made by the Applicant in relation to the motion.
- [8] Counsel notes that on April 26, 2019, he sent an email to the CAT replying to the CAT’s request for the Respondent’s submissions on the Applicant’s motion. This email is set out fully in paragraph 4 of the decision issued on May 24, 2019, and reads 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.
- [9] Counsel further notes that an additional email was delivered to the CAT on April 27, 2019, stating that “the ‘Respondent’ has fulfilled its obligations pursuant to the Order.”

- [10] Whether or not Counsel now believes such submissions did not adequately set out the Respondent's position does not negate the fact that submissions were made in response to CAT requests and constituted the Respondent's participation in the process.
- [11] Rule 31.2 requires the requesting User to explain why it is unfair for the User if the case is not reopened. Counsel provided submissions in this regard. However, where a User has not failed to participate or respond, as set out in Rule 31.1, the question of fairness has no application. Submissions relating to fairness would only be considered when the applicant has satisfied the criteria of Rule 31.1.
- [12] The Respondent's request to have the motion order reviewed and reopened is denied.

Michael H. Clifton
Member, Condominium Authority Tribunal

Released On: July 9, 2019