

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 30, 2021

CASE: 2020-00400R

Citation: Anvari v. Carleton Condominium Corporation No. 95, 2021 ONCAT 24

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

Member: Ian Darling, Chair

The Applicant,

Majid Anvari

Represented by David Salmon, Counsel

The Respondent,

Carleton Condominium Corporation No. 95

Represented by Sean Murray, Agent

Hearing: Written Online Hearing – February 21, 2021 to March 12, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] Majid Anvari (the Applicant) requested two contracts from Carlton Condominium Corporation No. 95 (CCC95). CCC95 refused to provide the records due to the Applicant's history of complaints about the Condominium Management provider. This decision explains why the Applicant is entitled to the records, and that the Respondent has unreasonably refused access to the records and must pay the Applicant \$2200 (\$2000 penalty and \$200) in costs.
- [2] The Respondent minimally participated in the hearing. At the beginning of this hearing they posted messages confirming they were aware of the case and participated in clarifying the issues to be decided. They failed to participate after the initial hearing stage although they were given opportunities and had been advised that the hearing would continue without them. Although the Respondent stopped participating, I was satisfied that they were aware of the case, their responsibilities as a party to a case and timelines in the hearing, so I proceeded with the hearing in their absence.
- [3] The hearing addressed the following issues:

1. Is the Applicant entitled to examine or obtain copies of the requested records outlined in the Applicant's Request for Records dated October 30, 2020?
 2. If the Applicant is entitled to examine the requested records, has the Respondent refused without reasonable excuse to permit him to examine or obtain copies of the records? If so, should the Applicant be awarded a penalty under s. 1.44 (1) 6 of the *Condominium Act, 1998* (the Act)?
 3. Is the Applicant entitled to costs?
- [4] The Applicant requested two contracts: the contract for the security contractor and for the current Condominium Management provider. They used the mandatory Request for Records form on October 30, 2020. CCC95 responded to the request. They refused to provide the records because the Applicant had previously complained about the Security Contractor and Condominium Management Services provider.
- [5] The Applicant's submissions identified that they are an owner, and that the Request followed the process outlined in the Act and Regulations. The Applicant identified that the requested records are contracts, which are covered by s. 55 (1) of the Act and that s. 55 (1) 8 requires the corporation to maintain such records. The Applicant established that there are no relevant exemptions under s. 55 (4) which would justify the Respondent not providing the record.
- [6] CCC95 did not offer any reasons in the hearing for refusing to provide the record, but the Response to Request for Records Form (which was provided by the Applicant) stated that the records were refused because the Applicant had previously complained about the Security and Condominium Management Services provider.
- [7] This is not a valid reason to refuse to provide access to the records. I find that the Applicant is entitled to the Records. The Applicant requested electronic versions of the records, so they must be provided at no cost to the Applicant.
- [8] Since the Applicant is entitled to the records, I will now turn to the question of whether a penalty should be applied. The relevant section of the Act relating to penalties is s.1.44 (1) 6. It 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.

- [9] Under s. 1.44 (3), the Tribunal has authority to award a penalty of up to \$5000. The questions for me to consider are whether the Respondent refused to provide the requested records to the Applicant, and, if so, was there a reasonable excuse for such refusal. If I determine a penalty is justified, the next question is to decide the appropriate amount that should be paid.
- [10] The Applicant is entitled to the records. Since CCC95 did not give any reasons for the refusal in the hearing, I am only able to consider the reasons provided on the record request form. The Respondent's reason for the refusal is that the Applicant's prior complaint disentitles them. The CAT has decided this issue previously¹, finding that an Applicant's prior conduct does not limit their right to request or access records. Given the evidence before me, there is no reason here to deviate from the reasoning of those previous decisions. I find in this case that the corporation has refused to permit the Applicant to examine or obtain records without a reasonable excuse. Therefore, a penalty is appropriate.
- [11] The Applicant requested a \$3000 penalty. They stated that there was a clear entitlement to the record, and the request was straightforward. They requested a significant penalty, asserting that the CCC95 deliberately ignored its obligations under the Act. I agree with the Applicant that the entitlement was clear, and the request uncomplicated. Even a cursory look at the Act, the Condominium Authority of Ontario information about records or previous Tribunal decisions would have demonstrated the Respondent's clear obligations. In this circumstance, because the request is so straightforward, and the refusal so clear I am inclined to award a significant penalty.
- [12] Previous CAT decisions have established that one of the purposes of assessing a penalty is to deter future similar action. In *Tharani Holdings Inc. v. Metropolitan Toronto Condominium Corporation No. 812*, 2019 ONCAT 3 the Member concluded that the Respondent:
- “willfully disregarded, or was willfully blind to, its legal requirements relating to the Applicant's request for records. In this circumstance, I find that a penalty of \$2000 against the Respondent is appropriate.”
- In *Tharani* the total number of records requested was higher than this case, but the Respondent's disregard for their responsibilities is similar. I award a penalty of \$2000.

¹ See: *Sohail Benjamin v Peel Standard Condominium Corporation No. 1008*, 2019 ONCAT 10 (CanLII), and *Tonu Orav v York Condominium Corporation No. 344*, 2019 ONCAT 18 (CanLII).

[13] The Applicant requested \$200 be awarded in costs to reimburse their Tribunal application fees. The Applicant was fully successful in their case, so I will award \$200 in costs.

B. ORDER

[14] The Tribunal Orders that:

1. The Respondent shall provide the Applicant with the following records, in electronic format, within 30 days of the date of this decision:
 - a. The Security Contract for Carleton Condominium Corporation No. 95.
 - b. Management Contract for Carleton Condominium Corporation No. 95.
2. The Respondent shall pay a penalty of \$2000 to the Applicant within 30 days of the date of this decision.
3. The Respondent shall pay costs of \$200 to the Applicant within 30 days of the date of this decision.
4. In the event that the penalty or costs are not provided to the Applicant within 30 days of this Order, the Applicant will be entitled to set-off those amounts against the common expenses attributable to the Applicant's unit(s) in accordance with Section 1.45 (3) of the Act.
5. In order to ensure that the Applicant does not have to pay any portion of the penalty and cost awards, they will also be given a credit toward the common expenses attributable to their unit(s) in the amount equivalent to their proportionate share(s) of the penalty and costs awarded.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: March 30, 2021