



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Michael Vinokur

Applicant

-and-

York Condominium Corporation #201 and David Tartatovsky

Respondents

DECISION

Adjudicator: Mary Truemner

Date: May 19, 2011

File Number: 2008- 00445-1

Citation: 2011 HRTO 962

Indexed as: **Vinokur v. York Condominium Corporation #201**

APPEARANCES

Michael Vinokur, Applicant)	Milana Vinokur
)	
)	
York Condominium Corporation #201, and David Tartatovsky, Respondents)	Jeremy Schwartz, Counsel
)	
)	

[1] This is an Application filed on September 26, 2008 under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”), alleging discrimination in housing, goods, services, facilities, and membership in a vocational association on the basis of race, ancestry, place of origin, ethnic origin, disability, family status, marital status, age, receipt of public assistance, association with a person identified by a Code ground, and reprisal. It is one among several Applications filed by residents of condominium units against their condominium corporation, the corporate respondent. All but two of those Applications have been dealt with previously by the Tribunal.

[2] In the section of the Application which asks the applicant to explain what happened and describe the events that he believes were discrimination, the Application states:

While acting on behalf of The Dalemout York Condominium Corporation #201, DAVID TARTAKOVSKI created a “black list” with names of tenants, to which he assigned codes using derogatory names such as “whore”, “prostitute”, “idiot”, etc. to describe tenants he wishes to target. This list is used by DAVID TARTAKOVSKI, on [sic] behalf of The Dalemout York Condominium Corporation #201 to target, harass and deny services to specific people residing at the above-mentioned address. My name is included in this list and based on this I have been continuously denied services for a number of years. DAVID TARTAKOVSKI is an acting President/Chair of Condominium Board of Tenants, yet at the same time he has hired himself as a Property Manager and is paying himself salary, which constitutes clear conflict of interest and gives him total power and control over any decision-making process, to do and behave as he pleases, some of which behaviour includes targeting and bullying specific tenants, as well as using condo maintenance fees for his own purposes. Unethical and questionable use of proxies to support his own position and keep re-electing himself as both President of the Board and Property Manager.

[3] This Application and another Application, which the Tribunal had not yet dealt with, were the subjects of a Summary Hearing held on February 25, 2011 pursuant to a Case Assessment Direction (“CAD”). The CAD directed the parties to be prepared to deal with the question of whether either Application should be dismissed because there is no reasonable prospect that it can succeed. The parties were also advised to be prepared at the Summary Hearing to deal with the respondents’ Requests that the

Tribunal dismiss the Application on the basis that 1) the Tribunal has no jurisdiction; 2) the Application discloses no *prima facie* case of discrimination or harassment; 3) the Application is frivolous, vexatious and an abuse of the Tribunal's process and 4) the Application lacks particulars.

[4] At the Summary Hearing, the applicant advised that he did not intend to pursue his allegations of discrimination in membership in a vocational association because he is not a member of one.

Decision

[5] For the reasons which follow, I dismiss the Application because there is no reasonable prospect of success.

Dismissing Under Rule 19A

[6] Rule 19A.1 of the Tribunal's *Rules of Procedure* reads as follows:

19A.1 The Tribunal may hold a summary hearing, on its own initiative or at the request of a party, on the question of whether an Application should be dismissed in whole or in part on the basis that there is no reasonable prospect that the Application or part of the Application will succeed.

[7] As stated in *Dabic v. Windsor Police Service*, 2010 HRTO 1994, at paragraphs 8 and 9:

In some cases, the issue at the summary hearing may be whether, assuming all the allegations in the application to be true, it has a reasonable prospect of success. In these cases, the focus will generally be on the legal analysis and whether what the applicant alleges may be reasonably considered to amount to a *Code* violation.

In other cases, the focus of the summary hearing may be on whether there is a reasonable prospect that the applicant can prove, on a balance of probabilities, that his or her *Code* rights were violated. Often, such cases will deal with whether the applicant can show a link between an event and the grounds upon which he or she makes the claim. The issue will be whether there is a reasonable prospect that evidence the applicant has or that is reasonably available to him or her can show a link between the event and the alleged prohibited ground.

Association with a Person Identified by a Ground

[8] At the Summary Hearing, the applicant stated that he was withdrawing his allegation of discrimination because of an association with someone. The withdrawal of this allegation is allowed.

Receipt of Public Assistance

[9] The Application indicates that the applicant receives an income through the Canada Pension Plan, and states:

Because DAVID TARTAKOVSKI believes he can do as he pleases because he knows that I have a limited amount of money and am unable to hire a proper legal representation, while he uses Condominium Corporation lawyer and money to obtain legal representation. [Punctuation, spelling and grammar are reproduced as in original text].

[10] At the Summary Hearing, the applicant said that he received Old Age Security and he believed that the personal respondent therefore had access to his financial information and would know that the applicant was not financially in the same category as other residents in the building. The applicant believes that his financial situation may be a reason for the personal respondent allegedly treating him worse than other residents in the building, particularly with respect to ignoring his demands for repairs and maintenance, and for allegedly placing the Russian word “svolach”, which he said means “scum of the Earth”, beside his name on the “black list”.

[11] The applicant was unable to point to any evidence that he would provide at a Hearing to substantiate his belief that the personal respondent was influenced by the fact that the applicant received public assistance. In the context of his oral submissions on the allegations of discrimination because of race, ancestry, place of origin and ethnic origin, the applicant stated that the reason for which he was treated badly by the respondents was because, years ago, he told the personal respondent “to his face” that he was doing a bad job. In the circumstances where the applicant has no evidence, just a belief, I find that there is no reasonable prospect that evidence the applicant has or that is reasonably available to him can show a link between the alleged bad treatment of the applicant, including his inclusion on any “black list”, and the alleged prohibited ground of receipt of public assistance.

Family Status

[12] At the Summary Hearing, the applicant stated that he was withdrawing his allegation of discrimination because of family status. The withdrawal of this allegation is allowed.

Marital Status

[13] When asked on the Application to explain why he believes that he was discriminated against based on his marital status, the applicant wrote, “I reside in our condominium unit with my wife, yet DAVID TARTAKOVSKI and The Dale York Condominium Corporation #201 refused to acknowledge me as a condominium owner.” At the Summary Hearing, the applicant alleged that he was refused services by the property management office. He explained that he felt this was discrimination because of marital status because he thought he had the same rights as the owner because he was married to her.

[14] Marital status is defined in the *Code* as “the status of being married, single widowed, divorced and separated and includes the status of living with a person in a conjugal relationship outside marriage.” The applicant’s marital status may

therefore be described as “being married” but the allegation of discrimination is based on the applicant’s assertion that he should have the same rights as the owner simply because he is married to her. He is not alleging that he was denied services because of who his wife is or because of his status as a married person. He is not alleging that if he had not been married, then the respondents would have treated him better. His argument is that he should have been granted extra rights (treated unequally) because he was married, as opposed to unmarried. Even if it were true that the respondents refused to deal with the applicant in the property management office, what the applicant alleges with respect to marital status may not reasonably be considered to amount to a *Code* violation.

Age and Disability

[15] The Application contains no explanation as to why the applicant believes he was discriminated against on the basis of age or disability. The applicant was 81 years old on the day of the Summary Hearing, and his health was fragile because he says that he now has several health problems causing him to be disabled. He explained that he has a feeling that the respondents understood that they could be hard on him and that he would not fight back because he was old and disabled. He admitted that this is just a belief.

[16] Without any evidence to link the alleged differential treatment to age and/or disability, there is no reasonable prospect that the applicant can prove, on a balance of probabilities, that his *Code* rights were violated on either or both of these grounds.

Race, Ancestry, Place of Origin and Ethnic Origin

[17] The Application itself provides very little information to explain why the applicant believes that he was reprimanded against or treated unequally on the basis of his race, ancestry, place of origin and ethnic origin. In addition to the paragraph in which the applicant explains what happened that he believes constitutes discrimination under the *Code*, cited above, the Application indicates

the following to explain why the applicant believes he was discriminated against because of his race, colour, ancestry, place of origin, citizenship, or ethnic origin:

I am an immigrant from former Soviet Union; my English language skills are limited; I am a Jew; I am from the same cultural back ground as David Tartakovski, and as such familiar with practises of those in the position of power back home. I left my country to escape this sort of prosecution only to find it practiced here in Canada and in my own home. [Punctuation, spelling and grammar are reproduced as in original text].

[18] At the Summary Hearing, as stated above, the applicant said that the Russian word beside his name on the “black list” means “scum of the Earth”. The applicant explained that he identifies himself as a Jew from the Ukraine with an ancestry of mixed origins. He said that the personal respondent, who he alleges caused all his problems, is also Jewish from the Ukraine but there are subtle differences between them. He explained that some Jews and residents with his place of origin and racial and ethnic background get treated well, but it depended on whether they sided with the personal respondent in his decisions and activities as President/Chair of the Board of Directors. The applicant stated that the reason he was treated badly by the respondents, who would not listen to him or make repairs, was because he told the personal respondent “to his face” that he was doing a bad job.

[19] In these circumstances, I find that there is no reasonable prospect that the applicant can prove, on a balance of probabilities, that his *Code* rights were violated. There is no reasonable prospect that evidence he has or that is reasonably available to him can show a link between the alleged bad treatment (mostly characterized as a refusal of services) and race, ancestry, place of origin and ethnic origin.

Reprisal

[20] Section 8 of the *Code* provides:

Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this *Act* and to refuse to infringe a right of another person under this *Act*, without reprisal or threat of reprisal for so doing.

[21] In *Noble v. York University*, 2010 HRTO 878, at paragraphs 33-34, the Tribunal summarized the key elements in reviewing what must be established to justify a finding of reprisal:

Thus, in a complaint or application alleging reprisal, the following elements must be established:

- a. An action taken against, or threat made to, the complainant;
- b. The alleged action or threat is related to the complainant having claimed, or attempted to enforce a right under the *Code*; and
- c. An intention on the part of the respondent to retaliate for the claim or attempt to enforce the right.

[22] On Form 1-B of the Application, in the section where the applicant is to explain why he believes that the respondents reprised against him, he wrote, “Over the years, each time I took a stand against misuse of power and tried to exercise my rights as a Condominium Owner, I have been penalised by lack of services, restriction from accessing services, targeting behaviour, etc.”

[23] At the Summary Hearing, the applicant explained that he was complaining to other people in his condominium building about how the personal respondent exploited the proxy system of voting for members of the Board of Directors, and that he was thinking of taking legal action. He believes that the personal respondent found out and harassed the other tenants, saying that the applicant was demanding and unreasonable, and that they should not be witnesses for the applicant. In summarizing, he said that he was reprised against when he stood

up to the respondents and told them that “they were doing a bad job running the place,” particularly with respect to disrepair and abuse of the proxy system.

[24] While being treated badly by the respondents as a result of telling them that “they were doing a bad job” may describe a kind of reprisal, it is not a reprisal as defined by *Code*. I find that the submissions provided by the applicant, even if true, cannot be construed to be an action taken against or threat made to the applicant because he started a proceeding or is participating in a proceeding under the *Code*. I therefore find that the allegation of reprisal has no reasonable prospect of success.

Conclusion

[25] In his Application and his submissions, the applicant described unfair treatment by the respondents. Even if his description is accurate, the Tribunal does not have the power to deal with all claims of unfairness. I have found that the Tribunal does not have the power to deal with the allegations in the Application because they are not sufficiently linked to the grounds listed in the *Code* and there is no reasonable prospect of success at a Hearing.

[26] The Application is dismissed.

Dated at Toronto, this 19th day of May, 2011.

“Signed by”

Mary Truemner
Vice-chair