



**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Case Number: CSOS02522/KZN/18

IN THE MATTER BETWEEN
TRUSTEES OF RAVENSTONE BODY CORPORATE
(Applicants)

And

VGR MANAGEMENT T/A PHOENIX BODY CORPORATE
(Respondent)



ADJUDICATION ORDER

EXECUTIVE SUMMARY

Category of dispute: in respect of financial and management services.

The Applicant seeks an order that the Respondent be directed to attend to the following:

1. the payment of the monthly administration fee of R 720.00 totalling R 5,040.00 for the period of 01 January 2017 until July 2017 for the services that the Respondent failed to render;
2. comply with the last part of clause 9.6 of the contract which stipulates as follows "*the Association (Respondent) is obligated to hand to the Body Corporate the books and records on termination of the contract*"

Such relief sought is in line with the provision of section 39 of the CSOS Act¹ which provides that an application made in terms of section 38 must include one or more of the orders listed; in this case section 39 (5)(a) and (e).



INTRODUCTION

1. The Applicants are the Trustees of Ravenstone Body Corporate duly represented by Mr Desmond Emmanuel Devraj an adult male who reside at Unit 20 Ravenstone Body Corporate, Ravenstone Street, Phoenix, Durban.
2. The Respondent is the VGR Property Management t/a Phoenix Body Corporate a legal person in terms of the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011 (“ST SMA”) which is situated at 28 Cardinal Road, Stonebridge, Phoenix;
3. The Applicant is a Trustee the Chairman of the Ravenstone Body Corporate in the aforesaid sectional title complex.
4. The application was brought in terms of s 39 of the CSOS Act, which provides that:

“An application made in terms of that section must include one or more of the following orders:

(1) In respect of management services issues and financial issues –

(a) An order requiring a managing agent to comply with the terms of a person’s contract of appointment and any applicable code of conduct or authorisation; and

(e) An order for the payment or repayment of a contribution or any other amount.”

¹ Community Schemes Ombud Service Act No. 9 of 2011

5. This is an application for dispute resolution in terms of the CSOS Act. The application was made in the prescribed form and lodged with the Kwazulu-Natal Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
6. A Notice of Set Down was sent out on 25th August 2019 and it was communicated to both parties. The adjudication hearing took place on 17th September 2019 and only the applicant was present.
7. The Applicants were represented by the Chairman of the Body Corporate. However, there was non-appearance on the side of the Respondent despite a notice of set down sent to it and there was no explanation given for its non-appearance.

RELEVANT STATUTORY PROVISION



8. The hearing was conducted in terms of section 38(1) the CSOS Act which provides that –
“Any person may make an application if such person is a party to or affected materially by a dispute”.
9. Section 45(1) provides that –
“The ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator”
10. Section 47 provides that –
“on acceptance of an application and after receipt of any submissions from affected

persons or responses from the applicant, if the ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the ombud must refer the matter to conciliation.”



11. Section 48 provides that –

“If conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator”.

12. A certificate of Non- Resolution was issued. The Ombud therefore, referred the matter to adjudication, in terms of Section 48 of the Act.

SUMMARY OF RELEVANT EVIDENCE (That relating to the issues in dispute)

Applicant's Submissions

13. The Applicant referred to the Application form, dated 10 December 2018 as well as a copy of contract which was signed by both parties on 03 January 2013.

14. The Applicant states that it has appointed VGR Property Management (Respondent) t/a Phoenix Body Corporate Association from 01 January 2013 until he terminated their contract on 31 July 2017.

15. Clause 4. of the contract stipulates that “the association on behalf of the Body Corporate will:

Clause 4.1 collect monthly Body Corporate bank statements and any other income due to the Body Corporate (other income in terms of fines allocated to defaulters);

16. Further clause 4.3 provides that the Respondent will furnish the Chairman (Applicant) with a monthly customer detailed ledger showing amounts due and received from each member of the Body Corporate.

Clause 9.6 of the contract stipulates that “in the event of the Body Corporate exercise its rights to terminate the contract with the Association, the software shall remain the absolute property of the Association and the Body Corporate shall have no claims against the association for such software. “The Association is obligated to hand the Body Corporate books and records”, my emphasis.

17 The Applicant submits that the Respondent is in breach of contract in that it refuses to hand over the Body Corporate Books and Records as per clause 9.6 of the contract.

18 The Applicant submits that he had tried a numerous time to engage with the Respondent in order to try to resolve this matter amicably. However, all his attempts did not yield a desired result,

19 The Applicant further submits that 70% of the Unit owners are pensioners and they really require proper updates with their statement of account and the books.

Respondent's submissions



20 The Respondent was not represented hence we do not have its version of the story.

21 It must be noted that a notice of set down was sent out timeously on both parties however no response was received from the Respondent.

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

22 In the absence of the Respondent disputing the version of the Applicant, the version submitted by the Applicant must prevail. In any event, there is no

reason to believe that the Applicant's application should not be accepted as the Respondent is in breach of the terms of the contract entered between it and the Applicant.

23 The last part of clause 9.6 clearly stipulates that "The Association is obligated to hand the Body Corporate books and records". Numerous attempts were made by the Applicant to try and resolve the matter amicably. However, they were all in vain in that the Respondent was not cooperating with the Applicant. It must be noted that the terms of the contract are binding to both parties.

24 Further the Body Corporate property such as books and records are necessary for the operation of the Body Corporate, hence it must be returned to the Body Corporate. The Respondent is obligated to return such books and records as per contract. In other words, the Respondent is not expected to exercise its discretion, but it mandated to do so. All supporting documents are on record.

ADJUDICATION ORDER

25.1 In the circumstances, the Respondent is ordered to make the payment of the monthly administration fee of R 720.00 totalling R 5,040.00 for the period of 01 January 2017 until July 2017 for the services that the Respondent failed to render;

25.2 The Respondent is ordered to hand over the complete/full set of books and records for a period when it was appointed to a period when the contract was terminated. The aforesaid books and records must be handed over to the Ravenstone Body Corporate as obligated by the clause 9.6 of the contract within Fourteen (14) of the service on it, of this Order.



ADJUDICATION ORDER
DATE: *Alham 21/01/19*
Community Schemes Ombud Service
T: +27 (010) 593 0533 | F: +27 (010) 590 6154
Website: www.csos.org.za
Fraud Hotline: 0800 701 701

RIGHT OF APPEAL

24 The parties' attention is drawn to –

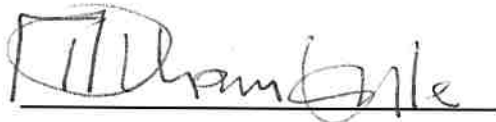
Section 57(1) of the CSOS Act of 2011 which provides –

An applicant, the association or any affected person

who is dissatisfied by an adjudicator's order, may appeal

to the High Court, but only on a question of law within thirty (30) days after the date of delivery of the order of the adjudicator”

DATED AT DURBAN on 31 October 2019



ADJUDICATOR: T KHAMBULE

