

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES REGULATORY
AUTHORITY OF ONTARIO**

Applicant

-and-

**SUSSMAN MORTGAGE FUNDING INC., 2486976 ONTARIO INC. and 1981361
ONTARIO INC.**

Respondents

APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES,
LENDERS AND ADMINISTRATORS ACT*, 2006, S.O. 2006, C. 29, AS AMENDED,
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS
AMENDED

**AFFIDAVIT OF BEATRICE LOSCHIAVO
(SWORN MAY 15, 2025)**

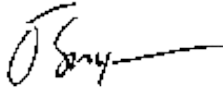
I, BEATRICE LOSCHIAVO, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a legal assistant with the law firm of Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**"), proposed representative counsel in these proceedings, and, as such, have knowledge of the matters contained in this affidavit. Where I do not have direct knowledge of those matters, I state the source of that information and I believe it to be true.
2. I am advised by Evan Snyder of Paliare Roland that on May 7, 2025, D.J. Miller of Thornton Grout Finnigan LLP ("**TGF**"), lawyers for Logpin Investments Limited, The

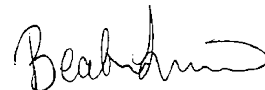
Goldfarb Corporation, Jeffrey Goldfarb, and Gary Goldfarb, sent a letter to Steven Graff of Aird & Berlis LLP ("**A&B**"), proposed representative counsel in these proceedings, copying the Service List, and that a copy of this letter was subsequently provided to the Court by the Receiver. A copy of the May 7, 2025 letter is attached hereto as Exhibit "A".

3. I am advised by Evan Snyder that, further to the May 7 letter, on May 13, 2025, Ms. Miller sent an email to the Receiver and its lawyers, and to Paliare Roland and A&B, among others. A copy of the May 13, 2025 email is attached hereto as Exhibit "B".

SWORN REMOTELY BEFORE ME at
the City of Toronto, in the Province of
Ontario on May 15, 2025

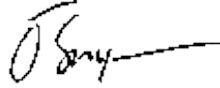


Commissioner for Taking Affidavits
(or as may be)



Beatrice Loschiavo

This is **Exhibit "A"**
Referred to in the Affidavit of Beatrice
Loschiavo Affirmed before me this 15th day of
May, 2025

A handwritten signature in black ink, appearing to read "J. Sny", with a horizontal line extending from the end of the signature.

A Commissioner for Taking Affidavits (or as may be)

May 7, 2025

BY EMAIL

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T5

Attention: Steve Graff

Dear Mr. Graff:

Re: Chief Executive Officer of the Financial Services Regulatory Authority of Toronto ("FSRA") v. Sussman Mortgage Funding Inc. ("SMFI") et al, Court File No.: CV-25-00741044-00CL

As you know, we represent Logpin Investments Limited, The Goldfarb Corporation, Jeffrey Goldfarb and Gary Goldfarb (collectively, the “**Goldfarb Investors**”) in connection with the above-captioned proceeding wherein B. Riley Farber has been appointed by the Court as Receiver.

Today, we became aware from our clients that the Goldfarb Investors had discussions with Aird & Berlis LLP (“**A&B**”) in January 2025, following introductory emails in November 2024, regarding the representation by A&B of the Goldfarb Investors in connection with their investments with SMFI and concerns with SMFI and its principal Sussman. In particular, Gary Goldfarb and Jeffrey Goldfarb (on behalf of themselves and the other Goldfarb Investors) exchanged emails, provided information relating to the issues of concern and engaged in discussions with members of your firm including Richard Kimel, Mark van Zandvoort, Kyle Plunkett, Kate Findlay and Colleen Pihokker. This includes the following:

- (i) On January 8, 2025, Gary Goldfarb asked Mr. Plunkett and Mr. van Zandvoort to clear conflicts relating to Sandy Sussman and SMFI;
- (ii) On January 9, 2025, Mr. van Zandvoort confirmed that A&B was clear of conflicts and a Microsoft Teams meeting was held on January 13, 2025 involving Mr. van Zandvoort and Kyle Plunkett of A&B;
- (iii) During discussions with representatives of A&B (**expressly without waiving any privilege that belongs to the Goldfarb Investors as to the details and confidential information discussed**), the Goldfarb Investors relayed, *inter alia*, the details of their concerns with SMFI and its handling of mortgage funds, and the Goldfarb Investors consulted with A&B and discussed actions that may be taken in respect of the assets of Mr. Sussman and SMFI to protect the interests of the Goldfarb Investors;

- (iv) A&B was provided with personal information relating to each of the Goldfarb Investors for the purposes of A&B opening a new file within the firm in accordance with LSO requirements; and
- (v) Following certain back-and-forth, a revised engagement letter signed by Richard Kimel of A&B was sent to the Goldfarb Investors on January 27, 2025.

Although the revised engagement letter was not executed, the law is clear that a solicitor-client relationship can be created without a formal retainer ever being concluded. The duty of confidentiality arises when confidential information is imparted to a lawyer for the purpose of obtaining legal advice, even if there is never a concluded retainer (*Descôteaux v. Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 S.C.R. 860; *Solosky v. R.*, 1979 CanLII 9 (SCC), [1980] 1 S.C.R. 821 and more recently cited in *Mizzi v Graham*, 2018 ONSC 3397 at [para 21](#)).

A&B received confidential information from the Goldfarb Investors less than five months ago on the exact same matter that A&B now seeks to be appointed as representative counsel. A&B's actions seeking to be appointed as representative counsel for the investors of SMFI creates a conflict of interest with the Goldfarb Investors. The materials served by A&B, the draft form of order circulated by A&B and submissions made at the court hearing on May 2, 2025 suggest that, if appointed by the Court as representative counsel, A&B would seek to pursue remedies adverse to the Goldfarb Investors, including as Opt-Out Investors (as defined in A&B's draft Order). This appears to be on the basis of an alleged "preference" in the form of security obtained by the Goldfarb Investors. If appointed, it would result in A&B pursuing remedies against the Goldfarb Investors that they were formerly in a solicitor-client relationship with, on the very matter that those same parties consulted with and provided confidential information to A&B.

This is a clear and irreconcilable conflict. The Goldfarb Investors have not waived this conflict, are not prepared to do so, and take the position that A&B could not act as representative counsel in this proceeding.

If representative counsel is appointed by the Court for Investors, it cannot be A&B.

The above does not mean that the representative counsel motion served by your firm cannot proceed as scheduled on May 16, 2025, if some other firm is prepared to replace A&B as the proposed representative counsel on the motion, with the motion record already having been served. Given the timing of the motion and our having just learned of this situation, we will notify the Service List so that counsel representing investors can coordinate themselves with respect to replacement counsel, as they wish.

In light of the above, please confirm that A&B will not be pursuing an appointment by the Court as representative counsel. We remind you that A&B's obligations to the Goldfarb Investors, including its duty of confidentiality and non-waiver of privilege, continue to apply. Nothing contained in this letter constitutes a waiver of any privilege by the Goldfarb Investors. We will be



Thornton Grout Finnigan LLP

3.

filing this correspondence and any reply with the Court in this proceeding, and are advising you of that in advance, so that you can ensure that your firm's obligations are met.

Yours truly,

Thornton Grout Finnigan LLP

A handwritten signature in blue ink, appearing to read 'D.J. Miller'.

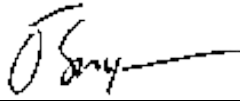
D.J. Miller

DM/gk

cc: Counsel for all Investors on the Service List

cc: Clients

This is **Exhibit "B"**
Referred to in the Affidavit of Beatrice
Loschiavo Affirmed before me this 15th day of
May, 2025

A handwritten signature in black ink, appearing to read "J. Sny", with a horizontal line extending from the end of the signature.

A Commissioner for Taking Affidavits (or as may be)

From: D. J. Miller <DJMiller@tgf.ca>
Sent: May 13, 2025 3:28 PM
To: Kraft, Kenneth; Matilda Lici; Kennedy, Robert; Ken Rosenberg
Cc: Steven L. Graff; George@chaitons.com; Max Starnino; anackan@brileyfin.com; rwilliams@brileyfin.com
Subject: RE: [EXTERNAL] Chief Executive Officer of the Financial Services Regulatory Authority of Ontario v. Sussman Mortgage Funding Inc. et al. | Court File No. CV-25-00741044-00CL

The “conflict” has been resolved strictly on the basis of our client agreeing to waive it upon receiving confirmation that the rep counsel Order sought by A&B does not seek to (and did not originally seek to) have Opt-Out Investors responsible for any portion of the fees and expenses of Rep Counsel, if appointed. That is the “gating issue” that existed but has been resolved. As A&B confirmed that that was not the intention and their firm would not be acting as rep counsel on that basis, our client confirmed that they will waive the conflict (appreciating that A&B does not share our client’s view as to whether the conflict exists in the first place). That is on the basis of the negotiated Order in our responding record.

It is likely best for me to address this issue, rather than counsel for the Receiver.

D.J.



D. J. Miller | DJMiller@tgf.ca | Direct Line +1 416 304-0559 | www.tgf.ca

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From: Kraft, Kenneth <kenneth.kraft@dentons.com>
Sent: Tuesday, May 13, 2025 3:22 PM
To: Matilda Lici <mlici@airdberlis.com>; D. J. Miller <DJMiller@tgf.ca>; Kennedy, Robert <robert.kennedy@dentons.com>; Ken.Rosenberg@paliarerland.com
Cc: Steven L. Graff <sgraff@airdberlis.com>; George@chaitons.com; Max.Starnino@paliarerland.com; anackan@brileyfin.com; rwilliams@brileyfin.com
Subject: RE: [EXTERNAL] Chief Executive Officer of the Financial Services Regulatory Authority of Ontario v. Sussman Mortgage Funding Inc. et al. | Court File No. CV-25-00741044-00CL

Matilda

We will update the Court that to the extent a potential conflict issue had been raised that has now been resolved and should not impact the ultimate choice of rep counsel.

To clarify Rob’s earlier email, the third-party referee (if that route is chosen) would be empowered to make a recommendation to the Court (not to decide the issue). If a motion is to be heard, either way, we believe it should be shortly after the Receiver’s report is delivered (so likely the second week of June).

Ken

Kenneth Kraft

Partner

My **pronouns** are: He/Him/His

☐ +1 416 863 4374 | ☐ +1 416 602 7174

Dentons Canada LLP | Toronto

This lawyer practices through a professional corporation.

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From: Matilda Lici <mlici@airdberlis.com>

Sent: Tuesday, May 13, 2025 2:45 PM

To: D. J. Miller <DJMiller@tgf.ca>; Kennedy, Robert <robert.kennedy@dentons.com>; Kraft, Kenneth <kenneth.kraft@dentons.com>; Ken.Rosenberg@paliarerland.com

Cc: Steven L. Graff <sgraff@airdberlis.com>; George@chaitons.com; Max.Starnino@paliarerland.com; anackan@brileyfin.com; rwilliams@brileyfin.com

Subject: RE: [EXTERNAL] Chief Executive Officer of the Financial Services Regulatory Authority of Ontario v. Sussman Mortgage Funding Inc. et al. | Court File No. CV-25-00741044-00CL

[WARNING: EXTERNAL SENDER]

Hi Robert and Ken,

We reference the email that you sent to the Court yesterday at 9:48 pm, which attached Ms. Miller's letter to Mr. Graff of May 7, 2025, in which there was a suggestion of a potential conflict with respect to our firm's ability to act as representative counsel of the investors.

We trust that you have seen Ms. Miller's email of this morning, in which she advised the list of investors' counsel that her clients are prepared to waive any purported conflict as there is consensus regarding the language of the draft representative counsel order. In view of that communication, we trust that you will take immediate steps to advise the Court of same.

Thank you,

Matilda Lici
Associate

T 416.865.3428

E mlici@airdberlis.com

Aird & Berlis LLP | Lawyers
Toronto | Vancouver

Aird & Berlis LLP operates as a multi-disciplinary practice.

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Court File No. CV-25-00741044-00CL

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at TORONTO

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Email: evan.snyder@paliareroland.com

Proposed Representative Counsel, Paliare Roland
Rosenberg Rothstein LLP