

**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 SUBSECTION 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**

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**MOTION RECORD  
(Returnable May 2, 2025)**

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April 29, 2025

**AIRD & BERLIS LLP**  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steve Graff** (LSO #31871V)  
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**Matilda Lici** (LSO #79621D)  
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*Proposed Representative Counsel*

**TO: SERVICE LIST**

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

B E T W E E N:

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SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C.C.43, AS AMENDED**

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**DOCUMENTS**

1. Notice of Motion dated April 29, 2025
2. Affidavit of Harley Zaretsky sworn April 29, 2025
3. Draft Representative Counsel Order

# TAB 1

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

**B E T W E E N :**

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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**

**NOTICE OF MOTION**

Certain investors who invested in mortgages brokered and administered by Sussman Mortgage Funding Inc. ("**SMFI**") pursuant to investor agreements entered into with SMFI, for an Order, among other things, appointing Aird & Berlis LLP ("**A&B**") as representative counsel of all investors who contracted with SMFI for the administration of mortgage investments will make a Motion to the Court on May 2, 2025 at 10:00 am, or as soon after that time as the Motion can be heard, at 330 University Ave, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard orally.

**THE MOTION IS FOR** an Order, among other things:

1. approving the time for service of the Notice of Motion, and dispensing with service on any person other than those served;
2. appointing A&B as representative counsel ("**Representative Counsel**") to represent the investors who invested in mortgages brokered and administered by SMFI pursuant to any written, oral, express or implied investor agreements entered into with SMFI (each an "**Investor**" and collectively, the "**Investors**") in respect of all claims ("**Claims**") to be made by the Investors in these proceedings;
3. appointing Stephen Shefsky, Robert Green and Harley Zaretsky as representatives of the Investors (the "**Representative Investors Committee**") in respect of the within receivership proceedings, provided that any other Investors may be appointed to the Representative Investors Committee from time to time on such terms as may be agreed to by the Representative Investors Committee or established by further order of this Court;
4. granting a charge attaching to the assets of the Respondents as security for the professional fees of A&B as Representative Counsel, at its standard rates and charges, up to an aggregate maximum amount of \$100,000, exclusive of HST and disbursements (the "**Representative Counsel Charge**"); and
5. such further and other relief as to this Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

6. Sussman Mortgage Funding Inc. ("**SMFI**") is a company incorporated in Ontario whose business is regulated by Financial Services Regulatory Authority of Ontario ("**FSRA**"). SMFI is

licensed as a mortgage brokerage and a mortgage administrator under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the “**MBLAA**”).

7. 2486976 Ontario Inc. and 1981361 Ontario Inc. are companies incorporated in Ontario, each of which is a joint venture participant in real estate projects financed by SMFI mortgages.

8. Sanford Sussman is a director and officer of each of the Respondents.

9. According to FSRA, SMFI has 92 investors in 38 mortgages under administration, valued at \$101,148,392, of which 22 are qualified syndicated mortgages valued at \$23,111,237 and 17 are non-qualified syndicated mortgages valued at \$79,307,152.

10. According to FSRA, 11 of the 38 mortgages, valued at \$73,191,452, are in arrears.

11. FSRA has commenced the within application to appoint a receiver, without security, of all of the assets, undertakings and properties of the Respondents acquired for, forming part of, or used in relation to a business carried on by the Respondents, any assets or property held by the Respondents in trust for any third party, and all property, rights, interests and proceeds arising from all joint venture or co-tenancy agreements entered into by the Respondents, pursuant to Section 37 of the MBLAA, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

12. The appointment of A&B as Representative Counsel and the appointment of the Investor Representatives will assist a court-appointed officer, including a receiver, in streamlining communications and providing access to legal counsel to any Investor (other than any Opt-Out Investors).

13. No other representative counsel has been appointed in these proceedings and A&B is not aware of any other party seeking that role.

14. A&B already has the support of at least seven investors totalling over \$12 million in asserted claims.

**Other Grounds**

15. Rules 1.04 and 11 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

16. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The Affidavit of Harley Zaretsky sworn April 29, 2025; and
- (b) Such further and other evidence as the lawyers may advise and this Court may permit.

April 29, 2025

**AIRD & BERLIS LLP**  
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*Proposed Representative Counsel*

**TO: SERVICE LIST**

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

and

**SUSSMAN MORTGAGE FUNDING INC. et al. et al.**

Respondents

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

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION  
(RETURNABLE APRIL 29, 2025)**

**AIRD & BERLIS LLP**

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181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

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*Proposed Representative Counsel*

# TAB 2

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

**B E T W E E N:**

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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED**

**AFFIDAVIT OF HARLEY ZARETSKY  
(sworn April 29, 2025)**

**I, HARLEY ZARETSKY, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY AS FOLLOWS:**

1. I am an investor in mortgages brokered and administered by Sussman Mortgage Funding Inc. (“**SMFI**”). As such, I have personal knowledge of the matters set out herein. Where the matters I discuss in this affidavit are not within my personal knowledge, I have stated the source of the information, and I believe that information to be true.

2. No portion of this affidavit is meant to waive, nor should it be understood to be a waiver of, solicitor-client privilege.

3. I am swearing this affidavit in support of a motion for an order, among other things:

- (a) appointing Aird & Berlis LLP ("**A&B**") as representative counsel (in such capacity, "**Representative Counsel**") for all investors who invested in mortgages brokered and administered by SMFI pursuant to written, verbal, express or implied investor agreements entered into with SMFI (each an "**Investor**" and collectively, the "**Investors**") in respect of all claims ("**Claims**") to be made by the Investors in these proceedings;
- (b) appointing me, Stephen Shefsky, and Robert Green as representatives of the Investors (each, a "**Representative Investor**" and collectively, the "**Representative Investors Committee**") as well as any others who the Representative Investors, acting reasonably, wish to admit to the Representative Investors Committee, in respect of the proposed receivership proceedings; and
- (c) approving the proposed charge attaching to the assets of the Respondents as security for the proposed Representative Counsel's professional fees and its standard rates and charges, up to an aggregate maximum amount of \$100,000, exclusive of HST and disbursements (the "**Representative Counsel Charge**").

4. I understand from counsel that SMFI is a company incorporated in Ontario whose business is regulated by Financial Services Regulatory Authority of Ontario ("**FSRA**"). SMFI is licensed

as a mortgage brokerage and a mortgage administrator under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the “**MBLAA**”).

5. 2486976 Ontario Inc. and 1981361 Ontario Inc. are companies incorporated in Ontario, each of which is a joint venture participant in real estate projects financed by SMFI mortgages.

6. Sandford Sussman (“**Sussman**”) is a director and officer of each of the Respondents.

7. I am advised by A&B that FSRA has commenced an application to appoint a receiver, without security, of all of the assets, undertakings and properties of the Respondents, among other things.

8. According to FSRA, SMFI has 92 investors in 38 mortgages under administration, the face value of which stands at \$101,148,392, of which 22 are qualified syndicated mortgages valued at \$23,111,237 and 17 are non-qualified syndicated mortgages valued at \$79,307,152.

9. According to FSRA, 11 of the 38 mortgages, the face value of which is \$73,191,452, are in arrears.

10. I am advised by counsel at A&B that FSRA has recently received a number of complaints from investors, including allegations that loans have not been repaid, interest payments have stopped, mortgages were not registered on title, and mortgages were discharged without investor consent or repayment of their loans.

11. I am advised by A&B that several civil proceedings have been commenced or are pending against SMFI and its principal, Sussman, some of which involve allegations that certain investors

have recently entered into transactions with SMFI that may give them preferential treatment over other investors.

12. Based on representations made by Sussman personally and on behalf of SMFI, I entered into an investor agreement with SMFI to invest in certain syndicated mortgages.

13. I understood that the funds I invested, along with funds from other investors, would be pooled by SMFI and advanced to the borrower. The funds would be secured by a mortgage which was to be held in trust by SMFI for the investors. SMFI was to administer the mortgage, collect interest payments from the borrower and remit them to the investors in accordance with their proportionate share of the loan.

14. I invested approximately \$1.5 million with SMFI in connection with certain syndicated mortgages, identified to me as, *inter alia*, mortgages A-18, B-83, L-16, and R-66. As of April 28, 2025, approximately \$1,135,318.73 of my investment remains in the possession of SMFI.

15. I have connected with Dr. Sam Barkin (“**Dr. Barkin**”) and Jay Teichman (“**Mr. Teichman**”), two individuals who also hold investments in SMFI.

16. To date, we have not formally retained any law firm to represent our respective interests in this matter, but have been in dialogue with A&B from the start about the appointment of representative counsel to represent us and all other investors, and protect the collective investor class’s interests in connection with any realization efforts.

17. The amounts invested in SMFI by me, Mr. Teichman and Dr. Barkin are financially significant to each of us, and represent considerable life’s savings.

18. Additionally, I am advised by A&B that there are other SMFI investors—Stephen Shefsky, Rita Shefsky and Samantha Shefsky (collectively, the “**Shefskys**”) and Robert Green (“**Mr. Green**”)—who currently have their own legal representation, but support the appointment of A&B as representative counsel to act on behalf of all Investors.

19. Between all of us, our aggregate investment in SMFI amounts to a total of over \$12,000,000.

20. I believe that it is necessary to appoint the proposed Representative Counsel and Investor Representatives in these proceedings in order to ensure that Investors can meaningfully, collectively and affordably participate in these proceedings. In my view, it would be financially and logistically difficult for a large number of Investors to effectively participate in these proceedings without Representative Counsel. The appointment of A&B as Representative Counsel and the appointment of the proposed Investor Representatives will streamline communications between the receiver, if appointed, and the Investor class, and provide much needed and cost-effective representation to all Investors (other than any Opt-Out Investors).

21. A&B already has the support of at least seven investors with asserted claims totalling over \$12 million. No other representative counsel has been appointed in these proceedings and A&B is not aware of any other party seeking that role.

22. If appointed Representative Counsel over these proceedings, A&B proposes as part of its mandate, among other things, to:

- (a) advise and support the Investors in respect of all matters arising within the receivership proceedings;

- (b) hold townhall meetings to provide Investors and other related stakeholders the opportunity to ask questions and voice concerns about the ongoing proceedings;
- (c) represent the Investors in meetings and Court hearings, as necessary;
- (d) communicate with the Receiver and any other parties on behalf of the Investors in respect of potential future motions and orders to be sought in the receivership proceedings;
- (e) create and monitor a unique email address that Investors and other stakeholders can use to communicate with A&B to facilitate the sharing of updates and other information relating to the ongoing proceedings; and
- (f) create a website where Investors and other stakeholders can find updates regarding general information, court filings, legal forms (if applicable), and any other aspects of the proceedings.

23. I believe that I and the other Investors proposed to be represented by A&B have a common interest in these proceedings. I am not aware of any material conflict existing between the interest of the Investors at this time.

24. I am advised by A&B that the firm has extensive experience in mandates of this nature, which include the court proceedings involving Bridging Finance Inc., Crystal Wealth Management System Limited, The Lion's Share Group Inc. and Keele Medical Properties Ltd. I believe their experience in these matters has given them the know-how to structure their involvement in a cost-efficient and investor-focussed fashion.

25. This affidavit is thus made in support of the within motion for, among other things, the appointment of A&B as Representative Counsel over these proceedings, and for no other improper purpose.

Affirmed remotely by video conference on April 29, 2025 in the City of Toronto, in the Province of Ontario, with the affiant before me in the City of Toronto, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Matilda Lici

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Commissioner for Taking Affidavits

Matilda Lici

Signed by:

Harley Zaretsky

63307ECAB959481...

**HARLEY ZARETSKY**

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL  
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- and -

**SUSSMAN MORTGAGE FUNDING INC. et al.**

Applicant

Respondents

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

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

**Proceedings commenced at Toronto**

**AFFIDAVIT OF HARLEY ZARETSKY  
(sworn April 29, 2025)**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
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*Proposed Representative Counsel*

# TAB 3

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

THE HONOURABLE

)

FRIDAY , THE 2<sup>ND</sup>

)

JUSTICE KIMMEL

)

DAY OF MAY, 2025

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES  
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OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED**

**REPRESENTATIVE COUNSEL ORDER**

**THIS MOTION**, made by certain investors who invested in mortgages brokered and administered by Sussman Mortgage Funding Inc. ("**SMFI**") pursuant to investor agreements entered into with SMFI, for an Order, among other things, appointing Aird & Berlis LLP as representative counsel of all investors who contracted with SMFI for the administration of mortgage investments was heard on this day at 330 University Ave, Toronto, Ontario.

**ON READING** the Notice of Motion dated April 29, 2025, and on hearing the submissions of A&B, as counsel for the moving parties, and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Daisy Jin sworn April 29, 2025,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that Aird & Berlis LLP is hereby appointed as representative counsel (in such capacity, "**Representative Counsel**") to represent the investors who invested in mortgages brokered and administered by SMFI pursuant to any written, oral, express or implied investor agreements entered into with SMFI (each an "**Investor**" and collectively, the "**Investors**") in respect of all claims ("**Claims**") to be made by the Investors in these proceedings.
3. **THIS COURT ORDERS** that Representative Counsel may determine, advance or compromise any Claims made by an Investor or a group or class of Investors against any of the Respondents and any of the Opt-Out Investors, subject to approval of this Court, provided that each Investor reserves the right to advance any Claim against any other Investor including, without limitation, with respect to priority of Claims and preferential transactions or conveyances.
4. **THIS COURT ORDERS** that Representative Counsel shall have access to and the right to examine all relevant records and data kept by the Investors and all relevant records and data in the possession and control of B. Riley Farber, in its capacity as court-appointed receiver of the Respondents (the "**Receiver**"), in any form whatsoever.
5. **THIS COURT ORDERS** that pursuant to s. 7 of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, any court-appointed receiver of one or more of the Respondents is authorized and permitted disclose personal information of identifiable individuals who are believed to be Investors to Representative Counsel. Representative Counsel shall maintain and protect the privacy of such information and shall limit the use of such information to its role as Representative Counsel.
6. **THIS COURT ORDERS** that Stephen Shefsky, Robert Green and Harley Zaretsky are hereby appointed as representatives of the Investors (the "**Representative Investors Committee**") in respect of the within receivership proceedings, provided that any other Investors may be appointed to the Representative Investors Committee from time to time on such terms as may be agreed to by the Representative Investors Committee or established by further order of this Court.

7. **THIS COURT ORDERS** that Representative Counsel may rely on and act on the instruction of the majority of the Representative Investors Committee in the course of their engagement, without further communication from the Investors, except as may otherwise be ordered by this Court.
  
8. **THIS COURT ORDERS** that the Representative Investors Committee and Representative Counsel acting on its behalf are authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order on behalf of the Investors, including, without limitation, by:
  - (a) reviewing and advising Investors on the Receiver's preliminary report to stakeholders and the Court with respect to the business and affairs of the Respondents and the status of the mortgages referenced in the order appointing the Receiver (the "**Receivership Order**");
  - (b) filing and preparing materials, including any appeal materials, and advancing submissions in respect of any motions that may be scheduled to be heard in these proceedings;
  - (c) negotiating, as may be appropriate, any resolution to this application or any motion brought herein;
  - (d) bringing any motion as may be required to advance the interests of the Investors, including, without limitation, a motion, as necessary, to challenge the security granted by the Respondents in favour of any other investor; and
  - (e) performing such other actions as approved by this Court.
  
9. **THIS COURT ORDERS** that, with the exception of the Opt-Out Investors (as defined below):
  - (a) Representative Counsel shall represent all Investors in connection with the Claims; and
  - (b) the Investors shall be bound by the actions of Representative Counsel with respect to the Claims.

10. **THIS COURT ORDERS** that the Representative Counsel shall be entitled to apply to this Court for advice and direction in the discharge or variation of its powers and duties set out in this Order.
11. **THIS COURT ORDERS** that Representative Counsel shall be entitled to the benefit of a charge attaching to the assets of the Respondents as security for its professional fees at its standard rates and charges, up to an aggregate maximum amount of \$100,000, exclusive of HST and disbursements (the “**Representative Counsel Charge**”).
12. **THIS COURT ORDERS** that the Representative Counsel shall pass its accounts from time to time, and for this purpose the accounts of the Representative Counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice. For greater certainty, Representative Counsel shall be entitled to charge its legal fees and disbursements, incurred at the standard rates and charges of the Representative Counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.
13. **THIS COURT ORDERS** that upon the passing of its accounts, the Representative Counsel’s fees shall be at liberty from time to time to apply reasonable amounts, out of the monetization of the assets forming part of all of the assets of the Respondents, including those held in trust for others, when the proceeds of such assets are available for distribution, against its fees and disbursements.
14. **THIS COURT ORDERS** that the Representative Counsel Charge shall rank *pari passu* with the Receiver’s Charge (as defined in the Receivership Order) but only to the extent of the percentage of the Investors’ interest (excluding the Opt-Out investors) in the assets of the Respondents relative of the percentage of the interest of all investors, however.
15. **THIS COURT ORDERS** that the Representative Counsel Charge may be increased by further Order of the Court.
16. **THIS COURT ORDERS** that, subject to the Representative Counsel Charge, Representative Counsel shall be paid its reasonable fees and disbursements by the Receiver out of the distribution to which the Investors would be entitled to receive at the time of distribution for fulfilling its mandate in accordance with this Order, and subject to

such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Investors.

17. **THIS COURT ORDERS** that the Representative Investors and Representative Counsel shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order, or any subsequent Order in these proceedings, save and except for liability arising out of gross negligence or willful misconduct.
18. **THIS COURT ORDERS** that no proceeding may be commenced against the Representative Investors or Representative Counsel in respect of the performance of duties under this Order without leave of this Court, and on at least seven days' notice to the Representative Investors or Representative Counsel.
19. **THIS COURT ORDERS** that a copy of this Order shall be delivered forthwith to all known Investors by way of email, and a copy of this Order shall be posted on the website of the court-appointed receiver of the Respondents.
20. **THIS COURT ORDERS** that any Investor who does not wish to be bound by this Order shall notify Representative Counsel no later than three business days following the delivery by the Receiver of its preliminary report to the Court and, thereafter, shall not be bound by this Order and shall be responsible for representing themselves, personally or through counsel, as an independent individual party to the extent they wish to appear in these proceedings (the "**Opt-Out Investors**").
21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Representative Counsel and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Representative Counsel, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to Representative Counsel in any foreign proceeding, or to assist Representative Counsel and its agents in carrying out the terms of this Order.

22. **THIS COURT ORDERS** that Representative Counsel and the Committee shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for advice and directions in the discharge or variation of their powers and duties hereunder.
23. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order, and this Order is enforceable without the need for entry and filing.
-

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

**SUSSMAN MORTGAGE FUNDING INC. et al.**  
Respondents

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

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**ONTARIO  
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Proceedings commenced at Toronto

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**ORDER**

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