

**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

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

Respondent

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

RESPONDING MOTION RECORD

May 12, 2025

THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

D.J. Miller (LSO# 34393P)

Email: djmiller@tgf.ca

Tel.: (416) 304-0559

Derek Harland (LSO# 79504N)

Email: dkharland@tgf.ca

Tel.: (416) 304-1127

Lawyers for Logpin Investments Limited, The
Goldfarb Corporation, Jeffrey Goldfarb and
Gary Goldfarb

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

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1	Affidavit of Dannalyn Salita sworn May 12, 2025
Exhibit “A”	Email from TGF LLP to All Counsel for Investors on the Service List dated May 6, 2025, with attachments
Exhibit “B”	Email from TGF LLP to All Counsel for Investors on the Service List dated May 9, 2025, with attachments
Exhibit “C”	Email from Matilda Lici of Aird & Berlis LLP to All Counsel for Investors on the Service List dated May 9, 2025, with attachments
Exhibit “D”	Email from TGF LLP to All Counsel for Investors on the Service List dated May 12, 2025

**SERVICE LIST
(AS OF MAY 12, 2025)**

TO:	<p>DENTONS LLP Toronto Dominion Centre 77 King St W, Suite 400 Toronto, ON, M5K 0A1</p> <p>Robert Kennedy (LSO# 47407O) Email: Robert.kennedy@dentons.com</p> <p>Counsel to the Receiver, B. Riley Farber Inc.</p>
AND TO:	<p>B. RILEY FARBER INC. 150 York Street, Suite 1600 Toronto, ON, M5H 3S5</p> <p>Richard Williams Email: rwilliams@brileyfin.com</p> <p>Allan Nackan Email: anackan@brileyfin.com</p> <p>Receiver</p>
AND TO:	<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON, M2N 7E9</p> <p>George Benchetrit (LSO# 34163H) Tel: (416) 218-1141 Email: george@chaitons.com</p> <p>David Im (LSO# 89765G) Tel: (416) 218-1124 Email: dim@chaitons.com</p> <p>Lawyers for Chief Executive Officer of The Financial Services Regulatory Authority of Ontario</p>

AND TO:	<p>PAUL J. DAFFERN LAW FIRM 48 High Street Barrie, ON, L4N 1W4</p> <p>Paul Daffern (LSO# 38484M) Tel: 705-725-9670 Email: paul.daffern@daffernlaw.com</p> <p>Lawyers for Sussman Mortgage Funding Inc., 2486976 Ontario Inc., and 1981361 Ontario Inc.</p>
AND TO:	<p>FOGLER RUBINOFF LLP 40 King Street West Suite 2400 Toronto, ON, M5H 3Y2</p> <p>Milton Davis Email: mdavis@foglers.com</p> <p>Teodora Obradovic Email: tobradovic@foglers.com</p> <p>Lawyers (Mareva Proceeding) for Logpin Investments Limited, The Goldfarb Corporation, Gary Goldfarb, Jeffrey Goldfarb, Suzy S. Greenspan and Julianna Greenspan</p>
AND TO:	<p>THORNTON GROUT FINNIGAN LLP Toronto Dominion Centre 100 Wellington St W #3200 Toronto, ON, M5K 1K7</p> <p>DJ Miller (LSO# 34393P) Email: djmiller@tgf.ca</p> <p>Derek Harland (LSO# 79504N) Email: dkharland@tgf.ca</p> <p>Lawyers (Receivership Proceeding) for Logpin Investments Limited, The Goldfarb Corporation, Gary Goldfarb, and Jeffrey Goldfarb</p>

AND TO:	<p>CP LLP TD North Tower 77 King Street West, Suite 700</p> <p>Michael Crampton Email: mcrampton@cpllp.com</p> <p>Elliot Birnboim Email: ebirnboim@cpllp.com</p> <p>Lawyers for Jack Tepperman, Jordana Hoppe and the Tepperman Family Trust</p>
AND TO:	<p>BOOK ERSKINE LLP 500-360 Bay Street Toronto, ON, M5H 2V6</p> <p>Hilary Book (LSO# 524791) Tel: 416-613.9161 Email: hilary@be-law.ca</p> <p>Lawyers for Stephen Shefsky, Rita Shefsky and Samantha Shefsky</p>
AND TO:	<p>RICKETTS HARRIS LLP 250 Yonge Street, Suite 2200 Toronto, ON, M5B 2L7</p> <p>Gary Luftspring (LSO# 19972M) Email: gluftspring@rickettsharris.com Tel: 647-288-3362</p> <p>Pavle Masic (LSO# 62275F) Email: pmasic@rickettsharris.com Tel: 647-260-2201</p> <p>Lawyers for Robert Green Investors</p>

AND TO:	<p>AIRD & BERLIS LLP Brookfield Place 181 Bay St., Suite 1800 Toronto, ON, M5J 2T9</p> <p>Steven L. Graff (LSO# 31871V) Email: sgraff@airdberlis.com Tel: 416.865.7726</p> <p>Matilda Lici (LSO# 79621D) Email: mlici@airdberlis.com</p> <p>Proposed Representative Counsel</p>
AND TO:	<p>HGR GRAHAM PARTNERS LLP 190 Cundles Road East, Suite 107 Barrie, ON, L4M 4S5</p> <p>Riley Brooks Email: rbrooks@hgrgp.ca</p> <p>Marcey Kingdon Email: marceyk@hgrgp.ca</p> <p>Lawyers for Teresa Vincent, Laura Vincent, 2578709 Ontario Ltd. and UCA Branding Inc.</p>
AND TO:	<p>FRIEDMAN LAW PROFESSIONAL CORPORATION 150 Ferrand Dr North York, ON, M3C 3Z2</p> <p>Judy Hamilton Email: jh@friedmans.ca</p> <p>Lawyers for Jeffrey Citron PC and WFE Investments Corp.</p>

AND TO:	<p>ROBINS APPLEBY LLP 120 Adelaide St W #2600 Toronto, ON, M5H 1T1</p> <p>Leor Margulies Email: lmargulies@robapp.com</p> <p>Samuel Mosonyi Email: smosonyi@robapp.com</p> <p>Lawyers for Ballymore Building (Innisfill) Corporation</p>
AND TO:	<p>GOLDMAN SLOAN NASH AND HABER LLP 480 University Ave Toronto, ON, M5G 1V2</p> <p>Robert Malen Email: malen@gsnh.com</p> <p>Lawyers for 2114568 Ontario Inc., Alliance Homes Ltd., Alex Troop, and Waterways of Muskoka Ltd.</p>
AND TO:	<p>CLYDE & CO 401 Bay Street #2500 Toronto, ON, M5H 2Y4</p> <p>Mark Mandelker Email: mark.mandelker@clydeco.ca</p> <p>Lawyers for Sussman Mortgage Funding and Sandford Sussman in the proceeding bearing Court File No.: CV-25-00740475-00CL</p>
AND TO:	<p>106-4364 ONTARIO INC.</p> <p>Esther Cohen Email: richiecohen48@gmail.com</p>
AND TO:	<p>LOOPSTRA NIXON 130 Adelaide Street West, Suite 2800 Toronto, ON, M3H 3P5</p> <p>Graham Phoenix Email: gphoenix@ln.law</p> <p>Lawyers for Certain Investors</p>

AND TO:	<p>GIONET FAIRLEY WOOD LLP 152 Bayfield St Barrie, ON, L4M 3B5</p> <p>Carole Redmond Email: credmond@gfwlaw.ca</p> <p>Scott Fairley Email: sfairley@gfwlaw.ca</p> <p>Brooke Florian Email: bflorian@gfwlaw.ca</p> <p>Jessica Fonseca Email: jfonseca@gfwlaw.ca</p> <p>Lawyers for Cathy Horne and Marcus Kremer</p>
AND TO:	<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 35th Floor, 155 Wellington St W. Toronto, ON, M5V 3H1</p> <p>Ken Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Evan Snyder Email: evan.snyder@paliareroland.com</p> <p>Lawyers for Certain Investors / Proposed Representative Counsel</p>

**Email Service List
(as of May 12, 2025)**

Robert.kennedy@dentons.com; rwilliams@brileyfin.com; anackan@brileyfin.com;
george@chaitons.com; dim@chaitons.com; paul.daffern@daffernlaw.com;
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evan.snyder@paliareroland.com;

TAB 1

**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

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

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**AFFIDAVIT OF DANNALLYN SALITA
(SWORN MAY 12, 2025)**

I, **DANNALLYN SALITA**, 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 Thornton Grout Finnigan LLP (“**TGF**”), lawyers for Logpin Investments Limited, The Goldfarb Corporation, Jeffrey Goldfarb, and Gary Goldfarb (collectively, the “**Goldfarb Investors**”), and, as such, I have knowledge of the matters contained in this affidavit.
2. The facts set out below are either within my personal knowledge or derived from the face of the documents referred to herein. Where I do not have personal knowledge of the matters set out below, I have stated the source of my information and believe it to be true.

3. On May 6, 2025, TGF sent a letter to all counsel for investors on the Service List (the “**May 6 Letter**”), including to Mr. Steve Graff of Aird & Berlis LLP, counsel to the proposed representative counsel in this proceeding (the “**Proposed Rep Counsel**”) and copied counsel to the Receiver. A copy of the May 6 Letter is attached as **Exhibit “A”**.
4. On May 9, 2025, having not received a response to the May 6 Letter, TGF sent an email to all counsel for investors on the Service List including the Proposed Rep Counsel, attaching a letter dated May 9, 2025, a clean Word copy of a mark-up to the draft order contained in the Motion Record of the Proposed Rep Counsel (the “**Rep Counsel Motion Record**”) and a blackline comparison showing the changes made by TGF to the draft order. The Receiver’s counsel was also copied. A copy of the cover email, May 9, 2025 letter and enclosures is attached as **Exhibit “B”**.
5. Following further discussions, on May 12, 2025, the Proposed Rep Counsel sent an email (the “**May 12 Email**”) to all counsel for investors on the Service List with copies of a revised form of order, along with a blackline against the form of Order originally included in the Rep Counsel Motion Record. The revised form of Order circulated by the Proposed Rep Counsel through the May 12 Email is identical in substance to the revised form of Order circulated by TGF that is at Exhibit “B”. A copy of the May 12 Email with attachments is attached as **Exhibit “C”**.
6. On May 12, 2025, D.J. Miller of TGF sent an email to counsel for all investors on the Service List to follow up to determine if there was any disagreement on the part of any counsel for investors on the Service List or their clients with the May 12 Email and revised Order circulated, in an effort to narrow the issues for the Court. I’m advised by D.J. Miller that at the time of swearing this affidavit, no counsel has responded to indicate any concerns

with the form of Order circulated by counsel to the Proposed Rep Counsel. A copy of the follow-up email sent on May 12, 2025 is attached as **Exhibit “D”**.

SWORN remotely via video conference
by Dannallyn Salita at the City of Toronto, in
the Province of Ontario, before me on this
12th day of May, 2025, in accordance with
*O. Reg. 431/20, Administering Oath or
Declaration Remotely.*



Commissioner for Taking Affidavits
(or as may be)

DEREK HARLAND



DANNALLYN SALITA

This is Exhibit "A" referred to in the
Affidavit of Service sworn by Dannalyn Salita at the City of
Toronto, in the Province of Ontario, before me this 12th day
of May, 2025 in accordance with *O. Reg. 431/20*,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

DEREK HARLAND

Dannallyn Salita

From: Dannallyn Salita
Sent: May 12, 2025 7:26 PM
To: Dannallyn Salita
Subject: FW: 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
Attachments: 2025-05-06 Letter to Aird Berlis.pdf

From: Derek Harland <DHarland@tgf.ca>
Sent: Tuesday, May 6, 2025 11:00:11 AM
To: Steven Graff <sgraff@airdberlis.com>; mlici@airdberlis.com <mlici@airdberlis.com>
Cc: D. J. Miller <DJMiller@tgf.ca>; mcrampton@cpllp.com <mcrampton@cpllp.com>; ebirnboim@cpllp.com <ebirnboim@cpllp.com>; hilary@be-law.ca <[Hilary@be-law.ca](mailto:hilary@be-law.ca)>; Gary Luftspring <gluftspring@rickettsharris.com>; Pavle Masic <pmasic@rickettsharris.com>; rbrooks@hgrgp.ca <rbrooks@hgrgp.ca>; marceyk@hgrgp.ca <marceyk@hgrgp.ca>; Judy Hamilton <JH@friedmans.ca>; fred@fredtayar.com <fred@fredtayar.com>; colby@fredtayar.com <colby@fredtayar.com>; gphoenix@ln.law <gphoenix@ln.law>; credmond@gfwlaw.ca <credmond@gfwlaw.ca>; sfairley@gfwlaw.ca <sfairley@gfwlaw.ca>; bflorian@gfwlaw.ca <bflorian@gfwlaw.ca>; jfonseca@gfwlaw.ca <jfonseca@gfwlaw.ca>
Subject: 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 [IMAN-CLIENT.FID2001237]

Hello all,

Please see the attached letter of today's date.

Best,
Derek



Derek Harland | | DHarland@tgf.ca | Direct Line +1 416 304-1127 | | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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May 6, 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 now been appointed by the Court as Receiver. Collectively, the Goldfarb Investors are owed approximately \$42 million by SMFI.

We refer to our prior correspondence to you dated April 30, 2025 in respect of the Motion Record of Aird & Berlis LLP (“**A&B**”) dated April 29, 2025 and the Supplementary Affidavit of Harley Zaretsky sworn May 1, 2025 (collectively, the “**Rep Counsel Motion**”), wherein A&B seeks to be appointed by the Court as representative counsel for investors of SMFI. Following an attendance before Justice Dietrich on May 2, 2025 the Rep Counsel Motion will be heard on May 16, 2025.

While this letter is addressed to A&B as the counsel who brought the Rep Counsel Motion, we are copying all counsel for investors that we are aware of from the Service List created by the Receiver. Since A&B has not been appointed to represent any investors at this time, we want to ensure that we have the position of counsel for investors in relation to the Rep Counsel Motion.

Having considered your draft Order at Tab 3 of the Rep Counsel Motion record (the “**Draft Order**”) and in an attempt to narrow the issues on the Rep Counsel Motion, can you please advise as follows:

1. Do you agree that any priority charge over the Respondents’ assets in favour of Representative Counsel is solely in relation to the interests of those Investors that Representative Counsel represents, and does not purport to extend to the interests of any

Opt-Out Investors? That appears to be what you were addressing in paragraph 14 of the Order but is not reflected in a similar manner in paragraphs 11, 13, 16 and 20.

Hearing from you promptly on the above will greatly assist in narrowing the issues for the Rep Counsel Motion. We would also appreciate if you could please send us a Word version of the Draft Order to facilitate further discussions.

Yours truly,

Thornton Grout Finnigan LLP



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 Service sworn by Dannalyn Salita at the City of
Toronto, in the Province of Ontario, before me this 12th day
of May, 2025 in accordance with *O. Reg. 431/20*,
Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read "Derek Harland", is positioned above a horizontal line.

A Commissioner for taking affidavits

DEREK HARLAND

Dannallyn Salita

From: Dannallyn Salita
Sent: May 12, 2025 7:26 PM
To: Dannallyn Salita
Subject: FW: 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
Attachments: 2025-05-09 - Letter to Investor Counsel(20065886.1).pdf; AB Draft Representative Counsel Order (TGF Comments)(20065489.2).docx; Litera Compare Redline - AB Draft Representative Counsel Order and AB Draft Representative Counsel Order (TGF Comments).pdf

From: Derek Harland <DHarland@tgf.ca>
Sent: Friday, May 9, 2025 6:25:13 PM
To: Steven Graff <sgraff@airdberlis.com>; mlici@airdberlis.com <mlici@airdberlis.com>; mcrampton@cp LLP.com <mcrampton@cp LLP.com>; ebirnboim@cp LLP.com <ebirnboim@cp LLP.com>; hilary@be-law.ca <Hilary@be-law.ca>; Gary Luftspring <gluftspring@rickettsharris.com>; Pavle Masic <pmasic@rickettsharris.com>; rbrooks@hgrgp.ca <rbrooks@hgrgp.ca>; marceyk@hgrgp.ca <marceyk@hgrgp.ca>; Judy Hamilton <JH@friedmans.ca>; gphoenix@ln.law <gphoenix@ln.law>; credmond@gfwlaw.ca <credmond@gfwlaw.ca>; sfairley@gfwlaw.ca <sfairley@gfwlaw.ca>; bflorian@gfwlaw.ca <bflorian@gfwlaw.ca>; jfonseca@gfwlaw.ca <jfonseca@gfwlaw.ca>; Kennedy, Robert <robert.kennedy@dentons.com>; richiecohen48@gmail.com <richiecohen48@gmail.com>
Cc: D. J. Miller <DJMiller@tgf.ca>
Subject: 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 [IMAN-CLIENT.FID2001237]

To Counsel for Investors Appearing on the Service List:

Please see the attached letter, together with a draft Order for your review and comments (clean, together with redline comparison to the draft contained in the motion record seeking the appointment of rep counsel). We anticipate having further discussions with Mr. Graff of Aird & Berlis, so for now have left references in the Order as prepared by his firm with square brackets while we have those discussions.



Derek Harland | | DHarland@tgf.ca | Direct Line +1 416 304-1127 | | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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May 9, 2025

BY EMAIL

TO: ALL INVESTOR COUNSEL ON THE SERVICE LIST

Dear Counsel:

Re: Receivership of Sussman Mortgage Funding Inc. ("SMFI") et al.

We write further to our prior correspondence dated May 6, 2025 to Aird & Berlis LLP and all counsel for investors on the Service List, on behalf of our clients Logpin Investments Limited, The Goldfarb Corporation, Jeffrey Goldfarb and Gary Goldfarb (collectively, the “**Goldfarb Investors**”) in connection with the above-captioned receivership proceeding.

We had requested clarification of one point in our prior letter, to help narrow the issues for the Court on the motion returnable May 16, 2025, and inform our responding materials and ultimate position on the motion. We haven’t received a response from any counsel representing investors as to the question raised in our letter dated May 6, 2025. For purposes of this letter, we will assume that it is the intention of parties seeking or supporting the appointment of representative counsel (“**Rep Counsel**”) that the fees incurred by Rep Counsel in representing Investors would not be borne by any Opt-Out Investors (as such terms are defined in the draft Order attached at Tab 3 of the Motion Record seeking the appointment of Rep Counsel). In other words, Investors do not expect Opt-Out Investors to be responsible for paying any portion of the legal fees of Investors who choose to be represented by Rep Counsel. We will refer to that as the “Gating Assumption”.

Provided the Gating Assumption is correct and the language in the draft Order makes that clear, we think it’s likely that the appointment of Rep Counsel could proceed on an unopposed basis. While we continue to believe that the appropriate timing for consideration of the appointment of Rep Counsel is following receipt of the Receiver’s Preliminary Report, if the Gating Assumption is confirmed and reflected in the court Order, the Investors can determine whatever timing and terms upon which Rep Counsel will represent them, and our client will express no view and take no position on that.

In furtherance of the above, we are providing a markup of the draft Order that reflects the Gating Assumption. Please review the attached and advise as to your position. Some of the changes in the redline are due to moving paragraphs around and consolidating others, so a review of the clean version may be most helpful. The redline comparison is to the draft Order at Tab 3 of the Rep Counsel motion record.

We look forward to hearing from you.

Yours truly,

Thornton Grout Finnigan LLP



D.J. Miller
DM/gk

cc: *Counsel for the Receiver*

cc: *Clients*

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

THE HONOURABLE)	FRIDAY , THE 16th
)	
JUSTICE J. DIETRICH)	DAY OF MAY, 2025

**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
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101 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 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 investor agreements entered into with SMFI (each an "**Investor**" and collectively, the "**Investors**") in respect of the claims ("**Claims**") of the Investors in this proceeding. For greater certainty, "Investors" as such term is defined and used throughout this Order shall not include the Opt-Out Investors (as defined below).
3. **THIS COURT ORDERS** that Representative Counsel may determine, advance, defend or compromise any Claims of the Investors, provided that each Investor reserves the right to advance any Claim against any other Investor or Opt-Out Investor including, without limitation, with respect to priority of Claims and preferential transactions or conveyances involving any Investor or Opt-Out Investor. Similarly, nothing contained herein shall affect the rights of any Opt-Out Investor to advance any claim against any Investor or any other Opt-Out Investor.
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 related to the Investors in the possession and control of B. Riley Farber Inc., 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, the Receiver is authorized and permitted to disclose personal information of identifiable individuals who are believed to be Investors to Representative Counsel, provided, however, that the Receiver shall not disclose the personal information of any Opt-Out Investors who have notified the Receiver of their status as an Opt-Out Investor prior to the delivery of any such personal information 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 their 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**”). For greater certainty, and notwithstanding anything else contained herein: (i) the Representative Counsel Charge shall only secure the assets of the Respondents in relation to the interest of the Investors (and not the Opt-Out Investors), and (ii) payment of amounts to Representative Counsel from the assets of the Respondents or proceeds thereof shall only be made from the *pro rata* portion of the Respondents’ assets or proceeds to which the Investors (and not the Opt-Out Investors) have an interest. The *pro rata* interests of the Investors as described in this paragraph shall be defined as the “**Investors’ Interest**”.
12. **THIS COURT ORDERS** that Representative Counsel shall be entitled to charge its reasonable legal fees and disbursements in connection with fulfilling its mandate on behalf of Investors in accordance with this Order against the Investors’ Interests, as such proceeds become available for distribution, incurred at the standard rates and charges of the Representative Counsel, and such amounts when paid to Representative Counsel shall be treated for all purposes as payments made to the Investors from the Investors’ Interests in the assets of the Respondent.
13. **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, subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Investors. Upon, or subject to the passing of its accounts, the Representative Counsel shall be entitled to receive payment of its fees by making a request to the Receiver, which amounts will be paid from the monetization of the assets of the Respondents (but only in respect of the Investors’ Interest and not that of the Opt-Out Investors), as and when such proceeds become available for distribution.
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 *pro rata* percentage of the Investors’ Interests relative to the percentage of the interest of all investors, including the Opt-Out Investors.

15. **THIS COURT ORDERS** that the Representative Counsel Charge may be increased by further Order of the Court.
16. **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.
17. **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.
18. **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.
19. **THIS COURT ORDERS** that any investor who does not wish to be represented by the Representative Counsel shall notify Representative Counsel no later than three (3) business days following the delivery by the Receiver of its preliminary report to the Court or otherwise with the written consent of Representative Counsel or further order of the Court and, thereafter, shall not be an "Investor" as defined herein 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**").
20. **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.
21. **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.

22. **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

ONTARIO

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

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
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Steven L. Graff (LSO #31871V)

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Matilda Lici (LSO #79621D)

Tel: (416) 865-3428

Email: mlici@airdberlis.com

Proposed Representative Counsel

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

THE HONOURABLE
~~2ND~~ 16th

)

FRIDAY , THE

)

JUSTICE ~~KIMMEL~~ J. DIETRICH

)

DAY OF MAY, 2025

**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**

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 the~~ claims (“**Claims**”) ~~to be made by of~~ the Investors in ~~these proceedings this proceeding~~. For greater certainty, “**Investors**” as such term is defined and used throughout this Order shall not include the Opt-Out Investors (as defined below).
3. **THIS COURT ORDERS** that Representative Counsel may determine, advance, defend 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 of the Investors~~, provided that each Investor reserves the right to advance any Claim against any other Investor or Opt-Out Investor including, without limitation, with respect to priority of Claims and preferential transactions or conveyances involving any Investor or Opt-Out Investor. Similarly, nothing contained herein shall affect the rights of any Opt-Out Investor to advance any claim against any Investor or any other Opt-Out Investor.
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 related to the Investors in the possession and control of B. Riley Farber Inc., in its capacity as court-appointed receiver of the ~~Respondets~~ 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~~ the Receiver is authorized and permitted to disclose personal information of identifiable individuals who are believed to be Investors to Representative Counsel, provided, however, that the Receiver shall not disclose the personal information of any Opt-Out Investors who have notified the Receiver of their status as an Opt-Out Investor prior to the delivery of any such personal information 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~~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~~their Claims; and
 - (b) the Investors shall be bound by the actions of Representative Counsel with respect to the Claims.

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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"**). For greater certainty, and notwithstanding anything else contained herein: (i) the Representative Counsel Charge shall only secure the assets of the Respondents in relation to the interest of the Investors (and not the Opt-Out Investors), and (ii) payment of amounts to Representative Counsel from the assets of the Respondents or proceeds thereof shall only be made from the *pro rata* portion of the Respondents' assets or proceeds to which the Investors (and not the Opt-Out Investors) have an interest. The *pro rata* interests of the Investors as described in this paragraph shall be defined as the "Investors' Interest".
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 reasonable legal fees and disbursements in connection with fulfilling its mandate on behalf of Investors in accordance with this Order against the Investors' Interests, as such proceeds become available for distribution, 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.~~ when paid to Representative Counsel shall be treated for all purposes as payments made to the Investors from the Investors' Interests in the assets of the Respondent.
13. **THIS COURT ORDERS** that ~~upon~~ 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, subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Investors. Upon, or subject to the passing of its accounts, the Representative ~~Counsel's fees shall be at liberty from time to time to apply reasonable amounts, out of~~ Counsel shall be entitled to

receive payment of its fees by making a request to the Receiver, which amounts will be paid from 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~~ (but only in respect of the Investors' Interest and not that of the Opt-Out Investors), as and when such proceeds become available for distribution, ~~against its fees and disbursements.~~

14. **THIS COURT ORDERS** that the Representative Counsel Charge shall rank ~~pari~~pari *passu* with the Receiver's Charge (as defined in the Receivership Order) but only to the extent of the pro rata percentage of the Investors' ~~interest (excluding the Opt-Out investors) in the assets of the Respondents~~Interests relative ~~of~~to the percentage of the interest of all investors, ~~however~~including the Opt-Out Investors.
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.~~

16. ~~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.
17. ~~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.
18. ~~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~~Receiver of the Respondents.
19. ~~20.~~ **THIS COURT ORDERS** that any ~~Investor~~investor who does not wish to be ~~bound by this Order~~represented by the Representative Counsel shall notify Representative Counsel no later than three (3) business days following the delivery by the Receiver of its preliminary report to the Court or otherwise with the written consent of Representative Counsel or further order of the Court and, thereafter, shall not be ~~bound by this Order~~an "Investor" as defined herein 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**").
20. ~~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.

21. ~~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.
22. ~~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 INC. et al.
Respondents

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

ONTARIO

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

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP

~~Brookfield Place~~

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

Steven L. Graff (LSO #31871V)

Tel: (416) 865-7726

Email: sgraff@airdberlis.com

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Email: mlici@airdberlis.com

Proposed Representative Counsel

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Summary report: Litera Compare for Word 11.10.1.2 Document comparison done on 2025-05-09 6:07:04 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: AB Draft Representative Counsel Order.docx	
Modified DMS: iw://tgf.cloudimanage.com/CLIENT/20065489/2	
Changes:	
<u>Add</u>	51
Delete	53
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	104

This is Exhibit "C" referred to in the
Affidavit of Service sworn by Dannalyn Salita at the City of
Toronto, in the Province of Ontario, before me this 12th day
of May, 2025 in accordance with *O. Reg. 431/20*,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

DEREK HARLAND

Dannallyn Salita

From: Dannallyn Salita
Sent: May 12, 2025 7:27 PM
To: Dannallyn Salita
Subject: FW: [EXTERNAL]RE: 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
Attachments: Draft Order - Representative Counsel - 12-MAY-2025(64163834.5).docx; Litera Compare Redline - Draft Order - Representative Counsel - 02-MAY-2025-64163834-v4 and Draft Order - Representative Counsel - 12-MAY-2025-64163834-v5(644434.pdf)

From: Matilda Lici <mlici@airdberlis.com>
Sent: Monday, May 12, 2025 2:31:27 PM
To: Derek Harland <DHarland@tgf.ca>; D. J. Miller <DJMiller@tgf.ca>; mcrampton@cpllp.com <mcrampton@cpllp.com>; ebirnboim@cpllp.com <ebirnboim@cpllp.com>; hilary@be-law.ca <Hilary@be-law.ca>; Gary Luftspring <gluftspring@rickettsharris.com>; Pavle Masic <pmasic@rickettsharris.com>; rbrooks@hgrgp.ca <rbrooks@hgrgp.ca>; marceyk@hgrgp.ca <marceyk@hgrgp.ca>; Judy Hamilton <JH@friedmans.ca>; gphoenix@ln.law <gphoenix@ln.law>; credmond@gfwlaw.ca <credmond@gfwlaw.ca>; sfairley@gfwlaw.ca <sfairley@gfwlaw.ca>; bflorian@gfwlaw.ca <bflorian@gfwlaw.ca>; jfonseca@gfwlaw.ca <jfonseca@gfwlaw.ca>; Kennedy, Robert <robert.kennedy@dentons.com>; richiecohen48@gmail.com <richiecohen48@gmail.com>
Cc: Steven L. Graff <sgraff@airdberlis.com>; Adrienne Ho <aho@airdberlis.com>
Subject: [EXTERNAL]RE: 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 [IMAN-CLIENT.FID2001237]

Good afternoon all,

Please find attached the revised form of draft representative counsel order, along with a blackline reflecting the changes from our form of order included in our Motion Record served on April 29, 2025.

Kindly confirm if you have a different view on the revised form of order. If so, we would ask that you advise this list by way of reply all by the end of day today.

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.

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Derek Harland <DHarland@tgf.ca>
Sent: May 9, 2025 6:25 PM
To: Steven L. Graff <sgraff@airdberlis.com>; Matilda Lici <mlici@airdberlis.com>; mcrampton@cpllp.com; ebirnboim@cpllp.com; hilary@be-law.ca; Gary Luftspring <gluftspring@rickettsharris.com>; Pavle Masic <pmasic@rickettsharris.com>; rbrooks@hgrgp.ca; marceyk@hgrgp.ca; Judy Hamilton <JH@friedmans.ca>;

gphoenix@ln.law; credmond@gfwlaw.ca; sfairley@gfwlaw.ca; bflorian@gfwlaw.ca; jfonseca@gfwlaw.ca; Kennedy, Robert <robert.kennedy@dentons.com>; richiecohen48@gmail.com

Cc: D. J. Miller <DJMiller@tgf.ca>

Subject: 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 [IMAN-CLIENT.FID2001237]

To Counsel for Investors Appearing on the Service List:

Please see the attached letter, together with a draft Order for your review and comments (clean, together with redline comparison to the draft contained in the motion record seeking the appointment of rep counsel). We anticipate having further discussions with Mr. Graff of Aird & Berlis, so for now have left references in the Order as prepared by his firm with square brackets while we have those discussions.



Derek Harland | | DHarland@tgf.ca | Direct Line +1 416 304-1127 | | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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

THE HONOURABLE)	FRIDAY , THE 16th
)	
JUSTICE J. DIETRICH)	DAY OF MAY, 2025

**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**

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 ("**A&B**") 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 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 the claims ("**Claims**") of the Investors in this proceeding. For greater certainty, "Investors" as such term is defined and used throughout this Order shall not include the Opt-Out Investors (as defined below).
3. **THIS COURT ORDERS** that Representative Counsel may determine, advance, defend or compromise any Claims of the Investors, provided that each Investor reserves the right to advance any Claim against any other Investor or Opt-Out Investor including, without limitation, with respect to priority of Claims and preferential transactions or conveyances involving any Investor or Opt-Out Investor. Similarly, nothing contained herein shall affect the rights of any Opt-Out Investor to advance any claim against any Investor or any other Opt-Out Investor.
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 related to the Investors in the possession and control of B. Riley Farber Inc., in its capacity as court-appointed receiver of the Respondents (the "**Receiver**"), in any form whatsoever.
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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 their 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 \$150,000, exclusive of HST and disbursements (the “**Representative Counsel Charge**”). For greater certainty, and notwithstanding anything else contained herein: (i) the Representative Counsel Charge shall only secure the assets of the Respondents in relation to the interest of the Investors (and not the Opt-Out Investors), and (ii) payment of amounts to Representative Counsel from the assets of the Respondents or proceeds thereof shall only be made from the *pro rata* portion of the Respondents’ assets or proceeds to which the Investors (and not the Opt-Out Investors) have an interest. The *pro rata* interests of the Investors as described in this paragraph shall be defined as the “**Investors’ Interest**”.
- 12. **THIS COURT ORDERS** that Representative Counsel shall be entitled to charge its reasonable legal fees and disbursements in connection with fulfilling its mandate on behalf of Investors in accordance with this Order against the Investors’ Interests, as such proceeds become available for distribution, incurred at the standard rates and charges of the Representative Counsel, and such amounts when paid to Representative Counsel shall be treated for all purposes as payments made to the Investors from the Investors’ Interests in the assets of the Respondent.
- 13. **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, subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Investors. Upon, or subject to the passing of its accounts, the Representative Counsel shall be entitled to receive payment of its fees by making a request to the Receiver, which amounts will be paid from the monetization of the

assets of the Respondents (but only in respect of the Investors' Interest and not that of the Opt-Out Investors), as and when such proceeds become available.

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 *pro rata* percentage of the Investors' Interests relative to the percentage of the interest of all investors, including the Opt-Out Investors.
15. **THIS COURT ORDERS** that the Representative Counsel Charge may be increased by further Order of the Court.
16. **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.
17. **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.
18. **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.
19. **THIS COURT ORDERS** that any investor who does not wish to be represented by the Representative Counsel shall notify Representative Counsel no later than three (3) business days following the delivery by the Receiver of its preliminary report to the Court or otherwise with the written consent of Representative Counsel or further order of the Court and, thereafter, shall not be an "Investor" as defined herein 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**").
20. **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.

21. **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.
 22. **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

ONTARIO

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

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP

Brookfield Place
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Proposed Representative Counsel

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

~~THE HONOURABLE~~) ~~FRIDAY, THE 2ND~~
)
~~JUSTICE DIETRICH~~) ~~DAY OF MAY, 2025~~

THE HONOURABLE) FRIDAY, THE 16th
)
JUSTICE J. DIETRICH) DAY OF MAY, 2025

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

- and - Applicant

**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**

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 ("**A&B**") 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~~the claims (“**Claims**”) ~~to be made by~~of the Investors in ~~these proceedings~~this proceeding. For greater certainty, “**Investors**” as such term is defined and used throughout this Order shall not include the Opt-Out Investors (as defined below).
3. **THIS COURT ORDERS** that Representative Counsel may determine, advance, defend 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 of the Investors~~, provided that each Investor reserves the right to advance any Claim against any other Investor or Opt-Out Investor including, without limitation, with respect to priority of Claims and preferential transactions or conveyances involving any Investor or Opt-Out Investor. Similarly, nothing contained herein shall affect the rights of any Opt-Out Investor to advance any claim against any Investor or any other Opt-Out Investor.
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 related to the Investors in the possession and control of B. Riley Farber Inc., in its capacity as court-appointed receiver of the ~~Respondets~~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~~the Receiver is authorized and permitted to disclose personal information of identifiable individuals who are believed to be Investors to Representative Counsel, provided, however, that the Receiver shall not disclose the personal information of any Opt-Out Investors who have notified the Receiver of their status as an Opt-Out Investor prior to the delivery of any such personal information 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.

~~7.7.~~ **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.

~~8.8.~~ **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~~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.

9.9. **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~~their 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 ~~and at~~ its standard rates and charges, up to an aggregate maximum amount of ~~\$100,000~~150,000, exclusive of HST and disbursements (the “**Representative Counsel Charge**”) ~~in respect of the thirty-day period running from the granting of the Order appointing the Receiver.~~ For greater certainty, and notwithstanding anything else contained herein: (i) the Representative Counsel Charge shall only secure the assets of the Respondents in relation to the interest of the Investors (and not the Opt-Out Investors), and (ii) payment of amounts to Representative Counsel from the assets of the Respondents or proceeds thereof shall only be made from the *pro rata* portion of the Respondents’ assets or proceeds to which the Investors (and not the Opt-Out Investors) have an interest. The *pro rata* interests of the Investors as described in this paragraph shall be defined as the “**Investors’ Interest**”.

12. **THIS COURT ORDERS** that Representative Counsel shall be entitled to charge its reasonable legal fees and disbursements in connection with fulfilling its mandate on behalf of Investors in accordance with this Order against the Investors’ Interests, as such proceeds become available for distribution, incurred at the standard rates and charges of the Representative Counsel, and such amounts when paid to Representative Counsel shall be treated for all purposes as payments made to the Investors from the Investors’ Interests in the assets of the Respondent.

13. ~~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,~~ subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Investors. Upon, or subject to the passing of its accounts, the 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.~~ receive payment of its fees by making a request to the Receiver, which amounts will be paid from the monetization of the assets of the Respondents (but only in respect of the Investors' Interest and not that of the Opt-Out Investors), as and when such proceeds become available.

~~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 pro rata percentage of the Investors' ~~interest (excluding the Opt-Out investors) in the assets of the Respondents~~ Interests relative ~~of~~ to the percentage of the interest of all investors, ~~however~~ including the Opt-Out Investors.

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.~~

16. ~~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.

17. ~~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.
18. ~~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~~Receiver of the Respondents.
19. ~~20.~~ **THIS COURT ORDERS** that any ~~Investor~~investor who does not wish to be ~~bound by this Order~~represented by the Representative Counsel shall notify Representative Counsel no later than three (3) business days following the delivery by the Receiver of its preliminary report to the Court or otherwise with the written consent of Representative Counsel or further order of the Court and, thereafter, shall not be ~~bound by this Order~~an "Investor" as defined herein 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**").
20. ~~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.
21. ~~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.
22. ~~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.

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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
	ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceedings commenced at Toronto
	ORDER
	AIRD & BERLIS LLP Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9 Steven L. Graff (LSO #31871V) Tel: (416) 865-7726 Email: sgraff@airdberlis.com Matilda Lici (LSO #79621D) Tel: (416) 865-3428 Email: mlici@airdberlis.com Proposed Representative Counsel
<u>CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO</u> Applicant	<u>SUSSMAN MORTGAGE FUNDING INC. et al.</u> Respondents
	Court File No. CV-25-00741044-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
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Steven L. Graff (LSO #31871V)

Tel: (416) 865-7726

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Proposed Representative Counsel

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Summary report: Litera Compare for Word 11.9.1.1 Document comparison done on 2025-05-12 2:11:37 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://cloudimanager.com/CM/64163834/4	
Modified DMS: iw://cloudimanager.com/CM/64163834/5	
Changes:	
<u>Add</u>	78
Delete	55
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	2
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	135

This is Exhibit "D" referred to in the
Affidavit of Service sworn by Dannalyn Salita at the City of
Toronto, in the Province of Ontario, before me this 12th day
of May, 2025 in accordance with *O. Reg. 431/20*,
Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to read "Derek Harland", is positioned above a horizontal line.

A Commissioner for taking affidavits

DEREK HARLAND

Dannallyn Salita

From: Dannallyn Salita
Sent: May 12, 2025 7:40 PM
To: Dannallyn Salita
Subject: FW: 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

From: D. J. Miller <DJMiller@tgf.ca>
Sent: Monday, May 12, 2025 5:54 PM
To: Matilda Lici <mlici@airdberlis.com>; Derek Harland <DHarland@tgf.ca>; mcrampton@cpllp.com; ebirnboim@cpllp.com; hilary@be-law.ca; Gary Luftspring <gluftspring@rickettsharris.com>; Pavle Masic <pmasic@rickettsharris.com>; rbrooks@hgrgp.ca; marceyk@hgrgp.ca; Judy Hamilton <JH@friedmans.ca>; gphoenix@ln.law; credmond@gfwlaw.ca; sfairley@gfwlaw.ca; bflorian@gfwlaw.ca; jfonseca@gfwlaw.ca; Kennedy, Robert <robert.kennedy@dentons.com>; richiecohen48@gmail.com
Cc: Steven L. Graff <sgraff@airdberlis.com>; Adrienne Ho <aho@airdberlis.com>
Subject: 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

I've not seen any responses to Matilda's email, so I'm confirming that no counsel copied or their client takes issue with the revised form of Order that Matilda circulated. We will be serving responding materials this evening and appreciate the efforts to narrow any issues that would otherwise need to be addressed on Friday.

D.J.

From: Matilda Lici <mlici@airdberlis.com>
Sent: Monday, May 12, 2025 2:31 PM
To: Derek Harland <DHarland@tgf.ca>; D. J. Miller <DJMiller@tgf.ca>; mcrampton@cpllp.com; ebirnboim@cpllp.com; hilary@be-law.ca; Gary Luftspring <gluftspring@rickettsharris.com>; Pavle Masic <pmasic@rickettsharris.com>; rbrooks@hgrgp.ca; marceyk@hgrgp.ca; Judy Hamilton <JH@friedmans.ca>; gphoenix@ln.law; credmond@gfwlaw.ca; sfairley@gfwlaw.ca; bflorian@gfwlaw.ca; jfonseca@gfwlaw.ca; Kennedy, Robert <robert.kennedy@dentons.com>; richiecohen48@gmail.com
Cc: Steven L. Graff <sgraff@airdberlis.com>; Adrienne Ho <aho@airdberlis.com>
Subject: [EXTERNAL]RE: 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 [IMAN-CLIENT.FID2001237]

Good afternoon all,

Please find attached the revised form of draft representative counsel order, along with a blackline reflecting the changes from our form of order included in our Motion Record served on April 29, 2025.

Kindly confirm if you have a different view on the revised form of order. If so, we would ask that you advise this list by way of reply all by the end of day today.

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.

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Derek Harland <DHarland@tgf.ca>

Sent: May 9, 2025 6:25 PM

To: Steven L. Graff <sgraff@airdberlis.com>; Matilda Lici <mlici@airdberlis.com>; mcrampton@cpllp.com; ebirnboim@cpllp.com; hilary@be-law.ca; Gary Luftspring <gluftspring@rickettsharris.com>; Pavle Masic <pmasic@rickettsharris.com>; rbrooks@hgrgp.ca; marceyk@hgrgp.ca; Judy Hamilton <JH@friedmans.ca>; gphoenix@ln.law; credmond@gfwlaw.ca; sfairley@gfwlaw.ca; bflorian@gfwlaw.ca; jfonseca@gfwlaw.ca; Kennedy, Robert <robert.kennedy@dentons.com>; richiecohen48@gmail.com

Cc: D. J. Miller <DJMiller@tgf.ca>

Subject: 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 [IMAN-CLIENT.FID2001237]

To Counsel for Investors Appearing on the Service List:

Please see the attached letter, together with a draft Order for your review and comments (clean, together with redline comparison to the draft contained in the motion record seeking the appointment of rep counsel). We anticipate having further discussions with Mr. Graff of Aird & Berlis, so for now have left references in the Order as prepared by his firm with square brackets while we have those discussions.



Derek Harland | | DHarland@tgf.ca | Direct Line +1 416 304-1127 | | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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

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

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**AFFIDAVIT OF DANNALYN SALITA
(SWORN MAY 12, 2025)**

THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

D.J. Miller (LSO# 34393P)
Email: djmiller@tgf.ca
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Derek Harland (LSO# 79504N)
Email: dkharland@tgf.ca
Tel.: (416) 304-1127

Lawyers for Logpin Investments Limited, The Goldfarb
Corporation, Jeffrey Goldfarb and Gary Goldfarb

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

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

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

RESPONDING MOTION RECORD

THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
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