

**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

**SUPPLEMENTAL AFFIDAVIT OF DANNALLYN SALITA
(SWORN MAY 15, 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 15, 2025, Derek Harland of TGF sent an email to Paliare Roland Rosenberg Rothstein LLP, a proposed representative counsel in this proceeding (the “**Proposed Rep Counsel**”), attaching a clean Word copy of a revised draft order appointing the Proposed Rep Counsel and a blackline comparison showing the changes made by TGF to the draft order contained in the Motion Record of the Proposed Rep Counsel dated May 9, 2025. Counsel to the Receiver was also copied. A copy of the email sent on May 15, 2025 with attachments is attached as **Exhibit “A”**.
4. Materials filed by various parties in this proceeding to date refer to Statements of Claim that had been issued by certain investors and attach copies of two claims. In one of those proceedings (brought by the Shevskys) a Statement of Defence was delivered, a copy of which was not included in any materials filed to date. A copy of the Statement of Defence filed in one proceeding against SMFI is attached here as **Exhibit “B”**, for the sake of completeness of the record before the Court.

SWORN remotely via video conference
by Dannallyn Salita at the City of Toronto, in
the Province of Ontario, before me on this
15th 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 Dannallyn Salita sworn by Dannallyn Salita at the
City of Toronto, in the Province of Ontario, before me
this 15th 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 15, 2025 3:28 PM
To: Dannallyn Salita
Subject: FW: SMFI - Paliare Roland Draft Order
Attachments: Starkman, Sussman, Draft Order, May 16, 2025 (TGF Comments)(20068519.2).docx; Starkman, Sussman, Draft Order, May 16, 2025 (Clean)(20070050.1).docx

From: Derek Harland
Sent: Thursday, May 15, 2025 12:08 PM
To: Max Starnino <max.starnino@paliareroland.com>; evan.snyder@paliareroland.com; Kenneth T. Rosenberg (ken.rosenberg@paliareroland.com) <ken.rosenberg@paliareroland.com>
Cc: D. J. Miller <DJMiller@tgf.ca>; Kennedy, Robert <robert.kennedy@dentons.com>; kenneth.kraft@dentons.com
Subject: SMFI - Paliare Roland Draft Order [IMAN-CLIENT.FID2001237]

Hello all,

Please see attached our markup of Paliare Roland's draft form of order in clean and track changes. This reflects our comments on the order and is being circulated for discussion in advance of tomorrow's hearing.

Please let us know if you would like to discuss.

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

THE HONOURABLE
JUSTICE DIETRICH

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)

FRIDAY, THE 16th
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

ORDER

THIS MOTION, made by Gordon Starkman, for an Order appointing Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") as representative counsel to the Investor Committee (defined below) for the benefit of all investors who contracted with Sussman Mortgage Funding Inc. ("**SMFI**") for the brokerage and/or administration of mortgage investments (the "**Investors**") in these proceedings was heard this day, at 330 University Avenue, 9th Floor, Toronto, Ontario.

ON READING the Notice of Motion of Gordon Starkman dated May 9, 2025, the Affidavit of Gordon Starkman, affirmed May 9, 2025, the Notice of Motion of certain other investors in SFMI dated April 29, 2025, the Affidavit of Harley Zaretsky sworn April 29, 2025, and the Supplementary Affidavit of Harley Zaretsky sworn May 1, 2025, and on

hearing the submissions of Paliare Roland, Aird & Berlis LLP, counsel for B. Riley Farber Inc. in its capacity as court appointed receiver of the Respondents (the “**Receiver**”), and such other counsel as were present, no one else appearing although duly served, as appears from the Affidavit of Service of Beatrice Loschiavo affirmed May 9, 2025,

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DIRECTS** the Receiver, acting in consultation with Representative Counsel (defined below) and the Applicant, and subject to final approval of this court, to designate members of and form a committee of volunteers to represent the interests of persons who invested funds with SMFI (“**Investors**”), to number not more than five (5) persons (the “**Investor Committee**”). 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 the Investor Committee shall represent the Investors in these proceedings and, subject to further court order, any corollary proceedings in respect of all claims of the Investors against the Respondents in respect of mortgage investments brokered and/or administrated by SFMI (“**Claims**”), provided that, pending further order of the court, the scope of this representation and the related conduct of the Investor Committee is limited to activities consistent with the Preliminary Mandate (defined below), and remains subject to review by this Court and may be amended at the request of Investor Committee, Representative Counsel,

the Receiver or an Investor, upon further motion to this Court on notice to the Receiver, the Investor Committee, Representative Counsel and other interested persons.

4. **THIS COURT ORDERS** that, in carrying out the Preliminary Mandate, the Investor Committee may but shall have no obligation to consult with or seek instructions from individual Investors.
5. **THIS COURT ORDERS** that Paliare Roland be and is hereby appointed as counsel to the Investor Committee (in such capacity, the “**Representative Counsel**”),
6. **THIS COURT ORDERS** that the Investor Committee and Representative Counsel be and are hereby permitted, but not directed, to take and to perform, for and on behalf of the Investors, the following preliminary steps and acts as necessary or desirable to represent the interests of the Investors in these proceedings (the “**Preliminary Mandate**”):
 - a. Consulting and collaborating with the Receiver in respect of its initial investigation in respect of the Claims (the “**Investigation Mandate**”), including:
 - i. receiving and reviewing Information (as defined in paragraph 9, below) from the Receiver;
 - ii. the investigation and identification of valid and provable Claims;

- iii. developing a process for preserving and advancing the Claims as part of these proceedings or in such corollary proceedings as may subsequently be approved by this Court, including, without limitation, by negotiation, compromise, arrangement, settlement, or litigation; and,
 - iv. communicating with and responding to inquiries from Investors;
 - v. establishing rules for the operation of the Investor Committee, provided that it shall operate by majority vote, and that a member of Representative Counsel shall convene and act as the non-voting Chairperson of all meetings;
- b. taking such steps as may be necessary, in these proceedings or otherwise, to preserve and/or to avoid prejudice to the Claims which may arise from the passage of time, in circumstances where the Receiver is unable or unwilling to take such steps (the “**Urgent Proceedings Mandate**”); and,
- c. performing such other actions as authorized by this Court,
- provided, for the avoidance of doubt, that the Investor Committee and Representative Counsel are not, by the terms of this order, empowered to compromise any Claims.

7. **THIS COURT ORDERS** that the fees payable to Representative Counsel, if any, shall be determined by and subject to further order of the court, consistent with the following guidelines:

- a. Representative Counsel shall not be entitled to payment for services rendered in furtherance of the Investigation Mandate where it is determined that it is not advantageous to Investors for Representative Counsel to be involved in such actions relating to the Claims (for the avoidance of doubt, responsibility for and the costs of any mailings, advertisements, or other material disbursements shall be assumed by the Receiver, subject to the scope of its mandate pursuant to the Order dated May 2, 2025 as same may be amended by further Order of the Court);
 - b. Representative Counsel shall be entitled to payment for services rendered in respect of the Urgent Proceedings Mandate on a *quantum meruit* basis, and having regard to the availability of funds in the receivership estate; and
 - c. Representative Counsel shall only be entitled to payment from the *pro rata* portion of the assets of the Respondents' or proceeds thereof to which the Investors (and not the Opt-Out Investors) have an interest and, in the event any charge attaching to the assets of the Respondents is sought, such charge shall only secure the assets of the Respondents in relation to the interest of the Investors (and not the Opt-Out Investors).
8. **THIS COURT ORDERS** that the Receiver and Representative Counsel shall, within forty-five (45) days following the date of this Order, or within such further time as the Receiver and Representative Counsel may agree, on notice to the service list, move for advice and direction in respect of:

- a. the continuing or future mandate of the Investor Committee and Representative Counsel and the terms of their engagement, including, among other things, the manner of compensation of Representative Counsel, subject in all respect to the terms of paragraph 7(c) hereof; or
 - b. terminating the appointment of the Investor Committee and/or Representative Counsel, if, in the opinion of the Court, as informed by the submissions of the Representative Counsel, the Receiver, and other interested persons, the continued involvement of the Investor Committee and/or Representative Counsel is not necessary or desirable to represent the interests of the Investors in these proceedings.
9. **THIS COURT ORDERS** that the Receiver shall forthwith provide to the Representative Counsel, subject to mutually satisfactory confidentiality arrangements, or by further order of this Court, without charge, the following information, documents and data in its possession (the “**Information**”), to be used only for the purpose of the Preliminary Mandate:
- a. contact information of the Investors, including, where available, names, last known addresses and last known telephone numbers and e-mail addresses, other than in respect of Opt-Out Investors who have, prior to the Receiver’s delivery of such information, notified the Receiver and Representative Counsel of their decision to opt out of such representation by Representative Counsel; and

- b. upon request of the Representative Counsel, such documents and data as may be reasonably relevant to issues affecting the Investors, subject to the agreement of the Receiver or further order of this Court, and subject to such terms of confidentiality as may be required by the Receiver.

10. **THIS COURT ORDERS** that, within 10 days of the making of this Order, the Receiver shall provide notice of this Order to each of the Investors through a communication in form and content satisfactory to Representative Counsel, or as may be further directed by this Court (the “**Notice**”), to be delivered in the following manner:

- a. publication on the website maintained by the Receiver in connection with these proceedings;
- b. by regular mail sent to the last known address of each Investor; and,
- c. where possible, by email sent to the last known email address of the Investor,

and such Notice shall be deemed to be effective on the later of the date of publication or the date the Notice was sent, as applicable.

11. **THIS COURT ORDERS** that an Investor who prefers not to be represented by the Investor Committee may opt out of such representation by completing the Opt-Out Notice in the form of Schedule “A” to this Order (the “**Opt-Out Notice**”), and by delivering such Opt-Out Notice to the Receiver by email to the address indicated on the Opt-Out Notice, provided that the Opt-Out Notice must be received by no later than 11:59 p.m. (Eastern Daylight Time) on a date to be set by further order of this

Court upon determination of the final mandate given to the Investor Committee and Representative Counsel, and the compensation structure of the latter (subject in all cases to paragraph 7(c) herein), and the Receiver shall provide a copy of all Opt-Out Notices that it receives to the Representative Counsel on behalf of the Investor Committee.

12. **THIS COURT ORDERS** that an Investor who delivers an Opt-Out Notice (a “**Opt-Out Investor**”) shall not be represented in these proceedings by the Investor Committee and Representative Counsel, and the Investor Committee and Representative Counsel shall have no obligation to report to, respond to inquiries from, or otherwise take any account of the interests of any Opt-Out Investor.
13. **THIS COURT ORDERS** that members of the Investor Committee and Representative Counsel shall not be liable for any act or omission in respect of their appointment or fulfillment of their duties in respect of the provisions of this Order, other than for gross negligence or wilful misconduct. No action or other proceedings shall be commenced against the Investors Committee or Representative Counsel except with prior leave of this Court on at least 21 days’ notice and upon further order in respect of security for costs in connection with any such action or proceeding, to be given by the plaintiff on a substantial indemnity basis. For greater certainty, this paragraph shall only apply to the acts or omissions of the Investor Committee or members of the Investor Committee in such representative capacity pursuant to their appointment or fulfillment of their duties under this Order, and does not relate to any claims that may be asserted against individual members of the Investor Committee in their capacity as an Investor.

14. **THIS COURT ORDERS** that:

- a. individual members of the Investor Committee are at liberty to resign their appointment, whereupon the Receiver shall use its best efforts to replace them on the Investor Committee; and,
- b. Representative Counsel may move before this Court to terminate their appointment, or for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, and notice of such motion shall be given to the Respondents, the Receiver, and other interested persons, provided that this Court retains its jurisdiction to dispense with such notice where appropriate.

15. **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 the Investor Committee and 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 the Investor Committee and 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.

16. **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 that this Order is enforceable without the need for entry and filing.

SCHEDULE "A"
OPT-OUT LETTER

TO: eklein@brileyfin.com

B. RILEY FARBER INC., as court appointed receiver of Sussman Mortgage Finance Inc.
Attention: Emily Klein
Senior Manager, Restructuring

RE: CLAIMS AGAINST SUSSMAN MORTGAGE FUNDING INC., et al.

My Name is: _____

My telephone number is: _____

My email address is: _____

I am an Investor as defined in the Representation Order of the Honourable Justice Dietrich dated May 16, 2025 (the "Order").

In accordance with paragraph ♦ of the Order, I am hereby notifying you that I prefer not to be represented by the Investor Committee and Representative Counsel, as defined in the Order.

I acknowledge that, as a result of my having delivered this notice, the Investor Committee and Representative Counsel shall have no obligation to report to me, to respond to inquiries from me, or to take any account of my interests.

I also acknowledge that nothing in the Order: (a) obliges any party to deal with me or my claims by virtue of my having delivered this notice, other than as it relates to service of materials within the proceeding or notices and communications from the Receiver, which shall continue to be received by me; or, (b) precludes the compromise of my claims in the ordinary course in the same manner as other Investors, by operation of applicable law, which for greater certainty is not as a result of any appointment of the Investor Committee or Representative Counsel, or any decision to not be represented by Representative Counsel.

Date:

Signature of Witness

Signature of Investor

Name:

Address:

Telephone Number:

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

-and- **SUSSMAN MORTGAGE FUNDING INC., et al.**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(REPRESENTATIVE COUNSEL)**

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West
35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300

Ken Rosenberg (LSO #21102H)
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Evan Snyder (LSO# 82007E)
Tel: 416.646.6320
Email: evan.snyder@paliareroland.com

Proposed Representative Counsel, Paliare Roland

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

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

THE HONOURABLE)	FRIDAY, THE 16 th
)	
JUSTICE 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

ORDER

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ON READING the Notice of Motion of Gordon Starkman dated May 9, 2025, the Affidavit of Gordon Starkman, affirmed May 9, 2025, the Notice of Motion of certain other investors in SFMI dated April 29, 2025, the Affidavit of Harley Zaretsky sworn April 29, 2025, and the Supplementary Affidavit of Harley Zaretsky sworn May 1, 2025, and on

hearing the submissions of Paliare Roland, Aird & Berlis LLP, counsel for B. Riley Farber Inc. in its capacity as court appointed receiver of the Respondents (the “**Receiver**”), and such other counsel as were present, no one else appearing although duly served, as appears from the Affidavit of Service of Beatrice Loschiavo affirmed May 9, 2025,

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DIRECTS** the Receiver, acting in consultation with Representative Counsel (defined below) and the Applicant, and subject to final approval of this court, to designate members of and form a committee of volunteers to represent the interests of persons who invested funds with SMFI (“**Investors**”), to number not more than five (5) persons (the “**Investor Committee**”). 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 the Investor Committee shall represent the Investors in these proceedings and, subject to further court order, any corollary proceedings in respect of all claims of the Investors against the Respondents ~~of the~~ in respect of mortgage investments brokered and/or administrated by SFMI (“**Claims**”), provided that, pending further order of the court, the scope of this representation and the related conduct of the Investor Committee is limited to activities consistent with the Preliminary Mandate (defined below), and remains subject to review by this Court and may be amended at the request of Investor Committee, Representative Counsel,

the Receiver or an Investor, upon further motion to this Court on notice to the Receiver, the Investor Committee, Representative Counsel and other interested persons.

4. **THIS COURT ORDERS** that, in carrying out the Preliminary Mandate, the Investor Committee may but shall have no obligation to consult with or seek instructions from individual Investors.
5. **THIS COURT ORDERS** that Paliare Roland be and is hereby appointed as counsel to the Investor Committee (in such capacity, the “**Representative Counsel**”),
6. **THIS COURT ORDERS** that the Investor Committee and Representative Counsel be and are hereby permitted, but not directed, to take and to perform, for and on behalf of the Investors, the following preliminary steps and acts as necessary or desirable to represent the interests of the Investors in these proceedings (the “**Preliminary Mandate**”):
 - a. Consulting and collaborating with the Receiver in respect of its initial investigation in respect of the Claims (the “**Investigation Mandate**”), including:
 - i. receiving and reviewing Information (as defined in paragraph 9, below) from the Receiver;
 - ii. the investigation and identification of valid and provable Claims;

iii. developing a process for preserving and advancing the prosecution and liquidation of the Claims as part of these proceedings or in such corollary proceedings as may subsequently be approved by this Court, including, without limitation, by negotiation, compromise, arrangement, settlement, or litigation; and,

iv. communicating with and responding to inquiries from Investors;

v. establishing rules for the operation of the Investor Committee, provided that it shall operate by majority vote, and that a member of Representative Counsel shall convene and act as the non-voting Chairperson of all meetings;

b. taking such steps as may be necessary, in these proceedings or otherwise, to preserve and/or to avoid prejudice to the Claims which may arise from the passage of time, in circumstances where the Receiver is unable or unwilling to take such steps (the “**Urgent Proceedings Mandate**”); and,

c. performing such other actions as authorized approved by this Court,

provided, for the avoidance of doubt, that the Investor Committee and Representative Counsel are not, by the terms of this order, empowered to compromise any Claims.

7. **THIS COURT ORDERS** that the fees payable to Representative Counsel, if any, shall be determined by and subject to further order of the court, consistent with the following guidelines:

a. Representative Counsel shall not be entitled to payment for services rendered in furtherance of the Investigation Mandate where it is determined that it is not advantageous to Investors for Representative Counsel to be involved in such actions relating to the realization and liquidation of the Claims (for the avoidance of doubt, responsibility for and the costs of any mailings, advertisements, or other material disbursements shall be assumed by the Receiver, subject to the scope of its mandate pursuant to the Order dated May 2, 2025 as same may be amended by further Order of the Court); ~~and,~~

~~b.~~ Representative Counsel shall be entitled to payment for services rendered in respect of the Urgent Proceedings Mandate on a *quantum meruit* basis, and having regard to the availability of funds in the receivership estate; ~~and~~

~~b-c.~~ Representative Counsel shall only be entitled to payment from the *pro rata* portion of the assets of the Respondents' or proceeds thereof to which the Investors (and not the Opt-Out Investors) have an interest and, in the event any charge attaching to the assets of the Respondents is sought, such charge shall only secure the assets of the Respondents in relation to the interest of the Investors (and not the Opt-Out Investors).

8. **THIS COURT ORDERS** that the Receiver and Representative Counsel shall, within forty-five (45) days following the date of this Order, or within such further time as the Receiver and Representative Counsel may agree, on notice to the service list, move for advice and direction in respect of:

- a. the continuing or future mandate of the Investor Committee and Representative Counsel and the terms of their engagement, including, among other things, the manner of compensation of Representative Counsel, [subject in all respect to the terms of paragraph 7\(c\) hereof](#); or
- b. terminating the appointment of the Investor Committee and/or Representative Counsel, if, in the opinion of the Court, as informed by the submissions of the Representative Counsel, the Receiver, and other interested persons, the continued involvement of the Investor Committee and/or Representative Counsel is not necessary or desirable to represent the interests of the Investors in these proceedings.

9. **THIS COURT ORDERS** that the Receiver shall forthwith provide to the Representative Counsel, subject to mutually satisfactory confidentiality arrangements, or by further order of this Court, without charge, the following information, documents and data in its possession (the “**Information**”), to be used only for the purpose of the Preliminary Mandate:

- a. contact information of the Investors, including, where available, names, last known addresses and last known telephone numbers and e-mail addresses, [other than in respect of Opt-Out Investors who have, prior to the Receiver's delivery of such information, notified the Receiver and Representative Counsel of their decision to opt out of such representation by Representative Counsel](#); and

- b. upon request of the Representative Counsel, such documents and data as may be reasonably relevant to issues affecting the Investors, subject to the agreement of the Receiver or further order of this Court, and subject to such terms of confidentiality as may be required by the Receiver.

10. **THIS COURT ORDERS** that, within 10 days of the making of this Order, the Receiver shall provide notice of this Order to each of the Investors through a communication in form and content satisfactory to Representative Counsel, or as may be further directed by this Court (the “**Notice**”), to be delivered in the following manner:

- a. publication on the website maintained by the Receiver in connection with these proceedings;
- b. by regular mail sent to the last known address of each Investor; and,
- c. where possible, by email sent to the last known email address of the Investor,

and such Notice shall be deemed to be effective on the later of the date of publication or the date the Notice was sent, as applicable.

11. **THIS COURT ORDERS** that an Investor who prefers not to be represented ~~take the benefit of representation~~ by the Investor Committee may opt out of such representation by completing the Opt-Out Notice in the form of Schedule “A” to this Order (the “**Opt-Out Notice**”), and by delivering such Opt-Out Notice to the Receiver by email to the address indicated on the Opt-Out Notice, provided that the Opt-Out Notice must be such that it is received by no later than 11:59 p.m. (Eastern Daylight

Time) on a date to be set by further order of this Court upon determination of the final mandate given to the Investor Committee and Representative Counsel, and the compensation structure of the latter (subject in all cases to paragraph 7(c) herein), and the Receiver shall provide a copy of all Opt-Out Notices that it receives to the Representative Counsel on behalf of the Investor Committee.

12. **THIS COURT ORDERS** that an Investor who delivers an Opt-Out Notice (a “**Opt-Out Investor**”) shall not be represented in these proceedings ~~have the benefit of representation~~ by the Investor Committee and Representative Counsel, and the Investor Committee and Representative Counsel shall have no obligation to report to, respond to inquiries from, or otherwise take any account of the interests of any Opt-Out Investor. ~~For greater certainty, nothing in this order obliges any party to deal with any Opt Out Investor or precludes the compromise of the claims of an Opt Out Investor in the ordinary course, by operation of applicable law.~~

13. **THIS COURT ORDERS** that members of the Investor Committee and Representative Counsel shall not be liable for any act or omission in respect of their appointment or fulfillment of their duties in respect of the provisions of this Order, other than for gross negligence or wilful misconduct. No action or other proceedings shall be commenced against the Investors Committee or Representative Counsel ~~except with prior leave of this Court on at least 21 days’ notice and upon further order in respect of security for costs in connection with any such action or proceeding, to be given by the plaintiff on a substantial indemnity basis.~~ For greater certainty, this paragraph shall only apply to the acts or omissions of the Investor Committee or members of the Investor Committee in such representative capacity pursuant to their appointment or fulfillment

of their duties under this Order, and does not relate to any claims that may be asserted against individual members of the Investor Committee in their capacity as an Investor.

14. **THIS COURT ORDERS** that:

- a. individual members of the Investor Committee are at liberty to resign their appointment, whereupon the Receiver shall use its best efforts to replace them on the Investor Committee; and,
- b. Representative Counsel may move before this Court to terminate their appointment, or for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, and notice of such motion shall be given to the Respondents, the Receiver, and other interested persons, provided that this Court retains its jurisdiction to dispense with such notice where appropriate.

15. **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 the Investor Committee and 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 the Investor Committee and 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

-10-

Representative Counsel in any foreign proceeding, or to assist Representative Counsel and its agents in carrying out the terms of this Order.

16. **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 that this Order is enforceable without the need for entry and filing.

SCHEDULE "A"
OPT-OUT LETTER

TO: eklein@brileyfin.com

B. RILEY FARBER INC., as court appointed receiver of Sussman Mortgage Finance Inc.

Attention: Emily Klein

Senior Manager, Restructuring

RE: CLAIMS AGAINST SUSSMAN MORTGAGE FUNDING INC., et al.

My Name is: _____

My telephone number is: _____

My email address is: _____

I am an Investor as defined in the Representation Order of the Honourable Justice Dietrich dated May 16, 2025 (the "Order").

In accordance with paragraph ♦ of the Order, I am hereby notifying you that I prefer not to [be represented](#) ~~take the benefit of representation~~ by the Investor Committee and Representative Counsel, as defined in the Order.

I acknowledge that, as a result of my having delivered this notice, the Investor Committee and Representative Counsel shall have no obligation to report to me, to respond to inquiries from me, or to take any account of my interests.

I also acknowledge that nothing in the Order: (a) obliges any party to deal with me or my claims by virtue of my having delivered this notice, [other than as it relates to service of materials within the proceeding or notices and communications from the Receiver, which shall continue to be received by me](#); or, (b) precludes the compromise of my claims in the ordinary course [in the same manner as other Investors](#), by operation of applicable law, [which for greater certainty is not as a result of any appointment of the Investor Committee or Representative Counsel, or any decision to not be represented by Representative Counsel](#).

Date:

Signature of Witness

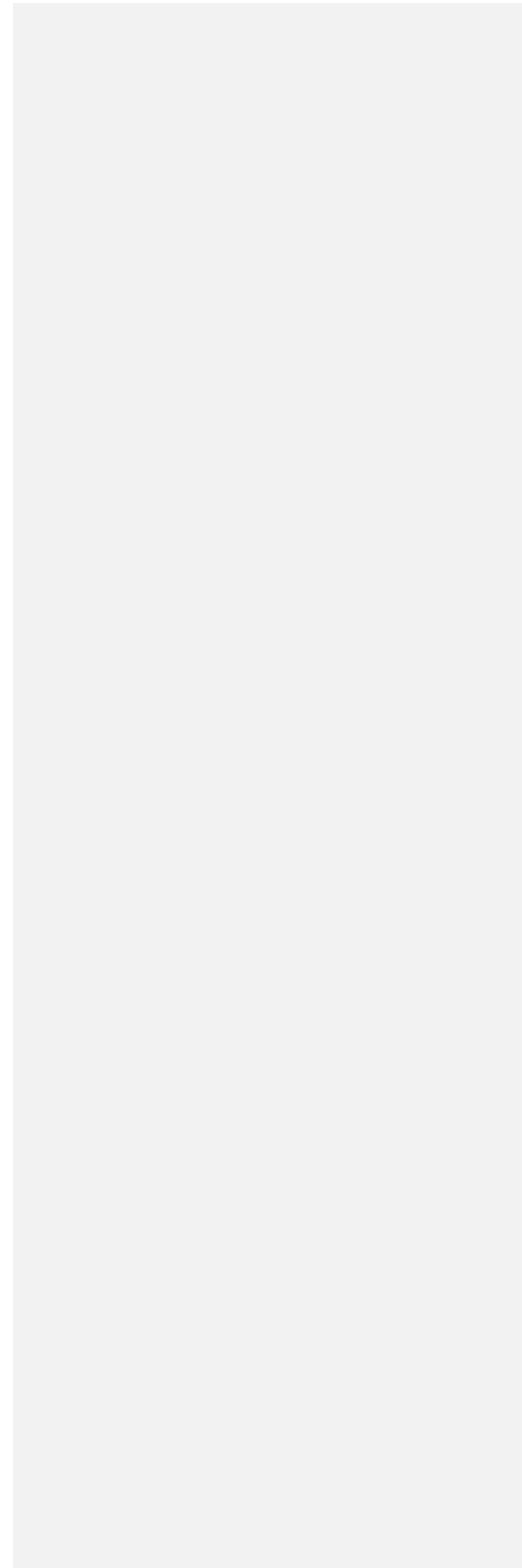
Signature of Investor

Name:

-12-

Address:

Telephone Number:



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

-and- **SUSSMAN MORTGAGE FUNDING INC., et al.**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

ORDER
(REPRESENTATIVE COUNSEL)

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Proposed Representative Counsel, Paliare Roland

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This is Exhibit “B” referred to in the
Affidavit of Dannallyn Salita sworn by Dannallyn Salita at the
City of Toronto, in the Province of Ontario, before me
this 15th day of May, 2025 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

DEREK HARLAND

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

STEPHEN SHEFSKY, RITA SHEFSKY, and SAMANTHA SHEFSKY
Plaintiffs

- and -

SUSSMAN MORTGAGE FUNDING INC. and SANDFORD SUSSMAN
Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANTS,
SUSSMAN MORTGAGE FUNDING INC. AND SANDFORD SUSSMAN**

1. The Defendants, Sussman Mortgage Funding Inc. ("**SMF**") and Sandford Sussman, admit the allegations in paragraphs 2, 3, and 5 of the Statement of Claim.
2. The Defendants agree with the contents of the chart at paragraph 7 of the Statement of Claim, except the remaining principal owed under syndicated mortgage A-14 as of the date of this pleading is \$302,400.00. For ease of reference, the mortgages referenced at paragraph 7 of the Statement of Claim shall be referred to as the "**Mortgage Investments**".
3. Unless stated otherwise herein, the Defendants deny the remainder of the allegations in the Statement of Claim, including, but not limited to, that the Plaintiffs are entitled to the relief sought at paragraphs 1, 29, 30, 31, and 32 of the Statement of Claim, and put the Plaintiffs to the strict proof thereof.

THE PARTIES

4. The Defendant, SMF, admits that it is an Ontario corporation carrying on business in Barrie, Ontario and operates as a mortgage brokerage and deposit brokerage. It has been in business since 1962. SMF currently employs four individuals, including a mortgage broker and deposit team.

5. SMF admits that it served as mortgage administrator for the Mortgage Investments.

6. The Defendant, Mr. Sussman, admits that he is a licensed mortgage agent (license class: Agent Level 2). Since May 1, 1990, Mr. Sussman has been a director of SMF and, since August 13, 2019, served as SMF's President, Secretary and Treasurer. He is also an employee of SMF and receives compensation through SMF in that capacity.

7. SMF admits that, as part of its services, it connects lenders seeking to invest in syndicated mortgages with borrowers seeking funding for various property development projects, including the Mortgage Investments.

THE PLAINTIFFS' BUSINESS WITH SMF

8. Mr. Sussman has known the Plaintiff, Stephen Shefsky, for more than 50 years. Mr. Shefsky has been investing with SMF for over 20 years.

9. Mr. Shefsky is a sophisticated and experienced investor who is well-versed in syndicated mortgages and investing, generally. He serves, among other roles, as the President and Chief Executive Officer of Cancap Investments Limited, a private merchant

bank providing venture capital and project financing for private and public companies. In addition, Mr. Shefsky holds a law degree from Pepperdine University.

10. In his Form 3.0 – Information about Investor/Lender in a Non-Qualified Syndicated Mortgage, Mr. Shefsky declared the following, among other things:

(a) he had a “high” risk tolerance in relation to a non-qualified syndicated mortgage investment/loan, which is described as being “willing to accept high risk to his/her principal investment or loan amount and understands that he/she could lose a substantial or all of the mount of the money invested or loaned”; and

(b) he had a “high” degree of financial knowledge and investment experience in relation to an investment/loan in a non-qualified syndicated mortgage, which is described as having “a high degree of financial knowledge and over 10 years experience investing in standard, more sophisticated and ‘highly sophisticated’ investment products that could include options, futures, derivatives, hedge funds and real estate development loans.”

11. Mr. Shefsky has participated in many mortgages with SMF. For example, he participated in syndicated mortgage A-18 with an original investment of \$2,173,700.00. He was paid out in full on this investment, based on sales on that project. His last principal payment, which brought his balance to \$0.00, was made in February 2024.

12. Mr. Shefsky also participated in syndicated mortgage B-83 with an original investment of \$3,498,296.23. He was paid out in full on this investment based on sales on

that project. His last principal payment, which brought his balance to \$0.00, was made in May 2023.

13. Mr. Shefsky's original investment in syndicated mortgage A-14 was \$865,400. As of the date of this pleading, Mr. Shefsky has received \$563,000.00 based on sales on that project.

14. The Plaintiffs, Rita Shefsky and Samantha Shefsky, have been investing with SMF for over three years.

15. Rita Shefsky participated in syndicated mortgage B-86 with an original investment of \$86,396.14. At or around the time of renewal of this mortgage, she advised the Defendants that she did not want to participate further and sought early termination. The Defendants were able to find a replacement investor and, as a result, Rita Shefsky was paid out \$68,396.14 on this investment in August 2024.

16. Both Stephen and Rita Shefsky qualify as a member of a designated class of lenders and investors under the *Mortgage Brokerages: Standards of Practice*, O. Reg. 188/08, made under the *Mortgage Brokerages, Lenders and Administrators Act 2006*, 2006 S.O. 2006, c. 29.

17. All of Samantha Shefsky's dealings with SMF were conducted through Mr. Shefsky who signed a "Mortgage Investor Third Party Declaration Form", which provided Mr. Shefsky with the authority to act on her behalf with respect to mortgage investments with SMF. Samantha Shefsky understood and agreed that all decisions related to the

Mortgage Investments in her name would be made by Mr. Shefksy, and this is in fact what occurred.

18. At all material times, the Plaintiffs fully appreciated the nature of the Mortgage Investments and were advised of the risks related to them, including, without limitation, that payments to investors could be delayed. Indeed, as the Plaintiffs admit in paragraph 8, they understood that payments under the Mortgage Investments are paid down as homes are sold.

19. The various disclosure forms signed by the Plaintiffs (in the case of Samantha Shefksy's investments, all forms were signed by Stephen Shefsky on her behalf) identified the nature of the Mortgage Investments and their risks, which included (but were not limited to) the following:

(a) All mortgage investments carry risk. [...] A syndicated mortgage (defined as a mortgage with more than one investor/lender) may carry additional risks not only relating to the risk of default but also to the risks associated with participating in a syndication and the financing of real estate transactions;

(b) Investments in non-qualified syndicated mortgages are speculative and involve a high degree of risk;

(c) Payments to an investor/lender rely on the ability of the borrower to make payments required under the terms of the mortgage investment/loan. The mortgage administrator, if applicable, cannot make payments to an investor/lender if the borrower defaults;

(d) The investor/lender may not be able to liquidate his/her investment/loan, or a portion of it, on a timely basis. If he/she wants to withdraw his/her money before the end of the term of the investment/loan, there is no assurance that there will be a market for the resale or transfer of his/her investment/loan. A non-qualified syndicated mortgage investment/loan should only be considered by investors/lenders who are able to bear the economic risks of a long-term investment and who do not require the investment to be immediately liquid upon demand;

(e) If the investor/lender is one of several investors/lenders in a non-qualified syndicated mortgage, the investor/lender will likely not be able to enforce repayment of the investment on his/her own if the borrower defaults;

(f) There is a risk that the successful completion of the project, in order to repay all mortgages and each investors, might not be possible. The development might be delayed or not completed at all. This in turn could delay payments to the lenders or even put repayment of the mortgage at risk;

(g) Certain development projects have no or limited revenue streams until they are completed. In order to move forward with the project development, borrowers/developers use capital acquired from a variety of different sources that may be subject to upfront costs such as interest, brokerage fees, etc. These costs may affect the borrower/developer's ability to advance the project. Additionally, at times, this source of capital may be expensive or unavailable causing significant delays or additional costs that may affect the borrower/developer's ability to advance the project;

(h) The repayment of the investment is heavily reliant on the developer's (or marketing company's) efforts, ability and experience in successfully promoting the underlying construction project to other investors and/or to sell the completed project to a buyer(s);

(i) Mortgage investment/lending through a syndicate generally carries a higher degree of risk given the many connected factors that affect the success of the underlying development project and investment return (e.g. developer experience, real estate values, interest rates and mortgage terms);

(j) If the contract provides for an extension, the investor/lender may not be able to opt out of or object to any extension of a mortgage term. The investor/lender needs to review terms relating to the extension of mortgages carefully; and

(k) As this is a development, the property must be constructed and sold for the repayment of this mortgage.

20. The Plaintiffs had the opportunity to, and did review, the disclosure materials related to the Mortgage Investments and made the informed decision to invest in them.

21. SMF admits that it, in trust, entered into investment agreements with respect to each of the Mortgage Investments (the "**Investment Agreements**"). The Mortgage Investments were renewed in accordance with their terms and conditions. In the alternative, since renewal of the Mortgage Investments, the Plaintiffs have received and accepted monthly payments under each of them. The Defendants plead that the Plaintiffs

have explicitly and/or implicitly agreed to the renewal of the Mortgage Investments, and the Plaintiffs are estopped from making any claim related to their renewal.

22. Ultimately, as a result of various factors, including the substantial impact of COVID-19, the borrowers to the Mortgage Investments have experienced slower-than-expected progress with respect to the sale of the homes, which sale is a key element required for payment under the Mortgage Investments, which is a risk to which the Plaintiffs agreed and fully understood.

NO NEGLIGENCE

23. The Plaintiffs seek to make the Defendants liable for investment decisions that the Plaintiffs themselves chose to make. The Plaintiffs willingly assumed any risk in the investments at issue and bear any responsibility for the investment decisions they willingly made.

24. The Defendants acknowledge that they owed duties to the Plaintiffs in accordance with the requirements of applicable mortgage legislation and plead that they, and those for whom SMF is responsible at law, performed all such duties honestly, fairly and in good faith, with due care and attention and with the requisite skill required by applicable mortgage legislation and in total compliance therewith. The Defendants deny any breach of any duty owed to the Plaintiffs and put the Plaintiffs to the strict proof thereof.

25. At all material times, the Defendants, and those for whom SMF is responsible at law, acted within the scope of their authority and fully discharged their duties.

NO BREACH OF CONTRACT

26. SMF denies that it breached any of the Investment Agreements with the Plaintiffs, or any of them, as alleged in the Statement of Claim, or at all, and denies that it owed the Plaintiffs, or either of them, any duty, contractual, fiduciary or otherwise, save for those contained in the aforesaid agreements.

NO BREACH OF FIDUCIARY DUTY

27. SMF denies that a fiduciary relationship existed between it and the Plaintiffs, or either of them, and puts the Plaintiffs to the strict proof thereof.

28. Even if SMF owed a fiduciary duty to the Plaintiffs, or either of them, which is expressly denied, SMF denies that it breached any such duty.

29. Rather, SMF, and all those for whom it is responsible at law, took all reasonable care to ensure that the Plaintiffs' investment objectives and risk tolerance levels were suitable to the Mortgage Investments, and SMF denies that it, and all those for whom it is responsible at law, failed to fully advise the Plaintiffs with respect to the nature of and risk associated with the Mortgage Investments.

NO BREACH OF TRUST

30. SMF denies that it committed any acts that amounted to a breach of trust in relation to any of the Plaintiffs as alleged, or at all. At all materials times, SMF acted reasonably, honestly, and in good faith, and in full compliance with the applicable mortgage legislation and the terms of the Investment Agreements.

NO UNJUST ENRICHMENT

31. The Defendants deny that they have been unjustly enriched, or that the Plaintiffs, or either of them, have sustained a corresponding deprivation as alleged, or at all.

NO PERSONAL LIABILITY

32. Mr. Sussman denies that he completely dominates and controls SMF's conduct, as alleged by the Plaintiffs.

33. At all material times, Mr. Sussman had no involvement in his personal capacity in the dealings between the parties whatsoever; rather, all of his dealings with the Plaintiffs were done in the normal course of his employment and in the ordinary business of SMF.

34. Mr. Sussman is an improperly named party in this action.

NO DAMAGES

35. The Defendants deny that the Plaintiffs have sustained any loss as a result of the Mortgage Investments. In the alternative, the Defendants state that the Plaintiffs were aware of the potential losses and/or delays in payment under the Mortgage Investments, but willingly and knowingly accepted those risks. The Defendants state that the Plaintiffs made their own investment decisions and bear responsibility for the outcome of those decisions.

36. The Defendants deny that the Plaintiffs sustained any "further damages", as alleged at paragraph 30 of the Statement of Claim, and hold the Plaintiffs to the strict proof thereof. In the alternative, if the Plaintiffs sustained any such further damage, which is not admitted

but expressly denied, such damages are excessive, remote, not reasonably foreseeable, and reflect a failure to mitigate on the part of the Plaintiffs.

37. The Defendants plead and rely on the provisions of the following and relevant regulations made thereunder, as amended:

(a) *Court of Justice Act*, RSO 1990, c C.43;

(b) *Mortgage Brokerages, Lenders and Administrators Act*, 2006, SO 2006, c 29;

(c) *Negligence Act*, RSO 1990, c N.1; and

(d) such further and other statutes and regulations, the particulars of which will be provided to the Plaintiffs prior to the trial of this action.

38. The Defendants respectfully request that this action be dismissed with costs on a substantial indemnity basis.

Dated: February 6, 2025

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Court File No. CV-24-00734030-000

SHEFSKY et al
Plaintiffs

- and -

SUSSMAN MORTGAGE FUNDING INC. et al
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

STATEMENT OF DEFENCE

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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

**SUPPLEMENTAL AFFIDAVIT OF
DANNALYN SALITA
(SWORN MAY 15, 2025)**

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