

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

THE HONOURABLE	)	TUESDAY, THE 20th
	)	
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, the Affidavit of Harley Zaretsky sworn April 29, 2025, the Supplementary Affidavit of Harley Zaretsky sworn May 1, 2025, the Affidavit of Gordon Starkman affirmed May 9, 2025, the Affidavit of Dannalyn Salita sworn May 12, 2025, the Supplemental Affidavit of Dannalyn Salita sworn May 15, 2025, and the Affidavit of Beatrice Loschiavo sworn May 15, 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 affidavits of service of Daisy Jin sworn April 29, 2025 and May 15, 2025, filed

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 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, and all associated costs shall be borne by the Investors and treated as a disbursement incurred by Representative Counsel.
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.

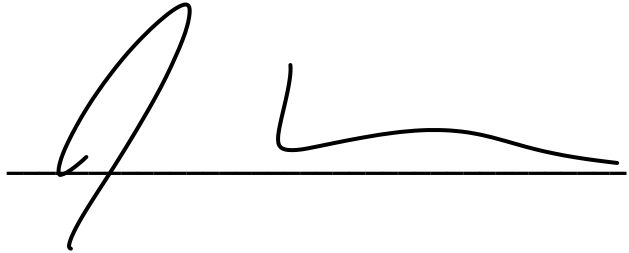
6. **THIS COURT ORDERS** that a committee of representatives of the Investors (the “**Representative Investors Committee**”), comprising a maximum amount of seven (7) members, shall be constituted in respect of the within receivership proceedings, pursuant to consultation with the Investors and the Receiver to ensure that membership represents a diverse range of Investors, provided that Investors may be appointed to or removed from 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 to ensure diverse and appropriate representation.
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 Opt-Out 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 subordinate in priority to 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, provided that the Receiver's Charge is correspondingly increased in an amount deemed appropriate by 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, by no later than May 22, 2025, a copy of this Order shall be delivered forthwith by the Receiver to all known Investors by way of email (to the extent that the Receiver has such 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 and the Receiver by no later than June 6, 2025 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.

A handwritten signature in black ink, consisting of a large, stylized 'J' or 'G' followed by a horizontal line that extends to the right and then curves slightly upwards at the end.

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

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

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

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

Proceedings commenced at Toronto

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**ORDER**

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*Proposed Representative Counsel*