

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

B E T W E E N:

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

Applicant

and

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

Respondents

**MEMORANDUM OF LAW AND ARGUMENT OF THE PROPOSED
REPRESENTATIVE COUNSEL, PALIARE ROLAND ROSENBERG
ROTHSTEIN LLP
(Motion returnable May 16, 2025)**

May 15, 2025

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Proposed Representative Counsel, Paliare
Roland Rosenberg Rothstein LLP

TO: SERVICE LIST

OVERVIEW

1. Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") delivers this memorandum of law and argument in connection with the motion made by Gordon Starkman in these proceedings for an Order, among other things, establishing an Investor Committee and appointing Paliare Roland as representative counsel to the Investor Committee in connection with the Preliminary Mandate (the "**Starkman Order**").¹

2. Certain other Investors in mortgages brokered and administered by SMFI have also made a motion for an Order establishing a representative committee and appointing Aird & Berlis LLP ("**A&B**") as representative counsel (the "**Certain Investors Order**").

3. Accordingly, there are competing appointment motions before this Court. At this early stage, the operative principle guiding the relief sought in the form of the Starkman Order is that stakeholders don't know what they don't know.² This principle explains several of the main differences between the proposed appointments, which are summarized in the table below.

	Starkman Order Proposed appointment of Paliare Roland	Certain Investors Order Proposed appointment of A&B
Scope of appointment	Limited, preliminary mandate to represent the Investor Committee in respect of an Investigation Mandate and an Urgent Proceedings Mandate. Within 45 days of appointment (or as otherwise agreed with the Receiver or	Broad mandate to represent all Investors in respect of all Claims (including to compromise Claims).

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Notice of Motion of Gordon Starkman dated May 9, 2025.

² Letter of Paliare Roland to B. Riley Farber, May 8, 2025 – Exhibit "A" to the Affidavit of Gordon Starkman affirmed May 9, 2025 ("**Starkman Affidavit**"), Motion Record of the Proposed Representative Counsel, Paliare Roland ("**Starkman MR**"), Tab 2(A), p. 34 [[D200](#)].

	authorized by the Court, the Receiver and Representative Counsel to move for advice and direction of the Court in respect of the scope of Representative Counsel's appointment.	
Investor committee	Committee of not more than seven (7) persons, including Stephen Shefsky, Robert Green, and Harley Zaretsky, and otherwise to be designated by the Receiver, acting in consultation with the Representative Counsel and the Applicant, and subject to removal at the direction of the Receiver in the event of unmanageable conflicts of interest, all subject to final approval of this Court.	Committee comprised of Stephen Shefsky, Robert Green, and Harley Zaretsky; with the option to appoint other Investors by agreement of the committee or further order of this Court.
Payment of professional fees	Fees payable to Representative Counsel are to be determined, and contingent on the identification and delineation of a material role for Representative Counsel, and subject to further order of the Court, in accordance with paragraph 7 of the Draft Order. No charge securing payment of professional fees at this time.	Initial charge of \$150,000 securing payment of professional fees, with the option to increase the charge by further order of this Court.
Investor Opt-Out Deadline	An opt-out deadline to be set by further order of the Court, upon determination of the final mandate given to the Investor Committee and Representative Counsel, and its communication to Investors.	An opt-out deadline of three 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.
Cost Allocation	The proposed draft Order does not, at this stage, establish any entitlement to costs, and neither does it foreclose arguable claims in respect of the allocation of Representative Counsel's professional fees, with respect to Opt-Out Investors or otherwise.	Representative Counsel will be paid only from the "Investors' Interest"—i.e., the pro rata portion of the Respondents' assets or proceeds to which the Investors have an interest.

4. For the reasons detailed below, at this early stage in these proceedings, the balance of convenience favours granting the Starkman Order appointing Paliare Roland as Representative Counsel to the Investor Committee.

FACTS

Background of these proceedings

5. The Financial Services Regulatory Authority of Ontario (“**FSRA**”) monitors mortgage brokers and brokerages. SMFI is a licensed mortgage brokerage and mortgage administrator incorporated in Ontario whose business is regulated by FSRA.³

6. The other two respondents, 2486976 Ontario Inc. and 1981361 Ontario Inc., are companies incorporated in Ontario. Each of these companies holds a 50% interest in joint ventures that are the beneficial owners of construction projects believed to have been financed by funds from investors in SMFI.⁴

7. Serious allegations of wrongdoing by SMFI have been brought to FSRA’s attention. FSRA commenced these proceedings for the appointment of a receiver to take control of SMFI’s business and the business of certain entities related to SMFI (the “**Receiver**”). This Court appointed the Receiver over the respondents’ assets, undertakings and properties by Order dated May 2, 2025.⁵

8. Materials filed by FSRA in these proceedings indicate that SMFI has 92 investors in 38 mortgages under administration, that the face value of these investments is

³ [Endorsement of Justice Dietrich, May 2, 2025](#), paras. 7-8.

⁴ [Endorsement of Justice Dietrich, May 2, 2025](#), para. 9.

⁵ [Endorsement of Justice Dietrich, May 2, 2025](#), paras. 2, 7, 25.

approximately \$101 million, and that a substantial portion (approximately \$73 million) of these mortgages are now in arrears.⁶

9. At least three separate actions have been commenced by SMFI investors against SMFI, Sussman, and other related parties. These proceedings include allegations of, among other things, breach of contract, negligence, breach of fiduciary duty, breach of trust, unjust enrichment, fraud and misrepresentation.⁷ These proceedings have been stayed by operation of the receivership Order.

10. Pursuant to the receivership Order, the Receiver has taken possession of all the property, assets and undertakings of the respondents, and is expected to file its initial report by early June.

The motions before this Court

11. On April 29, 2025, certain investors brought a motion seeking the Certain Investors Order.

12. On May 7, 2025, counsel for a group of investors identifying themselves as the “**Goldfarb Investors**”, wrote to A&B, noting that, less than five months earlier, A&B had received confidential information from the Goldfarb Investors on the exact same matter that A&B now seeks to be appointed as representative counsel. Counsel for the Goldfarb Investors noted that this was a “clear and irreconcilable conflict” which precluded A&B from acting as representative counsel in these proceedings.⁸ Subsequently, the Goldfarb

⁶ [Endorsement of Justice Dietrich, May 2, 2025](#), para. 11.

⁷ [Endorsement of Justice Dietrich, May 2, 2025](#), para. 15.

⁸ Letter from TGF LLP to Steven Graff dated May 7, 2025 – Exhibit “A” to the Affidavit of Beatrice Loschiavo sworn May 15, 2025 (“**Loschiavo Affidavit**”).

Investors waived this irreconcilable conflict upon receiving confirmation that the representative counsel order sought by A&B does not seek to have Opt-Out Investors responsible for any portion of the fees and expenses of the representative counsel, if appointed.⁹

The Starkman Group

13. Gordon Starkman is an investor in mortgages brokered and administered by the respondent, Sussman Mortgage Funding Inc. (“**SMFI**”).¹⁰ Mr. Starkman is 88 years old and is retired.¹¹

14. Some years prior to his retirement, Mr. Starkman and his late wife were introduced by his son-in-law to Sandford Sussman and SMFI as an investment opportunity.¹²

15. Over the course of several years, Mr. Starkman and his late wife made a number of mortgage investments with Mr. Sussman and SMFI.¹³ Mr. Starkman believes the aggregate amount of his investments was in excess of \$200,000, but does not currently know the precise amount of his investments, the status of his investments, or whether the funds he advanced to Mr. Sussman or SMFI were ever in fact secured by any mortgages, as represented by Mr. Sussman and SMFI.¹⁴

16. On May 9, 2025, Mr. Starkman brought a motion seeking the Starkman Order, and detailing some of his concerns regarding the proposed Certain Investors Order, including

⁹ Email from J.D. Miller to counsel dated May 13, 2025 – Exhibit “B” to the Loschiavo Affidavit.

¹⁰ Starkman Affidavit, para. 1, Starkman MR Tab 2, p. 22 [\[D188\]](#).

¹¹ Starkman Affidavit, paras. 4-5, Starkman MR Tab 2, p. 24 [\[D190\]](#).

¹² Starkman Affidavit, para. 7, Starkman MR Tab 2, p. 24 [\[D190\]](#).

¹³ Starkman Affidavit, para. 11, Starkman MR Tab 2, p. 25 [\[D191-192\]](#).

¹⁴ Starkman Affidavit, paras. 11, 15, Starkman MR Tab 2, pp. 25, 27 [\[D191-192, D193\]](#).

that there should not be undue layering of professional costs, and that the composition of the Investor Committee should be determined by a neutral party, like the Receiver, rather than by any particular group of Investors.¹⁵

17. As of the delivery of this Memorandum of Fact and Law:

- (a) Mr. Starkman is aware of at least three other Investors who share his concerns and who support the Starkman Order, and he understands that this group, including Mr. Starkman, have collectively invested in excess of \$1.1 million with SMFI;¹⁶ and
- (b) Paliare Roland has had a number of discussions with other Investors, and he understands that Robert Green and investors associated with him, having investments with SMFI in excess of \$13 million, also support the approach taken in the Starkman Order.

ISSUES AND ARGUMENT

18. These motions raise two issues to be determined by this Court:

- (a) Does this Court have jurisdiction to appoint representative counsel in these proceedings? *Answer: Yes.*
- (b) Should this Court exercise its discretion to appoint Paliare Roland as representative counsel? *Answer: Yes.*

¹⁵ Starkman Affidavit, paras. 18-19, 23, Starkman MR Tab 2, pp. 28-29, 30-31 [[D194-195](#), [D196-197](#)].

¹⁶ Starkman Affidavit, para. 24, Starkman MR Tab 2, p. 31 [[D197](#)].

1. This Court has jurisdiction to appoint representatives and representative counsel.

19. There is no dispute that this Court has the necessary jurisdiction to make an order appointing representative counsel pursuant to Rule 10.01 of the *Rules of Civil Procedure*.¹⁷

20. Rule 10.01(1)(f) provides, in relevant part, as follows:

In a proceeding concerning [...] any other matter where it appears necessary or desirable to make an order under this subrule, a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.¹⁸

21. Courts apply a liberal interpretation of this provision, and have made representation orders even where the group of persons could be readily ascertained, found and served.¹⁹ As correctly noted in the A&B Factum, the test under Rule 10.01(1)(f) is whether the balance of convenience favours the granting of a representation order.²⁰

2. This Court should exercise its discretion in favour of the Starkman Order.

22. The issue in this case is the approach to be taken to the appointment of representatives having regard to the very early stage of these proceedings.

23. Where there are competing applications for representation orders, the court will consider the following factors among others: (1) independence of the representative

¹⁷ See the Factum of the Proposed Representative Investors dated May 1, 2025 (“A&B Factum”) at paras. 23-25 [F41-42].

¹⁸ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 10.01(f).

¹⁹ *Police Retirees of Ontario Inc. v. Ontario Municipal Employees’ Retirement Board*, 1997 CanLII 12271 (ON SC) at paras. 16-18 [representation order granted despite OMERS’ ability to create a list of all potentially affected retirees] [“Police Retirees”].

²⁰ A&B Factum, para. 25 [F42], citing *Police Retirees* at para. 18.

counsel and the absence of any actual or potential conflicts of interest; (2) the requisite expertise; (3) communications with the class; (4) efficiency and cost effectiveness brought to the proceedings as a whole; and (5) demonstrated interest in working with the court-appointed officer.²¹

24. As explained below, a consideration of foregoing factors in light of the available evidence militates in favour of and justifies granting the Starkman Order. In the event, however, that this Court requires additional information, it has a residual discretion to appoint an independent third party to evaluate the competing proposals and make a recommendation to the Court.²²

Requisite expertise and communications with the Investor group

25. Paliare Roland has considerable experience acting in myriad cases involving classes of disappointed investors and stakeholders in the context of insolvency, winding-up and class proceedings. Through these engagements, it has demonstrated its ability to successfully establish and maintain effective communication channels with large groups of clients and stakeholders. Some of Paliare Roland's representative briefs are set out immediately below, and a fuller (but still selective) list of briefs is attached at Exhibit "B" to the Starkman Affidavit.

²¹ See the [Endorsement of Justice Osborne dated May 5, 2025](#) in *Hudson's Bay Company (Re)*, appending at Schedule "A" the Honourable Herman Wilton-Siegel's report in respect of the appointment of representative counsel. See also, *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 at paras. [9](#), [11-12](#), [45](#). Similar factors, among others, are considered in the context of carriage motions in class proceedings; see ex., *Earle v. CannTrust Holdings Inc.*, 2020 ONSC 579 at para. [16](#). In *CannTrust*, the determinative factor for Hailey J. in choosing between competing legal teams was the factor of independence and absence of conflict of interest (a law firm included in one of the legal teams represented RBC and accordingly proposed to exclude RBC as a defendant in the class proceedings).

²² See the [Endorsement of Justice Osborne dated May 5, 2025](#) in *Hudson's Bay Company (Re)*.

- (a) Pace Securities: Paliare Roland acted as the court-appointed representative counsel of investors in the *Pace Financial* and *First Hamilton Holdings* funds, in the context of the court-supervised liquidation of those funds, resulting in a 70% recovery for investors after payment of professional costs. As noted by the Court, “[t]he results achieved by Representative Counsel for the investors can only be described as excellent”: 2021 ONSC 6956 at para. [39](#).
- (b) Lac Megantic: Paliare Roland acted as insolvency counsel to the shareholder class action plaintiff group in the *Lac Megantic* case, wherein Paliare Roland contributed to the creation of a settlement fund in excess of \$400 million.
- (c) Bank of Montreal: Paliare Roland acted as counsel to class representatives in a foreign exchange class action against *Bank of Montreal*, resulting in a settlement of \$100 million for class members, following a successful summary judgement motion on liability issues: [2021 ONSC 3726](#).

26. In this case, under both proposed appointments, representative counsel would communicate with, and take instructions from, a representative committee of investors. The composition of such a committee should reflect the diversity of the stakeholder group at large, having regard to factors such as age and stage of life, investment size (big and small), and level of sophistication.

27. To that end, under the Starkman Order—unlike under the Certain Investors Order—the composition of the Investor Committee would be determined by the Receiver, acting in consultation with Representative Counsel and the applicant, and would be subject to final approval of this Court. This approach is intended to ensure that the Investor Committee is truly representative of all Investors’ interests and is not determined by any particular group of investors. In the absence of any issues raised by the Receiver (and none have been raised to date), Paliare Roland has no objection to the appointment of Messrs. Green, Shefsky, and Zaretsky to the Investor Committee, as contemplated by the Starkman Order.

Efficiency and cost effectiveness

28. The appointment pursuant to the Starkman Order is reasonably expected to be more efficient and cost-effective for Investors than the proposed appointment pursuant to the Certain Investors Order. Under the latter appointment, A&B would have a broad (and, at this early stage, largely unparticularized) mandate,²³ and would be entitled to an initial charge on the assets of the respondents up to a maximum amount of \$150,000 as security for A&B's professional fees.²⁴ Ultimately, A&B's fees will be borne by the disappointed investors of SMFI.²⁵

29. Conversely, the appointment proposed for Paliare Roland is limited to a narrowly tailored Preliminary Mandate,²⁶ to be reconsidered following delivery of the results of the Receiver's initial investigation, consultation with the Investor Committee, and further direction from this Court. In the absence of a meaningful role for Representative Counsel going forward, the appointment could be terminated without cost to Investors, subject to a minor exception²⁷. Accordingly, the proposed Starkman Order does not contemplate an initial charge against the assets of the respondents. Conversely, if a meaningful role were to be identified, that role and the manner of compensation of Representative Counsel (which could take any number of different forms) would be clearly defined, so that the implications of opting out are fully understood by Investors in advance.²⁸

²³ Draft Representative Counsel Order, para. 8, Motion Record of the Proposed Representative Investors dated May 1, 2025 ("A&B MR"), Tab 3, p. 3 [F21].

²⁴ Draft Representative Counsel Order, para. 11, A&B MR, Tab 3, p. 4 [F22].

²⁵ See ex., *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 at paras. 31, 38, 49(4).

²⁶ Draft Order, para. 6, Starkman MR, Tab 1(A), pp. 13-14 [D179-180].

²⁷ The proposed order would permit the court to authorize payment of Representative Counsel on a quantum meruit basis, where Representative Counsel was obliged to take steps on an urgent basis to preserve an asset: [D180].

²⁸ See Draft Order, para. 7, Starkman MR, Tab 1(A), pp. 14-15 [D180-181].

30. This “look-see” approach proposed in the Starkman Order is in the best interests of Investors and will avoid the undue layering of professional costs at this early stage of the proceedings, when it is still unclear what claims Investors may have, how those might be best realized upon, what funds may be available to repay Investors, and what net benefit—if any—Investors may ultimately receive from the appointment of representative counsel.²⁹ Under the terms of the appointment proposed for Paliare Roland, Investors would have the benefit of the contingent fee arrangement noted above in respect of the Preliminary Mandate, and the possibility of an ongoing contingent fee structure in respect of an expanded mandate. This optionality might be of particular benefit to any impecunious or modestly-resourced Investors who could not, for example, pursue their claims by way of s. 38 proceedings in a bankruptcy scenario.

31. Finally, the proposed approach on a preliminary, look-see basis is consistent with the following admonishment of the Supreme Court of Nova Scotia “[r]epresentatives and representative counsel should not have an open-ended retainer to undertake any inquiry or investigation they may wish, particularly where the fees are to be paid out of the assets of the applicant company” (here, the respondent companies).³⁰ The terms of appointment proposed for Paliare Roland represent a measured approach, and the contingent fee structure facilitates the investigation of claims and avoids undue layering of fees at this preliminary stage.

²⁹ Starkman Affidavit, para. 18, Starkman MR, Tab 2, pp. 28-29 [\[D194-195\]](#).

³⁰ *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 at para. [10](#).

Demonstrated interest in working with the court-appointed Receiver

32. From the outset, Paliare Roland has demonstrated its interest in working with the Receiver (including by seeking the Receiver's input to the Starkman Order prior to the delivery of Mr. Starkman's motion³¹). Notably, the appointment proposed for Paliare Roland contemplates a significant role for the Receiver, including in respect of the selection and conduct of the Investor Committee; the initial investigation of Claims; future adjustment to Representative Counsel's mandate having regard to the allocation of responsibilities; the sharing of the Information; the provision of Notice to Investors; and the receipt of any Opt-Out Notices.³²

Independence

33. Paliare Roland does not have any conflicts that would prevent it from acting in this matter.³³ Paliare Roland also does not have any prior involvement with the present brief (aside from the communications noted in the Starkman Affidavit).³⁴

34. The unfortunate sequence of events in which the Goldfarb Group alleges and earlier engagement of A&B by the Goldfarb Group, and asserts an "irreconcilable conflict", and then waives the irreconcilable conflict upon negotiating amendments to the funding

³¹ Letter of Paliare Roland to B. Riley Farber, May 8, 2025 – Exhibit "A" to the Starkman Affidavit, Starkman MR, Tab 2(A), p. 35 [\[D199\]](#).

³² Draft Order, paras. 2-3, 6(a), 8, 10, 11, Starkman MR, Tab 1(A), pp. 12-17 [\[D178-183\]](#).

³³ Starkman Affidavit, para. 22, Starkman MR, Tab 2, p. 30 [\[D196\]](#).

³⁴ See the [Endorsement of Justice Osborne dated May 5, 2025](#) in *Hudson's Bay Company (Re)*, in which the Honourable Herman Wilton-Siegel's selection of representative counsel was based in part on the fact that the successful firm had had no prior mandate or relationship with affected employees of HBC.

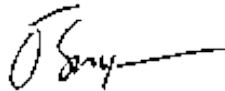
provisions of the Certain Investors Order may be difficult for some Investors to understand.³⁵

RELIEF SOUGHT

35. For the reasons set out above, it is respectfully requested that this Court:

- (a) Dismiss the motion for the Certain Investors Order; and
- (b) Grant Mr. Starkman's motion for an Order substantially in the form of the revised draft Order, as uploaded to Case Centre on May 15, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of May, 2025.



Paliare Roland Rosenberg Rothstein LLP,
Proposed Representative Counsel

³⁵ Letter from TGF LLP to Steven Graff dated May 7, 2025 – Exhibit “A” to the Loschiavo Affidavit; Email from J.D. Miller dated May 13, 2025 – Exhibit “B” to the Loschiavo Affidavit.

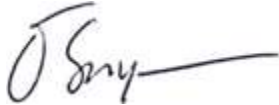
SCHEDULE “A”
LIST OF AUTHORITIES

Police Retirees of Ontario Inc. v. Ontario Municipal Employees’ Retirement Board, [1997 CanLII 12271 \(ON SC\)](#).

Quadriga Fintech Solutions Corp. (Re), [2019 NSSC 65](#).

Earle v. CannTrust Holdings Inc., [2020 ONSC 579](#).

I certify that I am satisfied as to the authenticity of every authority.

A handwritten signature in black ink, appearing to read "J. Smy", followed by a horizontal line.

Date: May 15, 2025

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS, AND BY-LAWS

Rules of Civil Procedure

R.R.O.1990, Reg. 194

RULE 10 REPRESENTATION ORDER

Representation of an Interested Person Who Cannot Be Ascertained

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

(a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

(b) the determination of a question arising in the administration of an estate or trust;

(c) the approval of a sale, purchase, settlement or other transaction;

(d) the approval of an arrangement under the [Variation of Trusts Act](#);

(e) the administration of the estate of a deceased person; or

(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 [\(1\)](#).

**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

**MEMORANDUM OF LAW AND ARGUMENT OF THE
PROPOSED REPRESENTATIVE COUNSEL,
PALIARE ROLAND LLP**

Paliare Roland Rosenberg Rothstein LLP

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Proposed Representative Counsel, Paliare Roland
Rosenberg Rothstein LLP

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

B E T W E E N:

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

Applicant

-and-

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

Respondents

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

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

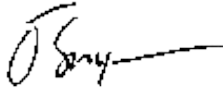
I, BEATRICE LOSCHIAVO, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

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

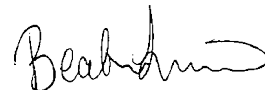
Goldfarb Corporation, Jeffrey Goldfarb, and Gary Goldfarb, sent a letter to Steven Graff of Aird & Berlis LLP ("**A&B**"), proposed representative counsel in these proceedings, copying the Service List, and that a copy of this letter was subsequently provided to the Court by the Receiver. A copy of the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

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

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

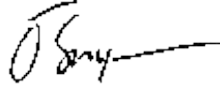


Commissioner for Taking Affidavits
(or as may be)



Beatrice Loschiavo

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

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

A Commissioner for Taking Affidavits (or as may be)

May 7, 2025

BY EMAIL

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

Attention: Steve Graff

Dear Mr. Graff:

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

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

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

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

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

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

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

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

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

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

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



Thornton Grout Finnigan LLP

3.

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

Yours truly,

Thornton Grout Finnigan LLP

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

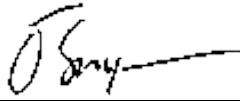
D.J. Miller

DM/gk

cc: Counsel for all Investors on the Service List

cc: Clients

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

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

A Commissioner for Taking Affidavits (or as may be)

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

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

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

D.J.



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

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

Matilda

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

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

Ken

Kenneth Kraft

Partner

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

☐ +1 416 863 4374 | ☐ +1 416 602 7174

Dentons Canada LLP | Toronto

This lawyer practices through a professional corporation.

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. Email you receive from Dentons may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete the email from your systems. To update your commercial electronic message preferences email dentonsinsightsca@dentons.com. Please see [dentons.com](https://www.dentons.com) for Legal Notices.

From: Matilda Lici <mlici@airdberlis.com>

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

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

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

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

[WARNING: EXTERNAL SENDER]

Hi Robert and Ken,

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

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

Thank you,

Matilda Lici
Associate

T 416.865.3428

E mlici@airdberlis.com

Aird & Berlis LLP | Lawyers
Toronto | Vancouver

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

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.

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

**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

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

Proceedings commenced at TORONTO

AFFIDAVIT OF BEATRICE LOSCHIAVO

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West

35th Floor

Toronto, ON M5V 3H1

Ken Rosenberg (LSO #21102H)

Tel: 416.646.4304

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Massimo Starnino (LSO #41048G)

Tel: 416.646.7431

Email: max.starnino@paliareroland.com

Evan Snyder (LSO #82007E)

Tel: 416.646.6320

Email: evan.snyder@paliareroland.com

Proposed Representative Counsel, Paliare Roland
Rosenberg Rothstein LLP

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

THE HONOURABLE
JUSTICE DIETRICH

)
)
)

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 establishing an Investor Committee (defined below) and 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 Lawyer’s Certificate of Service of Evan Snyder, dated May 9, 2025, filed,

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 seven (7) persons, including Stephen Shefsky, Robert Green, and Harley Zaretsky (the “**Investor Committee**”). For greater certainty, the term “Investors” as defined herein and used throughout this Order shall not include any Opt-Out Investor (as defined below).
3. **THIS COURT ORDERS** that the Investor Committee shall represent the Investors in these proceedings and any corollary proceedings in respect of all claims of the Investors 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 the prosecution and liquidation of the Claims as part of these proceedings or in such corollary proceedings as may be approved by this Court, including, without limitation, by negotiation, compromise, arrangement, settlement, or litigation;
 - iv. communicating with and responding to inquiries from Investors; and
 - 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 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 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); and,
 - b. Representative Counsel shall be entitled to payment for services rendered (if any) in respect of the Urgent Proceedings Mandate on a *quantum meruit* basis, and having regard to the availability of funds in the receivership estate.
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 or as the court may direct, 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; 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; 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.

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; and,
- b. either:

- i. by regular mail sent to the last known address of each Investor; or,
- ii. 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 take the benefit of representation by the Investor Committee may, upon this Order becoming effective in accordance with Paragraph 16 below, 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 Representative Counsel, with a copy to the Receiver, by email to the addresses indicated on the Opt-Out Notice, provided that, to be effective, any such Opt-Out Notice must be received by the Receiver 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.

12. **THIS COURT ORDERS** that an Investor who delivers an Opt-Out Notice (a “**Opt-Out Investor**”) shall not 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, and no ability to prosecute or compromise claims belonging to any such Opt-Out Investor. For greater certainty, nothing in this order obliges any party to deal with any Opt-Out Investor, or precludes the claims of an Opt-Out Investor being compromised or affected by an order of this

Court, including by an order approving a plan or compromise and arrangement, or otherwise 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 relating to any act or omission in respect of their appointment or fulfillment of their duties in respect of the provisions of this Order, 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.

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: evan.snyder@paliareroland.com
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

COPY TO: eklein@brileyfin.com
B. RILEY FARBER INC., as court appointed receiver of Sussman Mortgage Finance Inc.

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 the Order, I am hereby notifying you that I prefer not to 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; or, (b) precludes my claims from being compromised or affected by an order of the Court, including by an order approving a plan or compromise and arrangement, or otherwise by operation of applicable law..

Date:

Signature of Witness

Name:

Address:

Telephone Number:

Signature of Investor

**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

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

Ken Rosenberg (LSO #21102H)
Tel: 416.646.4304
Email: ken.rosenberg@paliareroland.com

Massimo Starnino (LSO# 41048G)
Tel: 416.646.7431
Email: max.starnino@paliareroland.com

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

Proposed Representative Counsel, Paliare Roland
Rosenberg Rothstein LLP

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

THE HONOURABLE
JUSTICE DIETRICH

)
)
)

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 establishing an Investor Committee (defined below) and 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 Lawyer’s Certificate of Service of ~~Beatrice Loschiavo~~ affirmed Evan Snyder, dated May 9, 2025, filed,

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”)~~ seven (7) persons, including Stephen Shefsky, Robert Green, and Harley Zaretsky (the “Investor Committee”). For greater certainty, the term “Investors” as defined herein and used throughout this Order shall not include any Opt-Out Investor (as defined below).
3. **THIS COURT ORDERS** that the Investor Committee shall represent the Investors in these proceedings and any corollary proceedings in respect of all claims of the Investors 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 the prosecution and liquidation of the Claims as part of these proceedings or in such corollary proceedings as may 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; and
 - 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 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 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); and,
- b. Representative Counsel shall be entitled to payment for services rendered (if any) in respect of the Urgent Proceedings Mandate on a *quantum meruit* basis, and having regard to the availability of funds in the receivership estate.

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 or as the court may direct, 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; 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; 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.

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; and,

b. either:

i. by regular mail sent to the last known address of each Investor;
and/or,

ii. ~~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 take the benefit of representation by the Investor Committee may, upon this Order becoming effective in accordance with Paragraph 16 below, 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 Representative Counsel,~~ with a copy to the Receiver, by email to the ~~address~~addresses indicated on the Opt-Out Notice, provided that, to be effective, any such that it is Opt-Out Notice must be received by the Receiver 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, ~~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 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, and no ability to prosecute or compromise claims belonging to any such 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,~~being compromised or affected by an order of this Court, including by an order approving a plan or compromise and arrangement, or otherwise 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 relating to any act or omission in respect of their appointment or fulfillment of their duties in respect of the provisions of this Order, 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.

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: evan.snyder@paliaroland.com
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

COPY 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 4~~ of the Order, I am hereby notifying you that I prefer not to 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; or, (b) precludes my claims from being compromised or affected by an order of the Court, including by an order approving a plan or compromise of my claims in the ordinary course, and arrangement, or otherwise by operation of applicable law.

Date:

Signature of Witness
Name:

Signature of Investor

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

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

Proposed Representative Counsel, Paliare Roland
Rosenberg Rothstein LLP

