

**IN THE MATTER OF  
FIRST GLOBAL DATA LTD., GLOBAL BIOENERGY RESOURCES INC.,  
NAYEEM ALLI, MAURICE AZIZ, HARISH BAJAJ, AND ANDRE ITWARU**

File No. 2019-22

**MOTION  
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

(For the dismissal of the Motion of Nayeem Alli dated August 9, 2021)

**A. ORDER SOUGHT**

The Moving Party, Staff of the Ontario Securities Commission, requests, with notice, that the Ontario Securities Commission make the following orders:

1. An order dismissing the Motion of Nayeem Alli dated August 9, 2021, which seeks, among other things, to stay the proceeding against Alli (the **Stay Motion**);
2. An order that this motion be heard in writing pursuant to Rule 23(3) of the *Ontario Securities Commission Rules of Procedure and Forms*, (2019) 42 OSCB 9714 (the **Rules**);  
and
3. Such further and other orders as counsel may advise and the Commission deems just.

**B. GROUNDS**

The grounds for the motion are:

1. On May 31, 2019, the Commission published a Statement of Allegations naming Alli and others as Respondents (the **SOA**). The SOA has never been amended and does not include any allegation of fraud against Alli;
2. During Staff's investigation, Alli attended voluntary interviews in 2017 and 2018 with counsel from Gowling WLG. Commencing in May 2018, Alli was represented by counsel at Paliare Roland Rosenberg Rothstein LLP (**Paliare**). Paliare continued to represent Alli

after the SOA was issued and at every preliminary attendance in the proceeding, up until September 23, 2020, when Alli delivered a Notice of Intention to Act in Person;

3. On August 24, 2020, a Respondent, Andre Itwaru, noted in his written submissions relating to whether the hearing should proceed by way of video conference and delivered to all parties, that Staff's "allegations were filed by outside counsel who was prosecuting this matter at the time, while representing a group of the 'Series G' debenture holders in a lawsuit against First Global Data";
4. At the final interlocutory attendance on September 2, 2020, the parties discussed whether there were any interlocutory issues or motions. Neither Alli nor his counsel raised any of the concerns now raised in the Stay Motion;
5. Starting on or around October 2, 2020 and during the Merits Hearing, until November 18, 2020, Alli was represented by counsel at Syed, Ellison and Viraney Law Professional Corporation;
6. On October 5, 2020, the hearing on the merits (the **Merits Hearing**) commenced and was held over 34 days;
7. On January 12, 2021, during the Merits Hearing, the following occurred:
  - a. Alli referenced CMB0000001, a letter dated February 22, 2019, attaching a Statement of Claim dated December 7, 2018. CMB0000001 had previously been marked as Exhibit 42 (on October 14, 2020) and was included in the first tranche of disclosure delivered to the Respondents (on June 24, 2019). Counsel who acted for Staff at the time of the issuance of the SOA (**SOA Staff Counsel**) was from the law firm who authored the letter and filed the Statement of Claim;
  - b. Alli raised concerns about these facts affecting the severity of the allegations made against him;
  - c. Staff objected to this line of testimony; and

- d. The Chair of the Merits Hearing, Vice-Chair Moseley, stated that the evolution of the allegations were irrelevant unless in the “the highly exceptional case” there was a claim of abuse of process, and that such a claim “had to come a lot sooner”. Vice-Chair Moseley went on to identify the unfairness of Alli raising such allegations in a public proceeding without affording the party who is the subject of the allegations an opportunity to respond. As a result, Vice-Chair Moseley ruled that if Alli intended to make arguments on this issue, he must alert Staff and the law firm involved as soon as possible;
8. Following the ruling on January 12, 2021, Staff received no such notice from Alli and is not aware of the SOA Staff Counsel receiving any such notice. On January 18, 2021, the evidence portion of the Merits Hearing concluded;
9. On March 29, 2021, Staff delivered its written closing submissions;
10. On June 29, 2021, Alli filed written responding closing submissions (the **Alli Submissions**) that included a section titled “Conflict of Interest”, which raised the same issues Alli attempted to testify about more than five months earlier, on January 12, 2021;
11. On July 29, 2021, Staff wrote to the Panel noting that Alli had failed to comply with the January 12 ruling and Staff requested an order striking the Alli Submissions and granting Alli leave to file revised responding closing submissions. The Panel granted Alli an opportunity to file submissions on Staff’s request;
12. On August 10, 2021, rather than filing written submissions, Alli filed the Stay Motion requesting an “Order staying the discipline procedure as against Nayeem Alli” and declarations that “the Ontario Securities Commission breached its obligations to” Alli and “that the Ontario Securities Commission shall self report the misconduct of their Staff to Staff’s professional regulators”;
13. The grounds cited to support the Stay Motion focus on alleged Staff misconduct in which Staff (and, “in particular”, SOA Staff Counsel) are alleged to have “weaponised” the proceeding “by callously and improperly concocting a fraud allegation against” Alli to “bully” him into a settlement. The grounds cited in the Stay Motion also state that when

the settlement did not proceed because it was not agreed to by First Global Data Inc., “Staff removed the fraud allegation against Nayeem Alli in a revised Statement of Allegations”;

14. On August 18, 2021, an attendance was held before Vice Chair Moseley (the **August 18 Attendance**), during which the following occurred:

- a. Staff raised objections to the Stay Motion and previewed Staff’s position that, among other things, there is no legal basis for the Stay Motion. Staff noted its intention to formalize Staff’s objections in a motion to dismiss the Stay Motion, which Staff suggested could be dealt with in writing;
- b. After hearing Staff’s position, Alli requested an opportunity to consider what Staff had said and respond to those issues in writing;
- c. Vice Chair Moseley asked Staff to work with Alli to try to reach an agreement on the process for dealing with the Stay Motion, Staff’s preliminary objections and any document requests Alli intended to make, and invited the parties to seek another attendance to report back on the results of those discussions and any issues that require resolution; and
- d. Alli indicated that it would assist him to review the transcript of the August 18 Attendance before engaging with Staff;

15. On August 27, 2021, the Registrar provided parties with the transcript of the August 18 Attendance;

16. On August 31, Staff contacted Alli asking, among other things, to let Staff know when he was in a position to discuss the issues raised during the August 18 Attendance. The same day Alli responded to say he would respond to Staff by Friday, September 3, at the latest;

17. Staff further contacted Alli on September 10, 15 and 20 to arrange a call to discuss the Stay Motion and the issues identified by Vice Chair Moseley or, if Alli did not wish to participate in a call, asking Alli to indicate a timetable for filing evidence to support the Stay Motion. Staff proposed several times for calls. Alli either responded to these emails

saying he needed more time or did not respond. To date, Alli has not made himself available for a call and has not otherwise committed to any time frame for filing evidence to support the Stay Motion;

18. The last communication from Alli was on September 20. Alli noted that while he had a variety of medical tests, he was planning to delay medical undertakings in order to proceed with his motion. Alli indicated he would “come back this week to move the discussions forward”;

19. Staff replied the same day suggesting times for a call and indicating that unless Alli either proceeded with a call that week, or provided dates for the filing of his motion materials, Staff intended to proceed with its motion to dismiss;

20. Alli never responded to Staff’s September 20 email and has not since contacted Staff, filed evidence in support of the Stay Motion or advised of or taken any steps required to move the Stay Motion forward;

21. The Stay Motion should be dismissed because:

- a. The issues raised by the Stay Motion are irrelevant to the proceeding;
- b. The Stay Motion discloses no basis to warrant a stay of proceedings, including on the basis of any prejudice, unfairness or risk to the integrity of the adjudicative process that could warrant a stay of proceedings;
- c. Alli delayed bringing the Stay Motion and, since bringing the Stay Motion, Alli delayed in taking any steps to advance the motion, including by failing to comply with the Panel’s direction to consult with Staff concerning the hearing of his motion and other procedural matters. Alli’s failure to take any steps to advance his motion supports the conclusion that the Stay Motion is merely a delay tactic;
- d. In light of Alli’s ongoing delay in advancing his motion, allowing the Stay Motion to proceed may prejudice or delay the proceeding, including by delaying the decision on the Merits Hearing or delaying the timing of any Sanctions and Costs Hearing;

- e. The Stay Motion will significantly add to the time and costs expended by the parties;
  - f. The Stay Motion is scandalous, frivolous and vexatious and otherwise constitutes an abuse of process of the Commission;
  - g. To the extent that the Stay Motion involves an attempt by Alli to delve into privileged discussions, such matters are subject to privilege that has not been waived by Staff or other parties; and
  - h. The Commission lacks jurisdiction to order the declaratory relief sought in the Stay Motion;
22. Rules 1, 3, 23 and 28 of the Commission's *Rules*;
23. Sections 23 and 25.0.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22; and
24. Such further and other grounds as counsel may advise and the Commission deems just.

**C. EVIDENCE**

The Moving Party intends to rely on the following evidence for the motion:

- 1. Affidavit of Sherry Brown sworn October 21, 2021; and
- 2. Such other evidence as counsel may advise and the Commission may permit.

**DATED** this 25 day of October, 2021.

**ONTARIO SECURITIES COMMISSION**

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*Staff of the Ontario Securities Commission*