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Citation: *First Global Data Ltd (Re)*, 2022 ONCMT 23
Date: 2022-09-15
File No. 2019-22

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

REASONS FOR DECISION

Adjudicator: Timothy Moseley

Hearing: By teleconference, October 1, 2020

Appearances: Mark Bailey For Staff of the Ontario Securities
Charlie Pettypiece Commission
Anil Saxena For Global Bioenergy Resources Inc.
Robert Stellick For Maurice Aziz
Nayeem Alli For himself
Harish Bajaj For himself
Andre Itwaru For himself

No one appearing for First Global Data Ltd.

REASONS FOR DECISION

1. OVERVIEW

- [1] On the eve of the merits hearing in this enforcement proceeding, the respondent Nayeem Alli asked that it be adjourned for thirty days. His primary reason for the request was that his counsel would no longer be representing him.
- [2] At a hearing the following day, I denied Alli's request, for reasons to follow. These are my reasons for that decision.
- [3] Merits hearings are to proceed as scheduled unless exceptional circumstances require an adjournment. I was not satisfied that Alli's circumstances met that test.

2. BACKGROUND

- [4] This is a complex proceeding involving serious and wide-ranging allegations against multiple respondents with divergent interests. It was commenced on May 31, 2019, almost a year and a half before the merits hearing was scheduled to begin on October 5, 2020. There were numerous preliminary attendances during that time. The parties expected that the merits hearing would require approximately 40 hearing days, with testimony from approximately 25 witnesses.
- [5] On September 24, 2020, Alli served and filed notice that he intended to act on his own behalf in this proceeding. On September 30, 2020, less than three business days before the merits hearing was to begin, Alli wrote to the registrar to request an adjournment. A teleconference hearing was convened for the following day to consider his request.

3. LEGAL FRAMEWORK

- [6] Rule 29(1) of the *Rules of Procedure and Forms* provides that every merits hearing in an enforcement proceeding shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment".

[7] That standard is a difficult one to meet. It reflects the important objective, set out in Rule 1, that Tribunal proceedings be "conducted in a just, expeditious and cost-effective manner".

[8] That objective must, however, be balanced against the parties' ability to participate meaningfully in hearings and to present their case. A determination about whether to grant an adjournment is necessarily dependent on the particular circumstances of the case.¹

4. ANALYSIS

[9] Alli requested the adjournment because:

- a. he was not equipped to represent himself and he therefore needed counsel;
- b. he was close to retaining new counsel, but they would need time to prepare;
- c. he could not attend a lengthy hearing himself because he had to work to pay for counsel; and
- d. he and his wife were recovering from medical events that had occurred approximately one year earlier, and six months earlier, respectively.

[10] Alli made other assertions in support of his request, but they were not relevant to the issue before me.

[11] Staff opposed Alli's request. The other respondents either supported Alli's request or took no position.

[12] I have some sympathy for the position in which Alli found himself. Responding to serious allegations in a complex matter with many witnesses over many hearing days is challenging, even with counsel. Doing so on one's own behalf is even more challenging.

[13] However, respondents in Tribunal proceedings often represent themselves. While a respondent may feel that they cannot participate as effectively as they could

¹ *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 at para 54, citing *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18 at para 28 and *Cheng (Re)*, 2018 ONSEC 13 at paras 5-6

with counsel, there are many protections in place to ensure that they get a fair hearing. There is no absolute right to counsel.

- [14] Alli did not explain why his counsel was no longer representing him or why the change came when it did.
- [15] Parties are of course free to choose whether to be represented, and if so, by whom. Generally, parties need not explain their choice about how they are represented. However, when a party seeks an adjournment based solely on that choice, the party bears the burden of demonstrating the exceptional circumstances that warrant an adjournment. Without an explanation, I cannot accept Alli's loss of counsel as meeting that burden.
- [16] As for Alli's assertion that he and his wife were recovering from medical events, he provided no evidence in support. Even if he had, however, I would not have found his assertion persuasive as framed.
- [17] An adjournment of the merits hearing would have been a significant disruption. Parties, counsel, panel members and witnesses had all been scheduled for many hearing days in October. The merits hearing dates had been set seven months earlier. Rescheduling the hearing on the eve of its scheduled commencement would inevitably have resulted in a delay of months for the conclusion of the hearing, especially given the many participants.
- [18] The requested adjournment would also have caused the Commission and the parties to incur additional costs.
- [19] That result would have been directly contrary to the objective set out in Rule 1 of expeditious and cost-effective proceedings.
- [20] For these reasons, I denied Alli's request to adjourn the merits hearing.

Dated at Toronto this 15th day of September, 2022

"Timothy Moseley"

Timothy Moseley