

**IN THE MATTER OF THE *SECURITIES ACT*,**

**R.S.O. 1990, C. S5, AS AMENDED**

**AND IN THE MATTER OF BRIDGING FINANCE INC., DAVID SHARPE,  
NATASHA SHARPE AND ANDREW MUSHORE**

File No. 2022-09

For a Stay of Proceedings under Rule 28 of the Tribunal's *Rules of Procedure*

**RESPONDING NOTICE OF MOTION  
OF NATASHA SHARPE**

**A. ORDER SOUGHT**

1. The moving party, Natasha Sharpe, brings this motion with notice, and respectfully requests that the Tribunal grant the following relief

- (a) an Order directing and compelling OSC Staff to disclose to Natasha Sharpe the documents and other materials and information as described below; and,
- (b) such further relief as counsel may advise and the Tribunal may permit.

**B. GROUNDS**

2. Natasha Sharpe was the Chief Investment Officer and a Director and shareholder of Bridging Finance Inc. ("**BFI**"), an alternative financing business that provides financing to middle-market companies through various funds that it manages.

3. Natasha Sharpe is currently the subject of ongoing proceedings before the Capital Markets Tribunal including an outstanding motion for a stay of proceedings to be scheduled. That motion relates to the unlawful use by Staff of Natasha Sharpe's compelled testimony.

4. Disclosure is sought both in relation to that motion and more generally.

### **Background to the Stay Motion**

5. On September 11, 2020, the Commission issued an order under Section 11 of the *OSA* authorizing Staff to conduct an investigation into BFI (the "**Investigation Order**"). The Investigation Order followed several months of informal investigation by Staff with which Natasha Sharpe and BFI were cooperating .

6. On September 28, 2020, Staff sent Natasha Sharpe a letter and a summons (the "**Summons**") under Section 13 of the *OSA*, requiring Natasha Sharpe to attend an examination by Staff in connection with the Investigation Order.

7. In the cover letter accompanying the Summons, Staff advised Natasha Sharpe that "there is a high degree of confidentiality associated with this matter" and cited the confidentiality provisions in section 16 of the *OSA*. Section 16 provides in part that "no person shall disclose at any time ... the nature of an order under section 11 or any testimony given under section 13." Violation of Section 16 is a breach of the *OSA*.

8. In response to the Summons, Natasha Sharpe gave compelled testimony at Staff's examination which took place over two days: October 21 and 22, 2020 (the "**Compelled Testimony**"). Additional compelled evidence was taken on July 7, 2021. Natasha Sharpe relied

upon Staff's assurances of confidentiality. As required by Section 13 of the *OSA*, Natasha Sharpe answered all questions put to her by Staff, with the exception of privilege claims.

9. On April 30, 2021, the OSC, utilizing the same Staff lawyers conducting the investigation and who examined Natasha Sharpe and David Sharpe under Section 13 of the *OSA*, brought an *ex parte* application at the Superior Court of Justice seeking a receivership order pursuant to which PricewaterhouseCoopers (the "**Receiver**") would be appointed receiver and manager over all of the assets, undertakings, and properties of BFI and associated entities (the "**Receivership Application**"). Natasha Sharpe is not a party to the receivership.

10. In support of its *ex parte* Receivership Application, the OSC, through Staff, publicly filed an application record (the "**Receivership Application Record**") which contained the April 29, 2021 Affidavit of Daniel Tourangeau ("**Tourangeau**"), a Senior Forensic Accountant with the OSC's Enforcement Branch (the "**Tourangeau Affidavit**"). Tourangeau attached excerpts from Natasha Sharpe's Compelled Testimony and excerpts of six other individuals' compelled interviews as exhibits to the Tourangeau Affidavit.

11. Staff had not sought an order from the Commission authorizing disclosure of compelled evidence as required by Section 17 of the *OSA* (the "**Section 17 Order**") or provided any notice to Natasha Sharpe prior to the public disclosure of her Compelled Testimony, as required by Section 17. Despite their obligation of full and frank disclosure, Staff did not bring it to the Court's attention the fact that their application materials contained confidential compelled evidence.

#### **OSC Staff Counsel File the Compelled Testimony in the Superior Court Record**

12. The *ex parte* Receivership Application was heard by the late Justice G. Hainey at 3:30 pm on Friday, April 30, 2021. Hainey J. granted the requested order several hours later (the

“**Receivership Order**”). The form of order proposed to the Court by the OSC included a provision that certain exhibits to the Tourangeau Affidavit be redacted for personal information (such as addresses or Social Insurance Numbers) before filing. However, the order did not include a sealing provision for compelled evidence.

13. On May 1, 2021, the Receiver posted the Receivership Application Record, which included parts of Natasha Sharpe’s Compelled Testimony, on its website. The Receiver’s website was available to all members of the public. The Receiver also emailed the Receivership Application Record to the large list of entities and lawyers connected to the Receivership.

### **The Materials Sought**

14. By letter dated November 23, 2022, Natasha Sharpe, through counsel, requested that the following items be disclosed by Staff:

- All communications between Staff the receiver of Bridging Finance Inc. and related entities (the “Receiver”) and/or counsel for the Receiver, particularly any communications or correspondence relating to the compelled evidence of Natasha Sharpe and other witnesses interviewed by Staff in connection with this proceeding and publicly disclosed in connection with the application to appoint the Receiver and the ongoing receivership;
- Any and all staff investigation notes or memoranda not yet produced and disclosed in this enforcement proceeding, including those related to the application to appoint the Receiver, the ongoing receivership, and the application for a cease-trade order, Commission File No. 2021-15 (the “TCTO”), including handwritten notes. If any Staff notes or related documents have been or are being withheld, please provide the justification and/or any related assertion of privilege;
- The list of any records or documents over which Staff claim privilege in this enforcement proceeding;
- Any internal OSC communications, including those with the Director of the Enforcement Branch, the Executive Director of the Commission, the Chair of the Commission, the Chief Administrative Officer of the

Commission and any commissioners/tribunal members, as well as communications with any other regulators, with respect to the appointment of the Receiver, including the selection of the Receiver; the ongoing receivership; and the TCTO application. If any records have or are proposed to be withheld, please provide the basis for this;

- Any communications between (a) Staff or any other department or part of the Commission, and (b) any of the individuals on Staff's witness lists to date;
- Any communications or Staff's discussions concerning the Commission's position on the Tribunal's decision of March 30, 2022, OSC File Nos. 2021-26 and 2021-15, following the release of that decision; and,
- Any communications or correspondence between Staff and the *Globe and Mail* in connection with this enforcement proceeding, the preceding investigation by Staff, the application to appoint the Receiver, and the TCTO application.

15. To date, Staff has refused or failed to respond to Natasha Sharpe's request for disclosure.

16. In addition to the foregoing items which have already been requested, Natasha Sharpe seeks disclosure of all communications between Staff and law enforcement in relation to any ongoing or potential criminal investigations.

### **Materials are Not Clearly Irrelevant**

17. Rule 27 of the Tribunal's Rules of Procedure require Staff to disclose copies of all non-privileged documents in its possession that are relevant to an allegation. Relevance means relevance in the *Stinchcombe* sense, and includes not only material that Staff may rely upon, but any information that could assist in advancing a defence or making tactical decisions: *Deloitte & Touche LLP v. Ontario (Securities Commission)*, 2002 CanLII 44980 (Ont. C.A.).

18. Disclosure must also be made of any information that is relevant to issues that might be properly raised: *BDO Canada LLP (Re)*, 2019 ONSEC 21.

19. On the stay motion, the Tribunal will have to consider and determine the alleged abuse of process arising from the improper and unlawful disclosure of Natasha Sharpe's compelled testimony.

20. Information that is relevant to Natasha Sharpe's abuse of process motion is relevant to the proceeding, because it would tend to prove or disprove, or otherwise advance, one or more serious issue(s) that have been raised by Natasha Sharpe, and that must be determined by the Tribunal..

21. In addition, some of the categories of information sought could relate more generally to tactical decisions to be made, and defences to be advanced, by Natasha Sharpe.

22. Disclosure of the information sought is necessary in order for Staff to comply with their disclosure obligations.

**C. EVIDENCE**

23. The moving party intends to rely on the following evidence for the motion:

- (a) Affidavit of Rozana Kishore , sworn December 2, 2022; and
- (b) such further and other evidence as counsel may advise.

**LENCZNER SLAGHT LLP**

130 Adelaide Street W.

Suite 2600

Toronto ON M5P 3P5

Lawrence E. Thacker (LSO#: 36939M)

[lthacker@litigate.com](mailto:lthacker@litigate.com)

Tel: 416.865.3097

Tel: 416.865.9500

Lawyers for Natasha Sharpe