



Capital  
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financiers

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Citation: *Bridging Finance Inc (Re)*, 2023 ONCMT 6

Date: 2023-01-31

File No. 2022-9

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

**REASONS FOR DECISION**

**(Sections 16.1 and 25.0.1 of the  
*Statutory Powers Procedure Act, RSO 1990, c S.22*)**

**Adjudicators:** Timothy Moseley (chair of the panel)  
Sandra Blake  
William Furlong

**Hearing:** By videoconference, January 19, 2023

**Appearances:** David A. Hausman                      For Andrew Mushore  
Jonathan Wansbrough

Johanna Braden                                      For Staff of the Ontario Securities  
Mark Bailey    Commission  
Nicole Fung

Erin Pleet    For the receiver of Bridging Finance Inc.

Daniel Thomas    For David Sharpe  
Melissa MacKewn

Lawrence E. Thacker                                      For Natasha Sharpe

## REASONS FOR DECISION

### 1. OVERVIEW

[1] Andrew Mushore is a respondent in this complex and wide-ranging enforcement proceeding. He is the former Chief Compliance Officer of the respondent Bridging Finance Inc. (**Bridging**). Staff of the Ontario Securities Commission alleges that Mushore:

- a. contravened Ontario securities law by:
  - i. perpetrating a fraud related to securities;
  - ii. failing to comply with conflict of interest requirements;
  - iii. misleading Staff during its investigation; and
  - iv. authorizing, permitting or acquiescing in Bridging's contraventions of Ontario securities law; and
- b. engaged in other misconduct warranting an order under s. 127 of the *Securities Act*.<sup>1</sup>

[2] Mushore moved for an expedited hearing of Staff's allegations against him, and related relief. Mushore submitted that he does not have the resources to have his counsel participate fully in that merits hearing, which is scheduled to run for 35 days. He asked the Tribunal to provide a mechanism that would separate, in some way, the portion of the merits hearing that addresses the allegations against him.

[3] Staff opposed Mushore's motion, as did David Sharpe and Natasha Sharpe, two of the respondents. Bridging's receiver took no position on the outcome but asserted, in the interests of unitholders of Bridging funds, that it would like to see an expeditious and just merits hearing.

[4] On the day after the hearing of Mushore's motion on January 19, 2023, we issued an order dismissing that motion, for reasons to follow. These are our reasons.

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<sup>1</sup> RSO 1990, c S.5

[5] We are sympathetic to Mushore’s desire to minimize the inconvenience and cost to him. However, Mushore was unable to present a mechanism that would achieve his goal and at the same time not unduly impair procedural fairness for the other parties.

## **2. MUSHORE’S REQUEST FOR ADDITIONAL RELIEF**

[6] In his motion, Mushore also asked that the merits and sanctions hearings be combined as against him, and that at that combined hearing he be permitted to make an unsworn statement to the Panel in which he would give context and an explanation for his actions or inaction.

[7] During the motion hearing, Mushore withdrew these requests. Accordingly, our decision did not address them. Similarly, these reasons will not.

## **3. ANALYSIS**

### **3.1 Introduction**

[8] We begin our analysis by attempting to define precisely what relief Mushore was seeking. We then turn to consider whether granting any of that relief would fairly balance Mushore’s interests against those of the other parties.

### **3.2 What relief was Mushore asking for?**

[9] Mushore emphasized that he was not seeking a severance of the case against him from the case against the other respondents. Rather, he was seeking an “enhanced case management” approach that would minimize his burden.

[10] Initially, Mushore proposed to have his case go first, *i.e.*, before Staff presents its case. Mushore would file his affidavit, and any party could then cross-examine him. Mushore would also testify in reply, if necessary.

[11] Mushore proposed that in order to avoid inconsistent findings, the Panel could release its decision respecting him at the same time as its decision resulting from the main merits hearing.

[12] As the motion hearing proceeded, Mushore’s proposal evolved. One alternative he suggested contemplated that Staff would first file an affidavit that would include any documents relevant to Mushore. In proposing that alternative, Mushore anticipated, but understandably could not promise without seeing the

documents, that he would raise no issues about their source or authenticity. Under Mushore's proposal, he would file his affidavit after Staff had filed its affidavit, and Mushore would be available for cross-examination by all parties.

[13] By the conclusion of the motion hearing, it was not clear to us which mechanisms Mushore was proposing. During argument, as we or other parties raised concerns about various alternatives, Mushore's response in some instances was that the concerns would have to be resolved in some way at some point in the future, possibly by the panel at the merits hearing. This left some loose ends and uncertainty about the subject matter of the motion. As we explain below, that uncertainty flows from the fact that the nature of this proceeding, including in particular Staff's allegations, does not lend itself well to the sort of relief Mushore seeks.

### **3.3 Would an expedited hearing, as proposed by Mushore, result in a just, expeditious and cost-effective proceeding?**

#### **3.3.1 Introduction**

[14] Proceedings before the Tribunal are to be conducted in a just, expeditious and cost-effective manner.<sup>2</sup>

[15] Mushore correctly submitted that a hearing panel may adapt its hearing procedures to accommodate various factors, including the financial circumstances of a respondent.<sup>3</sup> However, as we explain below, we concluded that the mechanisms proposed by Mushore would not result in the most just, expeditious and cost-effective merits hearing, because:

- a. despite Mushore's submission to the contrary, the allegations against him are inextricably intertwined with those against the other respondents;
- b. we cannot accept Mushore's submission that his evidence is uncontested;  
and

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<sup>2</sup> *Capital Markets Tribunal Rules of Procedure and Forms*, r 1

<sup>3</sup> *Sino-Forest Corporation (Re)*, 2015 ONSC 21; *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 25.0.1(a)

- c. none of the mechanisms that Mushore proposed would appropriately balance his interests with those of the other parties.

[16] We will address each of these three reasons in turn.

### **3.3.2 The allegations against the respondents are intertwined**

[17] Staff submitted that one cannot separate the allegations against Mushore from those against the other respondents. The allegations are not independent; rather, they arise out of the same transactions and events. In some instances, Mushore's alleged liability is as a direct participant in conduct also carried out by others; in other instances, Mushore's alleged liability is indirect, as someone who authorized, permitted or acquiesced in Bridging's alleged misconduct.

[18] Staff submitted that because the allegations are so deeply intertwined, Staff cannot present Mushore's case separately; rather, in putting forward its case against Mushore, Staff would have to lead almost all its evidence against all respondents.

[19] David Sharpe and Natasha Sharpe also asserted that the allegations are intertwined. They further submitted that the roles and responsibilities of each respondent are likely to be in dispute. Should Mushore's motion be granted, they anticipate that their cross-examination of him would essentially result in a full hearing within a hearing.

[20] Even Mushore himself implicitly acknowledged the difficulty of separating, in some way, the allegations against him. This is reflected in his submission that given the nature of the allegations, he would not be able to determine in advance when he would have to attend the hearing in order to make full answer and defence to those allegations that pertain to him.

[21] We agree with the submissions of Staff and of the Sharpes. The allegations are intertwined, and we can easily foresee that an expedited merits hearing in any form would quickly develop into a full hearing, with potential duplication of effort.

### **3.3.3 There is no basis to conclude that Mushore's evidence is uncontested**

[22] In his affidavit filed on this motion, Mushore testified that he does not believe that his evidence for the merits hearing "would in any way be contentious". He

came to that conclusion principally by referring to the summaries of anticipated evidence of Staff's witnesses that he has received, which he claims contain only a single reference to him, about his having been involved in some "paperwork".

[23] Mushore may believe that his evidence would be uncontentious, but such a belief is patently unreasonable, and we cannot join him in it. For example, David Sharpe submitted that he would regard as contentious, among other things, Mushore's sworn evidence that:

- a. Mushore was actively misled about David Sharpe's moral standing and expertise; and
- b. Mushore and his family were the subject of threats from David Sharpe, designed to prevent Mushore from co-operating with Staff or Bridging's receiver.

[24] We also note that Staff disagreed with Mushore's characterization of the witness summaries, which according to Staff contain more than sixty references to Mushore. We did not have the summaries before us, but we did not need them in order to reject Mushore's submission that his evidence is uncontested. Even if the witness summaries foreshadowed no oral testimony that would contradict Mushore's evidence, there are other ways in which Staff and the other respondents may contest Mushore's evidence, including through documents, transcripts of Mushore's own examination as a witness in the investigation, or cross-examination.

[25] As a result, there was no basis to conclude that Mushore's evidence is uncontested. If, as the merits hearing approaches, Mushore believes that his evidence is uncontroversial, then it is of course open to him to seek to reach agreement with any or all parties about some or all of that evidence. If he were to be successful in doing so, he could make significant progress toward his goal of reducing the time and cost required to defend this proceeding.

#### **3.3.4 None of the mechanisms that Mushore proposes would appropriately balance his interests with those of the other parties**

[26] In light of our conclusions above, we cannot accept any of the various mechanisms that Mushore proposes.

- [27] Any separate merits hearing would be impractical and would likely require duplication of effort, given that the allegations against Mushore are so intertwined with the allegations against the other respondents, and given that Mushore is, in some respects, adverse in interest to the Sharpes. Under those circumstances, a separate merits hearing would be contrary to, rather than consistent with, the objective of an expeditious and cost-effective proceeding.
- [28] Permitting Mushore, over the objections of the other respondents, to put his case forward (including being subject to cross-examination) before Staff presents its case would unfairly force the other respondents to cross-examine Mushore without having had the benefit of hearing Staff's entire case. Alternatively, it would require Mushore to return after the conclusion of Staff's case, a result that would yield no efficiency.
- [29] The usual sequence of events in a merits hearing is a tried and true means for discovering the truth in a way that maximizes procedural fairness for the parties. A departure from that usual sequence may be justified where, for example, the change improves rather than impairs overall procedural fairness. None of the mechanisms that Mushore proposes would accomplish that goal.

### **3.4 Conclusion**

- [30] Given the intertwined nature of the allegations, and the contentious nature of the issues between Mushore and the other parties, it would not be appropriate at this stage of the proceeding to modify the normal manner of conducting the merits hearing. We therefore issued the order dismissing Mushore's motion.
- [31] However, all is not lost for Mushore. During the motion hearing, Staff committed to being willing to consider workable and appropriate accommodations to assist Mushore and the other respondents, in order to secure a just, expeditious and cost-effective merits hearing.
- [32] We are confident that the panel hearing the merits of Staff's allegations will encourage the parties to be as transparent as possible about when various witnesses will testify, and when certain topics will be covered in direct examination, to the extent practicable. Mushore will be as well-equipped as is reasonably possible given the nature of the allegations, to decide which portions

of the hearing he or his counsel wish to attend as an active participant or as an observer.

Dated at Toronto this 31<sup>st</sup> day of January, 2023

*"Timothy Moseley"*

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Timothy Moseley

*"Sandra Blake"*

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Sandra Blake

*"William Furlong"*

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William Furlong