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Citation: *Ali (Re)*, 2023 ONCMT 30

Date: 2023-09-22

File No. 2022-6

IN THE MATTER OF AMIN MOHAMMED ALI

REASONS FOR DECISION

Adjudicators: M. Cecilia Williams (chair of the panel)
William Furlong

Hearing: By videoconference, June 26, 2023; final written submissions
received August 10, 2023

Appearances: Seema Sadiq For Amin Mohammed Ali
Shelly Feld For Canadian Investment Regulatory
Alan Melmud Organization
Linda Fuerst For Staff of the Ontario Securities
Tyler Morrison Commission

TABLE OF CONTENTS

1.	OVERVIEW	1
2.	BACKGROUND.....	2
3.	ALI’S REPRESENTATION	2
4.	STAY MOTION	4
4.1	The test for granting a stay	5
4.2	Analysis.....	5
4.2.1	Is there a serious issue to be tried?.....	5
4.2.2	Will Ali suffer irreparable harm if a stay is not granted?.....	6
4.2.3	Does the balance of convenience favor a stay?.....	7
4.3	Conclusion regarding the Stay Motion	8
5.	ALI’S CONFIDENTIALITY REQUESTS	8
5.1	Law.....	8
5.2	Analysis.....	9
5.2.1	Confidential Hearing Request.....	9
5.2.2	Redacted Documents Request	9
6.	CIRO’S REQUEST THAT A PORTION OF ALI’S HEARING BRIEF BE STRUCK	10
7.	CONCLUSION.....	11

REASONS AND DECISION

1. OVERVIEW

- [1] On June 30, 2023 we dismissed a motion (the **Stay Motion**) by Amin Mohammed Ali to stay a sanctions order of the Canadian Investment Regulatory Organization (**CIRO**, formerly the Mutual Fund Dealers Association) dated September 20, 2022 (**Sanctions Order**), with reasons to follow.¹ We dismissed the Stay Motion as there was insufficient evidence before us to conclude that Ali would suffer irreparable harm if the stay were not granted.
- [2] At the outset of the Stay Motion hearing, Ali asked that portions of certain documents he filed in this proceeding, including his application to initiate the review proceeding, the notice of motion and his written submission (which he referred to as his “Hearing Brief”) for this Stay Motion, and the record of proceedings from the CIRO hearing in the adjudicative record be kept confidential (the **Redacted Document Request**) and that this Stay Motion be held as a confidential hearing (the **Confidential Hearing Request**) to protect his privacy with respect to certain health information.
- [3] Given the sensitivity of Ali’s health issues, and in balancing the open hearing principle with Ali’s right to dignity and privacy, we determine that certain portions of those documents will remain confidential pursuant to his Redacted Document Request.
- [4] We granted Ali’s Confidential Hearing Request, and all parties agreed that the transcript of the Stay Motion would be made public, subject to submissions to redact portions of the transcript. We did not receive any submissions regarding redacting the transcript, and therefore the full transcript will be public.
- [5] CIRO Staff also requested that a portion of Ali’s Hearing Brief be struck as it refers to privileged settlement discussions. Ali did not oppose this request and we find that the identified portion of the Hearing Brief must be struck.

¹ (2023), 46 OSCB 5777

2. BACKGROUND

[6] Ali initiated an application (the **Review Application**) before the Tribunal for a review of a decision by CIRO (the **Merits Decision**) that Ali had contravened three CIRO rules related to:

- a. engaging in undisclosed or non-approved outside activities or entering into unauthorized referral arrangements;
- b. providing false and misleading responses to his employer; and
- c. failing to cooperate with a CIRO investigation of his conduct.

[7] He also seeks a review of the Sanctions Order which ordered that:

- a. he be permanently prohibited from conducting securities related business while in the employ of or in association with a CIRO member;
- b. he pay a fine of \$50,000; and
- c. he pay costs of \$10,000.

[8] The hearing for the Review Application is scheduled to begin on September 26, 2023. In advance of the hearing of the Review Application, Ali brought this Stay Motion, which was heard on June 26, 2023.

[9] He also requested that the panel dismiss the Sanctions Decision as part of the Stay Motion. We explained to him that his request to have the Tribunal dismiss the Sanctions Decision would be considered during the merits hearing of his Review Application. He withdrew this request during the hearing of the Stay Motion.

3. ALI'S REPRESENTATION

[10] Ali represented himself in this matter with the assistance of a family friend, Ms. Seema Sadiq.

[11] Ali first indicated that he wanted to represent himself with Sadiq's assistance at an attendance on March 20, 2023. Staff of the Ontario Securities Commission raised the concern that the Capital Markets Tribunal *Rules of Procedure and*

Forms (Rules) only permit someone authorized under the *Law Society Act*² to appear as a representative before the Tribunal,³ although rule 3 permits the panel to waive that requirement. Commission Staff also expressed concern about a non-lawyer representative being able to effectively represent Ali in the Review Application given the complex legal issues in the application. Sadiq asked for an adjournment of the attendance to explore getting legal representation, which we granted.

- [12] At our next attendance on May 31, 2023, Ali advised that he had not obtained legal representation and that he wanted to proceed to represent himself with Sadiq's assistance. He indicated that he had had four or five legal representatives throughout this matter who had either been unable to comprehend his case or had been deterred from representing him and he felt he would do better on his own with Sadiq's help. CIRO and Commission Staff both indicated that they did not object in principle to Sadiq acting as Ali's representative, but they cautioned Ali about proceeding without a representative with formal legal training and litigation experience, given the complexity of the legal issues raised in the Review Application. Ali confirmed that he understood the concern raised by CIRO and Commission Staff.
- [13] Commission Staff also advised that they had made Ali aware of the Law Society of Ontario's Legal Assistance Program. Ali confirmed that he had not sought assistance from this program. We note that this program is unable to provide assistance to Ali at the hearing of the Review Application.
- [14] We reviewed the *Law Society Act*, the Law Society By-Laws and the Law Society *Rules of Professional Conduct* and found that Sadiq is permitted to act for Ali as a representative before this Tribunal.
- [15] Subsection 30(4) of the Law Society By-Law 4 specifies that a "friend or neighbour" with the following characteristics may provide legal services before an administrative tribunal:

Acting for friend or neighbour

² RSO 1990, c L.8

³ r 5(j)

4. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a friend or a neighbour,
 - iii. who provides the legal services in respect of not more than three matters per year, and
 - iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

[16] We explored with Sadiq whether she met the above criteria. Sadiq confirmed that she is not a lawyer, was providing the services as a representative of Ali solely as his friend, was not providing the services in respect of any other matters, and she was not being compensated for her services. Sadiq is therefore permitted to act as a representative pursuant to the *Rules*.

4. STAY MOTION

[17] Ali has requested the stay on several grounds, including that granting the stay would not result in any harm to the public interest and would preserve the status quo until the Tribunal has considered the Review Application. He also submits that a stay would provide him hope of a return to the financial services industry and thereby provide significant support to his mental health.

[18] CIRO Staff opposes the Stay Motion because Ali has failed to establish the elements of the three-part test for granting a stay motion. In particular, CIRO Staff submits that Ali's notice of motion does not allege any irreparable harm if the requested stay is not granted and he has failed to provide any evidence of irreparable harm. CIRO Staff further submits that there is no basis to conclude that not granting the stay could result in irreparable harm. Ali's registration as a dealing representative was terminated more than five years ago and there is no evidence that he has attempted to seek registration in the industry since his termination. Therefore, there is no basis to find that continuing the permanent prohibition would negatively impact Ali's employment prospects or his income, let alone cause irreparable harm. With respect to the fine and costs orders, CIRO Staff submits that there is no evidence that Ali is impecunious or would suffer

financial hardship from payment or enforcement of the fine and costs and, in any event, as previously concluded by the Tribunal, financial hardship is not in and of itself irreparable harm.⁴

[19] Commission Staff takes no position with respect to the outcome of the Stay Motion.

4.1 The test for granting a stay

[20] The Tribunal has authority to grant a stay of a CIRO decision, pending a Tribunal decision, by virtue of s. 8(4) of the Ontario *Securities Act* (the **Act**).⁵

[21] The Tribunal has adopted the following three-part test, originally articulated by the Supreme Court, for determining when a stay is appropriate:⁶

- a. there is a serious issue to be tried;
- b. the moving party would suffer irreparable harm if the stay was refused;
and
- c. the balance of convenience favours granting the stay.

[22] Ali bears the onus of establishing that all three parts of the test have been met.⁷

4.2 Analysis

[23] We now turn to consider each part of the test.

4.2.1 Is there a serious issue to be tried?

[24] This part of the test requires the Tribunal to make a preliminary assessment of the merits of the Review Application and to be satisfied that the Review Application is neither vexatious nor frivolous.⁸ The threshold to establish that there is a serious issue to be tried is low.⁹

⁴ *Odorico (Re)*, 2023 ONCMT 10 (**Odorico**) at para 29; *Eley (Re)*, 2020 ONSEC 30 (**Eley**) at paras 28-30

⁵ RSO 1990, c. S.5

⁶ *RJR-MacDonald Inc. v Canada (Attorney General)*, 1994 CanLII 117 (SCC) (**RJR-Macdonald**); *Odorico* at para 14; *Eley* at para 14

⁷ *Odorico* at para 15; *Eley* at para 15

⁸ *RJR-Macdonald* at 337

⁹ *Eley* at para 17

- [25] Ali submits that, due to his health issues, he was unable to properly represent himself before CIRO. As a result, he is subject to a permanent ban from the work that is his livelihood and a large fine and costs that he is unable to pay. Ali believes that his rights have been abused and he will be unable to earn an income in the future.
- [26] CIRO Staff conceded that this aspect of the test for a stay had been satisfied, although their position is that the Review Application is without merit.
- [27] We are satisfied that Ali has established that there is a serious issue to be tried. Therefore, Ali has met the first part of the test.

4.2.2 Will Ali suffer irreparable harm if a stay is not granted?

- [28] The second part of the test requires that Ali establish that if a stay is not granted, his interests will be so adversely affected that the harm to him cannot be remedied.¹⁰
- [29] “Irreparable” refers to the nature of the harm, not its magnitude. The harm must be such that it either cannot be quantified in monetary terms nor be cured.¹¹ Irreparable harm must be established by clear evidence, not by speculation.¹²
- [30] Ali submits that the Sanctions Order is having an extremely negative effect on his health and well being. Ali submits that having hope that he will some day be able to return to a normal life is important to his recovery, and a stay of the Sanctions Order will provide some such hope and aid in his recovery.
- [31] Ali relied on three reports from various health professionals about the negative impact that the CIRO disciplinary proceeding was having on him, which were filed by Ali at the CIRO hearing. However, all of the reports predated the Sanctions Order and consequently did not directly address the matter of irreparable harm that might result if the Sanctions Order is not stayed.
- [32] Ali gave evidence that he has not been able to work for the past five years, that he is penniless, that he has three children he has to support and, as a result, he is unable to deal with the Sanctions Order fine and costs. He stated that he has

¹⁰ *Eley* at para 22

¹¹ *Odorico* at para 25

¹² *Sazant v College of Physicians and Surgeons of Ontario*, 2012 ONCA 727 at para 11

not sought work outside the financial services industry as his skills, experience and interests are best suited to this line of work. He also submits that a stay would provide him with hope of returning to the financial services industry which would support his mental health.

[33] Ali stated that his bank advised him that it can no longer service his Registered Disability Savings Plan because he can longer hold a securities account, which he believes to be a result of the Sanctions Order. CIRO Staff's position is that any restrictions are likely unrelated because the Sanctions Order only precludes Ali from conducting securities related business while in the employ of or in association with an MFDA (now CIRO) member. In any event, Ali stated that he did not think he would be able to access the funds in this account for another 10 years.

[34] CIRO Staff submits that Ali has not been registered as a dealing representative since February, 2018. Under cross examination it was revealed that Ali had let his insurance licence expire and had not applied to renew it. Further, Ali has not provided any documentary evidence of his financial condition to support his oral testimony.

[35] Based on the absence of supporting evidence before us, we are unable to conclude that Ali will suffer irreparable harm if the stay is not granted. It has been more than five years since Ali was registered with CIRO. The Review Application is scheduled to be heard in three months' time. We have no evidence that a stay will provide Ali with any prospects for employment in the financial services industry in the interim. Other than Ali's own assertions that are not supported by any medical evidence, we do not have any current, specific or direct evidence that Ali's health would be irreparably harmed if the Sanctions Order is not stayed.

4.2.3 Does the balance of convenience favor a stay?

[36] This part of the test requires us to assess which of the parties will suffer greater harm from granting or refusing the stay.¹³

¹³ *Odorico* at para 30

[37] We have found that Ali has failed to establish that he will suffer irreparable harm if a stay is not granted. Therefore, we do not need to consider this part of the three-part test.¹⁴

4.3 Conclusion regarding the Stay Motion

[38] For the reasons above, we dismissed Ali's motion to stay the Sanctions Order.

5. ALI'S CONFIDENTIALITY REQUESTS

[39] We now turn to Ali's Confidential Hearing Request and the Redacted Document Request.

5.1 Law

[40] Rule 22(2) of the *Rules* provides that the Tribunal may order that a hearing or part of a hearing be held without the public present if it appears that avoiding disclosure of intimate financial or personal matters or other matters during the hearing outweighs adherence to the principle that hearings should be open to the public.

[41] Rule 22(4) further provides that a panel may order that part of an adjudicative record remain confidential if the circumstances in rule 22(2) applies to the adjudicative record.

[42] The Tribunal's *Practice Guideline* states that personal information relevant to the resolution of the matter is generally not treated as confidential.

[43] Court and Tribunal proceedings are presumptively open to the public and court openness is protected by the constitutional guarantee of freedom of expression. The test for discretionary limits on court openness is directed at maintaining the presumption while offering sufficient flexibility to protect other public interests that may arise.¹⁵ In order to overcome the presumption of openness, the onus is on Ali to establish that there is a serious risk that without a confidentiality order, he will suffer "an affront to his dignity" by virtue of the disclosure of his intimate personal matters during the hearing.¹⁶

¹⁴ *Odorico* at para 31

¹⁵ *Sherman Estate v Donovan*, 2021 SCC 25 (***Sherman Estate***) at para 30

¹⁶ *Odorico* at para 37, citing *Sherman Estate* at paras 34, 56

[44] We now turn to the parties' submissions regarding confidentiality and the details of the documents in question.

5.2 Analysis

5.2.1 Confidential Hearing Request

[45] Ali asked that the hearing of the Stay Motion be held as a confidential hearing. CIRO Staff and Commission Staff agreed with Ali's request, subject to the transcript of the hearing of the Stay Motion being made public with appropriate redactions, if any.

[46] We agreed that holding a confidential hearing would allow Ali and his representative to speak freely without any concerns about the risk of disclosing highly sensitive personal information.

[47] The appropriate balance of the public interest in privacy with the principle of open hearings would be achieved, in our view, through the publication of the transcript of the hearing, subject to the panel's consideration of any requests from the participants to have some parts of the transcript redacted.

[48] As we noted earlier, none of the parties made any subsequent requests for any redactions to the transcript of the hearing. Thus the unredacted transcript for the Stay Motion hearing shall be public.

5.2.2 Redacted Documents Request

[49] Ali asks for extensive redactions to the following three documents in the adjudicative record:

- a. the Amended Application for the Review Hearing;
- b. the notice of motion for the Stay Motion; and
- c. Ali's written submissions filed for the Stay Motion, which Ali referred to as his "Hearing Brief".

[50] Ali further requested that the record of proceedings from the CIRO proceeding remain confidential.

[51] Staff of CIRO and of the Commission submit that any redactions to the adjudicative record should be limited to specific details about Ali's medical condition, such as specific symptoms, diagnoses and treatments. CIRO Staff

further submits that more general statements about Ali's health, particularly where they serve as the basis for his Review Application, ought to be available to the public to make Ali's Review Application generally comprehensible to the public.

[52] We agree that there are certain portions of the documents in question that go to issues of Ali's dignity that should remain confidential. However, Ali's mental health is at the heart of his Review Application and his Stay Motion. The fact that Ali has mental health conditions, and the details about how his mental health issues impacted his ability to properly participate in and defend himself in the CIRO proceeding, are central to the issues in this proceeding and require transparency.

[53] The appropriate balance between the public interest in privacy and the public interest in open hearings is achieved, in our view, by redacting from the adjudicative record language that deals with or refers to specific symptoms, medical history, diagnosis, examinations, treatments, and personal family matters unrelated to the substance of this proceeding.

[54] For the reasons set about above we order that the adjudicative records referred to above be redacted as noted in Appendix "A" to our accompanying order and that only the redacted versions of these documents shall be made available to the public.

[55] The relevant documents will need to be redacted, as indicated in Appendix "A" to the order, and refiled with the Registrar.

6. CIRO'S REQUEST THAT A PORTION OF ALI'S HEARING BRIEF BE STRUCK

[56] CIRO Staff requests that all of paragraph 15 of Ali's Hearing Brief, other than the first sentence, be struck because it improperly discloses information that is protected by settlement privilege. CIRO Staff submits that this portion of Ali's Hearing Brief contains details of settlement discussions which are presumptively inadmissible before the Tribunal.

[57] At an attendance in this proceeding on July 18, 2023, we explained to Ali the nature of CIRO Staff's request. Ali advised that he would provide his position on

CIRO Staff's request by the end of that week. We never received any submissions from Ali regarding or opposing CIRO Staff's request.

[58] We find that the portion of Ali's Hearing Brief identified by CIRO Staff does contain privileged information regarding settlement discussions. Accordingly, all of paragraph 15 of Ali's Hearing Brief, other than the first sentence, must be struck and redacted.

7. CONCLUSION

[59] For the reasons set out above, we:

- a. denied Ali's motion for a stay of the Sanctions Order;
- b. ordered that the Stay Motion be heard in confidence, but because the parties did not make any subsequent requests for redactions to the transcript of the Stay Motion hearing the unredacted transcript shall be made available to the public; and
- c. determined that certain portions of the adjudicative record be redacted as indicated in Appendix A to the order.

Dated at Toronto this 22nd day of September, 2023

"M. Cecilia Williams"

M. Cecilia Williams

"William Furlong"

William Furlong