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Citation: *Mughal Asset Management Corporation (Re)*, 2023 ONCMT 38
Date: 2023-11-01
File No. 2022-15

**IN THE MATTER OF
MUGHAL ASSET MANAGEMENT CORPORATION,
LENLE CORPORATION and USMAN ASIF**

REASONS FOR DECISION

Adjudicators: Andrea Burke (chair of the panel)
Geoffrey D. Creighton
William J. Furlong

Hearing: By videoconference, April 26, 2023

Appearances: Sarah McLeod For Staff of the Ontario Securities
Commission
Usman Asif For himself and Mughal Asset
Management Corporation and Lendle
Corporation

REASONS FOR DECISION

1. OVERVIEW

- [1] These are our reasons for a mid-hearing ruling denying the respondents' request for additional time to gather and present evidence at the merits hearing in this matter.
- [2] The respondents' request was made after Staff closed its case, after Staff and the respondents jointly filed an agreed statement of facts with the Tribunal, and after the respondents had stated on multiple occasions that they did not intend to introduce any evidence or call any witnesses at the merits hearing. The respondents advised that the evidence they wanted time to locate might have the potential to provide greater clarity on the amount of money Mughal repaid to investors. Specifically, Asif, who represented himself and the corporate respondents at the merits hearing, stated that the evidence could show that the amount of money repaid to investors "was slightly a bit higher" than the numbers in Staff's investigator's affidavit.
- [3] We denied the request with reasons to follow. We did so primarily because the request was brought much later in the hearing process than what would otherwise be acceptable, the respondents were unable to provide any assurance that the additional evidence was readily accessible to them, the respondents were not certain the additional evidence would be helpful to their case, and significant unfairness would result to Staff if the request were granted.

2. BACKGROUND

- [4] On the second day of the merits hearing, after taking part in a confidential conference at the request of the panel, the parties tendered an agreed statement of facts in which the respondents admitted to nearly all of Staff's allegations and evidence.
- [5] The agreed statement of facts states that the respondents agree to all of the facts set out in the affidavit of Staff's investigator, with a few exceptions. One of the exceptions was the total amount of funds returned to Mughal investors. The respondents submitted that Staff's investigator underestimated this amount.

- [6] The respondents requested additional time to obtain bank records, review those records and cross-reference the numbers with those included in the investigator's affidavit.
- [7] The respondents had previously repeatedly advised the panel and Staff that they were not going to introduce any evidence at the merits hearing, including as recently as two days before making the request. The respondents did not file any witness lists, witness summaries, or hearing brief prior to the merits hearing.
- [8] A separate issue arose after the evidentiary portion of the merits hearing was completed that led to the recusal of one of the members of the merits panel. As this ruling occurred before the recusal, these reasons are of all three panel members.

3. ANALYSIS AND CONCLUSION

- [9] We found that it was not in the public interest to grant the respondents' request.
- [10] In making this request, Asif explained that he had difficulty understanding the proper process to be followed at the hearing, was misguided by previous counsel and wanted to ensure that the evidence before the panel was as accurate as possible. However, he did not specify what the proposed additional evidence was going to include and whether it would actually contradict the numbers in the Staff investigator's affidavit.
- [11] Staff submitted that the respondents had already had more than sufficient time to consider and address Staff's numbers. The numbers the respondents were challenging were included in the original Statement of Allegations (issued on June 14, 2022). Copies of the schedules attached to the investigator's affidavit that included these numbers were also provided to the respondents as part of a witness summary in October 2022.
- [12] During this proceeding, the respondents repeatedly advised Staff and the Tribunal that they were not going to introduce any evidence or call any witnesses at the merits hearing. This included such advice made in writing by Asif on March 29, 2023, following the final interlocutory attendance in this matter, and orally on the first day of the merits hearing on April 24, 2023.

[13] We found that allowing the respondents additional time to locate and potentially present additional evidence would be inappropriate in the circumstances.

[14] Our reasons for dismissing the respondents' request include the facts that:

- a. the financial documents at issue, which the respondents had sufficient time to procure before the middle of the merits hearing, should have been provided to Staff much earlier in the hearing process and the respondents offered no explanation or justification for why this was not done;
- b. the merits hearing had already begun, and Staff had already called their evidence and closed their case;
- c. the requirement of providing notice to Staff of the intention to tender evidence (as well as notice of the contents of such evidence) had been previously communicated to the respondents on multiple occasions and was the subject of orders specifying dates for the delivery by the respondents of witness lists and witness summaries¹ and a hearing brief containing copies of any documents the respondents wanted to introduce in evidence²;
- d. the respondents were provided with Staff's analysis on the use of investor funds well in advance of the merits hearing;
- e. the Statement of Allegations, which had been available to the respondents for some time, also laid out the monetary amounts that were now being challenged;
- f. the respondents were unable to provide any assurance that they would be able to obtain the documents they wished to rely on, and if procuring the documents were to take longer than expected, we would likely have to extend the length of the merits hearing, which was scheduled to end on May 5, 2023; and

¹ (2022) 45 OSCB 9797

² (2023) 46 OSCB 504

g. the respondents were not certain that the additional evidence would be helpful to their case and, indeed, described the additional evidence as only potentially showing a “slightly higher” number.

[15] We ultimately found that the unfairness to Staff, who had proceeded with and closed its case on the understanding that the respondents were not going to introduce any evidence, that would result in granting the request outweighed any potential unfairness to the respondents.

[16] As a result of our ruling, the respondents did not tender the additional evidence at the merits hearing.

Dated at Toronto this 1st day of November, 2023

“Andrea Burke”

Andrea Burke

“Geoffrey D. Creighton”

Geoffrey D. Creighton

“William J. Furlong”

William J. Furlong