

IN THE MATTER OF
DAVID RANDALL MILLER

File No. 2019-48

MOTION
OF DAVID RANDALL MILLER

(For an Order extending time to serve and file witness list and serve summary of witness evidence and indicate intention to call an expert witness and abridging time)

A. Order Sought

The Moving Party, David Randall Miller requests with notice, that the Ontario Securities Commission make the following Orders:

1. An Order allowing an extension of the deadline for the Moving Party to file and serve his witness list and summary of each witness' anticipated evidence and indicate intention to call an expert witness from June 3, 2020 to July 15, 2020;
2. In the alternative, an Order permitting the Moving Party to supplement after June 3, 2020 any witness list, summaries or intention to call expert witness; and
3. An Order abridging time for service and filing of the materials on this motion.

B. Grounds:

The grounds for the motion are:

1. On December 19, 2019, Staff issued a Statement of Allegations against Mr. Miller. A Notice of Hearing was issued the following day.
2. Staff is seeking significant penalties as against Mr. Miller, which could result in him being banned from trading and acting as a director/officer of a registrant or issuer.
3. Mr. Miller's first attendance before the Commission was on January 14, 2020. Mr. Miller retained Addario Law Group shortly before that date. His second attendance was scheduled for May 5, 2020.
4. Staff counsel provided Addario Law Group with the first tranche of disclosure on January 15, 2020.

5. Ms. Morgan met with Mr. Miller on February 26, 2020. Ms. Morgan scheduled an in person follow up meeting for March 25, 2020..
6. On March 3, 2020, Mr. Miller travelled to Costa Rica for a three-week vacation.
7. On March 11, 2020, the World Health Organization declared that COVID-19 was a pandemic. Shortly thereafter, significant international travel restrictions were imposed.
8. On March 17, 2020, Ontario Premier Doug Ford declared a state of emergency in response to the pandemic.
9. On March 20, 2020, Ontario suspended all limitation periods and filing deadlines, including those respecting intended proceedings until the end of the state of emergency.
10. On March 23, 2020, Toronto Mayor John Tory declared a state of emergency in the City of Toronto.
11. Because of travel issues relating to COVID-19, Mr. Miller was unable to return to Canada as anticipated. He was not able to attend an in-person meeting scheduled with Ms. Morgan for March 25, 2020.
12. On April 24, 2020, Staff counsel produced a second tranche of disclosure, which was delivered to Ms. Morgan electronically.
13. On April 27, 2020, the Registrar inquired in writing as to whether the parties could propose the date for the third appearance and time for service and filing of the Respondent's witness lists and summaries on consent.
14. Mr. Miller was unable to return to Canada until April 29, 2020. Upon return, he was legally required to quarantine for 14 days.
15. Ms. Morgan spoke to Mr. Miller by telephone on April 30, 2020.

16. On May 1, 2020, Ms. Morgan and Staff counsel mutually proposed to schedule the third appearance for July 3, 2020 and agreed to the date of June 3, 2020 for the filing of the Respondent's witness list and summaries, and intention to call an expert witness.
17. On May 1, 2020, the Commission issued an Order confirming these dates on consent.
18. Ms. Morgan continued to engage in telephone conversations with Mr. Miller after that date.
19. After the conclusion of Mr. Miller's fourteen-day mandatory quarantine period, on May 16, 2020, Ms. Morgan and Mr. Miller met in person. Because Addario Law Group is closed to clients, the only available location for this meeting was a parking lot. In Ms. Morgan's view, this was not a satisfactory location or form of a meeting.
20. Ms. Morgan believes that further in-person meetings with Mr. Miller are required before the next step can be finalized.
21. It is anticipated that the loosening of recent restrictions and termination of Mr. Miller's quarantine will make it easier to obtain further information necessary for inclusion in the witness list and summaries.
22. On May 19, 2020, counsel requested inquired as to whether Staff would consent to a 4-6 week extension of time to file the Respondent's witness list and summaries.
23. On May 20, 2020, Staff advised it intended to oppose a request to vary the order regarding service and filing of the witness lists and summaries.
24. In light of the above, the Respondent is seeking an extension of time to file his witness list and summary of witness statements and intention to call an expert witness in order to ensure the proceedings are conducted in a just, expeditious and cost-effective manner.

C. Evidence

Mr. Miller intends to rely on the following evidence for the motion:

1. The affidavit of Samiyyah Ganga, sworn May 23, 2020;
2. Rules 5(1), 8 of the *Ontario Securities Commission Practice Guideline*;
3. Rules 1, 3, 4(2) of the *Ontario Securities Commission Rules of Procedure and Forms*; and
4. Such further and other evidence as the Respondent will advise and the Commissioner will permit.

Dated this 23rd day of May 2020.

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