

ONTARIO SECURITIES COMMISSION

IN THE MATTER OF STABLEVIEW ASSET MANAGEMENT INC. AND COLIN FISHER

File No. 2020-40

**NOTICE OF MOTION OF THE RESPONDENT,
COLIN FISHER**

(For an order striking portions of the proposed affidavits of Staff's witnesses, Catherine Muhindi, Sherry Brown, and Trevor Walz, under Rule 28 of the *Ontario Securities Commission Rules of Procedure and Forms*, Rule 8 of the *Ontario Securities Commission Practice Guideline*, section 15 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22)

LENCZNER SLAGHT LLP

Barristers

Suite 2600

130 Adelaide Street West

Toronto ON M5H 3P5

Brendan F. Morrison (61635B)

Tel: (416) 865-3559

Fax: (416) 865-9010

Email: bmorrison@litigate.com

Sarah Bittman (74913I)

Tel: (416) 865-9673

Fax: (416) 865-9010

Email: sbittman@litigate.com

Lawyers for the Respondent,
Colin Fisher

TO: **ONTARIO SECURITIES
COMMISSION**

22nd Floor
20 Queen Street West
Toronto, ON M5H 3S8

Johanna Braden
Tel: (416) 356-7476
Email: JBraden@osc.gov.on.ca

AND TO: **CHAITONS LLP**

Barristers and Solicitors
5000 Yonge Street
10th Floor
Toronto ON
M2N 7E9

Maya Poliak
Tel: (416) 218-1161
Email: maya@chaitons.com

Lawyers for the Respondent,
Stableview Asset Management Inc.

NOTICE OF MOTION

A. ORDER SOUGHT

The Moving Party (Respondent), Colin Fisher, respectfully requests, with notice to Staff, that the Ontario Securities Commission (the “Commission”) make the following orders:

1. An order striking portions of the affidavit of Catherine Muhindi in accordance with Schedule “A” hereto;
2. An order striking portions of the affidavit of Sherry Brown in accordance with Schedule “A” hereto;
3. An order striking the affidavit of Trevor Walz in its entirety; and
4. Such further and other relief and orders as counsel may advise and the Commission may deem appropriate.

B. GROUNDS

The grounds for the motion are:

Overview

5. On December 16, 2020, Staff filed a Statement of Allegations against Stableview Asset Management Inc. and Colin Fisher pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5. Paragraph 1 of the Statement of Allegations is a summary of the allegations:

This proceeding centres on registrants acting as a portfolio manager (PM) and investment fund manager (IFM) who flagrantly disregarded investment restrictions when managing client money. The registrants advised clients that certain investment parameters and restrictions designed to limit risk would be respected in the registrants’ discretionary management of client funds. The registrants then ignored these restrictions and increasingly invested client monies in a thinly-traded penny stock

company that was suffering from a deteriorating financial position. In order to prop up this penny stock company, the registrants continued to gamble client money on it, repeatedly throwing good money after bad in a vicious cycle of ever-increasing risks and losses for the investors. The registrants did not tell clients about these investments or their deleterious effect on the restrictions set out in the registrants' agreements with clients. Nor did the registrants tell clients about the corporate registrant's receipt of "consulting" fees from the penny stock company. Through their actions, the registrants exposed clients to risks not contemplated by them and clients have been harmed. The registrants' actions were fraudulent.

6. There is no allegation of a failure to cooperate with the Commission in the course of its investigation.

7. There is no allegation of any misconduct relating to the Respondent's interactions with the Commission.

8. There is no allegation of a breach of the Terms and Conditions which were imposed on Stableview Asset Management Inc. on November 8, 2019.

9. The Statement of Allegations has never been amended.

10. The hearing in this matter is scheduled to proceed on May 9, 2022. Thirty days of hearing time have been reserved.

11. Staff is not relying on any expert evidence on any issue.

12. Pursuant to the Order of the Commission dated February 4, 2022, Staff were required to serve affidavits containing the merits hearing evidence of its witnesses Sherry Brown, Catherine Muhindi, and Trevor Walz.

13. On March 25, 2022, Staff provided unsworn draft affidavits of Sherry Brown, Catherine Muhindi, and Trevor Walz to the Respondent.

14. Each of the affidavits contains evidence that is inadmissible and should be struck.
15. The affidavit of Trevor Walz is unrelated to the allegations contained in the Statement of Allegations. It is irrelevant and should be struck. Admitting irrelevant evidence would cause prejudice to the Respondent. It would unnecessarily prolong this proceeding.
16. Each of the affidavits of Catherine Muhindi and Sherry Brown contains evidence that is improper opinion evidence. Each of the affidavits of Catherine Muhindi and Sherry Brown contains evidence that is also irrelevant. Each of the affidavits of Catherine Muhindi and Sherry Brown contains evidence purporting to comment on the evidence of others, which is improper and irrelevant.
17. The evidence to be struck is prejudicial to a fair hearing and to the Respondent and serves no legitimate or proper purpose.

Catherine Muhindi

18. The following portions of the affidavit of Catherine Muhindi are inadmissible and should be struck:
 - (a) The first, second, and fourth sentences of paragraph 21 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
 - (b) Paragraphs 23-25 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;

- (c) Paragraphs 34-35 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
- (d) The first and final sentences of paragraph 37 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
- (e) The third sentence of paragraph 39 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
- (f) Paragraph 41 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
- (g) Paragraph 43 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
- (h) Paragraph 45 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
- (i) The last sentence of paragraph 46 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;

- (j) The first sentence of paragraph 52 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant; and
- (k) Paragraphs 54-55 on the grounds that it draws legal conclusions on issues to be determined by the Commission, purports to comment on the credibility of evidence of others, and is irrelevant.

Sherry Brown

19. The following portions of the affidavit of Sherry Brown are inadmissible and should be struck:

- (a) Paragraph 44 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
- (b) The first and third sentences of paragraph 57 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
- (c) Paragraphs 66-67 on the grounds that it is inadmissible hearsay evidence;
- (d) Paragraph 70 (excluding the chronology which follows it) on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;

- (e) The final sentence of paragraph 85 and all subparagraphs on the grounds that it draws legal conclusions commenting on the quality of evidence of others, and it is irrelevant;
- (f) The final sentence of paragraph 88 on the grounds that it is opinion evidence from a non-expert, that it draws legal conclusions on issues to be determined by the Commission and it is irrelevant;
- (g) The first and second sentences of paragraph 94 on the grounds that it is irrelevant to any allegation in the Statement of Allegations; and
- (h) Paragraph 108 on the grounds that it is inadmissible hearsay evidence, and fails to accord with Staff's obligations of disclosure.

Trevor Walz

- 20. The affidavit of Trevor Walz, in its entirety as irrelevant to any of the allegations made in the Statement of Allegations.
- 21. The impugned evidence is improper, unnecessary and inadmissible.
- 22. The evidence sought to be struck is gratuitous and irrelevant to the allegations contained in the Statement of Allegations, and purporting to be proffered by witnesses that are unqualified and adverse to the Respondent. It should be struck to avoid both prejudice to a fair hearing and an unnecessarily prolonged hearing.
- 23. Rules 1, 28 of the *Ontario Securities Commission Rules of Procedure and Forms*, Rule 8 of the *Ontario Securities Commission Practice Guideline*, and section 15 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22.

24. Such further grounds as counsel may advise and the Commission may permit.

C. EVIDENCE

The Moving Party intends to rely on the following evidence for the motion:

25. The Statement of Allegations dated December 16, 2020;

26. Schedule A to the Notice of Motion and the affidavits referred to therein; and

27. Such further documentary evidence as counsel may advise and the Commission may permit.

April 5, 2022

LENCZNER SLAGHT LLP

Barristers

Suite 2600

130 Adelaide Street West

Toronto ON M5H 3P5

Brendan F. Morrison (61635B)

Tel: (416) 865-3559

Fax: (416) 865-9010

Email: bmorrison@litigate.com

Sarah Bittman (74913I)

Tel: (416) 865-9673

Fax: (416) 865-9010

Email: sbittman@litigate.com

Lawyers for the Respondent,

Colin Fisher