

CITATION: CEO of Finance v. Stoliar, 2025 ONSC 3847
DIVISIONAL COURT FILE NO.: 640/24
DATE: 20250627

SUPERIOR COURT OF JUSTICE – ONTARIO DIVISIONAL COURT

RE: CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO, Applicant

AND:

ANATOLII STOLIAR and KOSTYANTYN POSHTARENKO, Respondents

BEFORE: Justice S. Nakatsuru

COUNSEL: *Tory Harrison and Kelsey Chisamore*, for the Applicant

No one appearing for the Respondents

HEARD: In Toronto, June 26, 2025, by videoconference

ENDORSEMENT

[1] The Applicant, the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (“FSRA”) makes an application by way of a stated case for a finding that Anatolii Stoliar and Kostyantyn Poshtarenko failed to comply with a summons served upon them under section 444.1 of the *Insurance Act*, R.S.O. 1990, c. I.8 (the “*Insurance Act*”). The Applicant seeks a punishment akin to what a court can order on contempt.

[2] Though served properly, the Respondents have not attended the hearing of this application.

[3] The facts can be briefly stated.

[4] The Applicant is the Chief Executive Officer of FSRA. FSRA is a regulatory agency established by the *Financial Services Regulatory Authority of Ontario Act*, 2016, S.O. 2016, c. 37, Sched. 8. Amongst other things, the FSRA administers and enforces the *Insurance Act* with the legislative objectives of regulating and generally supervising the insurance sector, promoting high standards of business conduct, and protecting the rights and interests of consumers accessing the insurance sector.

[5] After receiving a complaint in 2023, the FSRA began an investigation against several persons centered around allegations that Mr. Poshtarenko, in concert with others like Mr. Stoliar,

was acting as an insurance agent without being licenced to do so. As the investigation unfolded, other alleged improprieties in contravention of the *Insurance Act* were uncovered. The Applicant issued summonses under section 444.1 of the *Insurance Act* to the Respondents to further the FSRA's investigation.

[6] Section 444.1(1) states:

The Chief Executive Officer may issue a summons where he or she believes that,

(a) it is necessary in order to determine whether a person is complying with this Act or a requirement imposed under this Act; and

(b) it is, in the circumstances, in the public interest.

[7] Despite more than one summons issued to attend for examination, both Respondents failed to attend in answer to the summons.

[8] In the event of non-compliance, s. 444.1 (6) of the *Insurance Act* provides:

If the person does not comply with the summons, the Chief Executive Officer may state a case to the Divisional Court setting out the facts and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, the court may punish the person in the same manner as if the person had been guilty of contempt of the court.

[9] To be clear, the Applicant is not seeking a finding of contempt of court. That is not available under s. 444.1(6). Rather, the provision provides a range of consequences for failing to comply with a summons similar to the orders available on a determination of a contempt of court. Therefore, not all aspects of a civil contempt proceeding applies; for example, a bifurcation of the proceedings between liability and penalty: *Boily v. Carleton Condominium Corporation 145*, 2014 ONCA 574.

[10] That being acknowledged, the “punishment” available under s. 444.1(6) includes the types of orders that are set out in Rule 60.11(5) of the *Civil Rules of Procedure*, R.R.O. 1990, Reg. 194 involving civil contempt of court. This includes a fine or imprisonment. Given the seriousness of the potential sanction, while the Applicant argues it is unnecessary to do so under s. 444.1(6), I find it prudent to apply the test for a civil contempt order. The three-part test as modified to the circumstances of s. 444.1 requires the Applicant to prove beyond a reasonable doubt: (1) the summons clearly and unequivocally states what should or should not be done; (2) the party alleged to have failed to comply with the summons has actual knowledge of it. Knowledge can be inferred in the circumstances or proven based on the wilful blindness doctrine; and (3) the party allegedly in breach must have intentionally failed to have complied with the summons: *Carey v. Laiken*, [2015] 2 S.C.R. 79, 2015 SCC 17, at paras. 32-35.

[11] After the exercise of great restraint and caution, I am satisfied beyond a reasonable doubt that the three elements have been made out for both Mr. Poshtarenko and Mr. Stoliar.

[12] Under the first part, the summons is very clear and unequivocal about who was to attend, the exact time and date, the authority the summons was issued under, the purpose for the attendance, and the potential consequences of failing to attend including punishment in the same manner as a finding of contempt of court.

[13] Under the second part, with respect to Mr. Stoliar, a process server served him personally with his summons at his home. There is absolutely no doubt he was aware of the summons. A previously mailed summons had not been complied with either.

[14] Regarding Mr. Poshtarenko, personal service was not effected. Nonetheless, I am satisfied beyond a reasonable doubt that knowledge can be inferred from the circumstances. The March 11, 2024, summons was the third summons for Mr. Poshtarenko. He did not comply with two earlier summons that were properly mailed and emailed to him in compliance with service under s. 33 of the *Insurance Act*. FSRA had previously conducted appropriate investigations to determine Mr. Poshtarenko's address. On March 12, 2024, FSRA staff served the third Poshtarenko summons personally at the household address by leaving a copy in a sealed envelope addressed to Mr. Poshtarenko with a person who appeared to be an adult member of the same household at the address. This person confirmed that Mr. Poshtarenko lived at the address. On the whole of the record, I am satisfied beyond a reasonable doubt that Mr. Poshtarenko knew of the summons.

[15] The third aspect of the test has also been met. I find it proven beyond a reasonable doubt that based upon the repeated efforts to summons the two men to an examination, the nature and the history of the investigations against the men and the total lack of response from them, that they are both intentionally failing to comply with the summons. Indeed, I cannot help but conclude that their failure to comply with the summons stems from their unwillingness to cooperate with FSRA's investigations against them.

[16] On the facts before me, this application has been an enforcement mechanism of last resort rather than first resort: *Carey v. Laiken*, at para. 36. I make the finding against both men that they have failed to comply with a summons within the meaning of s. 444.1(6).

[17] In terms of sanction, I order the following:

(i). While the Applicant seeks a fine of \$25,000 against Mr. Stoliar and Mr. Poshtarenko as punishment for failing to comply with the summons, I find that in all the circumstances the more appropriate fine is \$5,000. In addition to this set fine, for the purpose of assisting the enforcement of the objectives behind the summons, Mr. Stoliar and Mr. Poshtarenko will each be fined an additional \$1,000 a day from the time this order is served on them in accordance with s. 33 of the *Insurance Act* until such time they have completed their examination as required by the FSRA. The total amount of this additional daily fine will be capped at \$20,000 per each man.

(ii). I also order Mr. Stoliar and Mr. Poshtarenko to immediately contact FSRA to arrange a suitable time and date for their examination. Once this date is set, Mr. Stoliar and Mr. Poshtarenko are to attend the FSRA's offices at 25 Sheppard Avenue West, Suite 100,

Toronto, on this date and time as determined by the Applicant or their designate to give such information as the Applicant or their designate considers relevant to determining whether a person or entity is complying with a requirement established under the *Insurance Act*.

[18] The order will go accordingly.

Justice S. Nakatsuru

Released: June 27, 2025.