

Court File No.: 09-8302-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario limited partnership

Respondent

Mr. Mercer and Ms. Meredith for the Applicant, a limited partner in the Respondent

Ms. Pillon for KPMG Inc., the Receiver of the Respondent

Mr. Graham for Harcourt and Fanconi, a 50% shareholder of the GP of the Respondent and its principal, respectively

Mr. Crawley and Ms. Loosemore for Omniscope Advisors Inc., the other 50% shareholder of the GP of the Respondent

By order of Mesbur J. dated August 6, 2009, the Receiver was appointed the receiver and manager of the assets and undertaking of the Respondent, a limited partnership, on the application of the Applicant.

Today, the Applicant seeks a broadening of the Receiver's power to permit the Receiver to deal with the "Forward Contract" to which the Respondent is a party - the key element in this failed derivative structure - and otherwise dispose of the Respondent's property where the Receiver considers it necessary or desirable to do so, and an order that Respondent shall be dissolved upon the Receiver filing a certificate confirming that the Receiver has completed the realization of the Respondent's assets and applied the property in accordance with the *Partnership Act*.

The Applicant submits that it is just and equitable that the Respondent be dissolved, and relies on the authority of the court, pursuant to s.35(f) of the *Partnership Act*, to order the dissolution of a partnership where it finds such to be the case.

The Applicant, qua limited partner, has the right to seek dissolution pursuant to s.10(c) of the *Limited Partnerships Act*.

The Receiver seeks approval of a claims process at this juncture in order to be in a position to expedite distribution to the creditors and claimants at the appropriate time and approval of its First Report.

The Receiver advises that it will report to this court again, before making a distribution (and, therefore, before filing the certificate which will trigger the dissolution).

The motions before me are unopposed. The Limited Partners have been given notice of these motions and none oppose. RBC Phillips, Hager & North Investment Counsel Inc. ("RBC PH&N IC"), which acts as portfolio manager for 126 of the 135 Limited Partners, and has authority under its investment management agreements with such limited partners to vote their limited partnership units, supports these motions. This is significant, because under the Limited Partnership Agreement it has sufficient votes to approve the dissolution.

I am satisfied that it is just and equitable to order the dissolution of the Respondent. The Respondent was structured to mirror the performance of an underlying hedge fund. As a result of the financial crisis in the fall of 2008, the underlying fund ceased to be viable. The "objects" for which the Respondent was formed can no longer be attained, and the order sought is therefore appropriate. (See *Ellerforth Investments v. The Typhon Group* 2009 CanLII 46640 (SCJ) para. 44)

A court-ordered dissolution will permit the Receiver, qua officer of the court, to effect the liquidation and, in all of the circumstances, all parties are of the view that the transparency of process that will result is desirable.

Orders to go in the form on which I have enclosed my fiat.

"Hoy, J."