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Via LexisNexis File & Serve

Mr. Robert H. Harris
87 Lotus Oval South
Valley Stream, NY 11581

Mr. Don L. Hartman
11242 Osprey Lake Lane
West Palm Beach, FL 33412

Re: Harris v. RHH Partners, LP, et al.
C.A. No. 1198-VCN
Date Submitted: October 7, 2009

Dear Mr. Harris and Mr. Hartman:

Petitioner Robert H. Harris ("Harris") and Intervenor Don L. Hartman ("Hartman") used to be good friends. That no longer is the case. Respondent 1015 Broadway, Inc. ("Broadway"), a corporation owned by Hartman, is now the general partner of Respondent RHH Partners, LP ("RHH"), a Delaware limited partnership that owns Harris's personal residence in Valley Stream, New York. As general partner, Broadway holds a one percent interest in the partnership; Harris, its only limited partner, owns the other ninety-nine percent. Harris wants to replace the

general partner with an entity that would be more friendly to him or, alternatively, to dissolve the partnership.[1]

The testimony of the two self-represented parties in this litigation is inconsistent and cannot readily be reconciled. Once the Court moves beyond the limited written evidence available to it, its confidence in being able to make accurate factual findings diminishes rapidly.

RHH was formed in 2001. Broadway was its initial general partner but, at that time, Broadway was owned by Clifford Marcus, CPA ("Marcus"), Harris's accountant. A few years later, Marcus, perhaps spurred on by his professional liability insurance carrier, concluded that he could no longer function indirectly through a corporation he controlled as the general partner of RHH. Marcus, therefore, assigned all of his interest in Broadway to Hartman on July 30, 2003.[2]

The purpose for which RHH was established and how that purpose may have evolved over time are not entirely clear. From the text of the limited partnership

[1] As framed in his version of the Pre-trial Order (¶ 3), Harris seeks "either an assignment of the shares or a dissolution."
[2] Tr. Ex. 4.

agreement,[3] the purpose is a typical, general one—to engage in any activity permitted to be carried out by a Delaware partnership, and no explanation is offered as to why the only asset to be held by RHH is Harris's personal residence. The better inference, although certainly one not free from doubt, is that Harris, who, in 2001, was in some financial distress, caused the formation of RHH with the intent to shield his personal residence from the claims of his creditors.

Hartman contends that he accepted control of Broadway in 2003 as a means of securing various debts owed to him by Harris. Harris and Hartman have a long and convoluted history of various business relationships. Hartman claims Harris has engaged in numerous shady transactions, ranging from bank fraud to improper administration of escrow accounts held by Harris's law firm while he was still entitled to practice law in the State of New York. Hartman, however, for purposes of these proceedings, has proved neither that Harris is indebted to him nor that the purpose for Broadway's service as general partner of RHH was to provide an unusual means of allowing Hartman an opportunity to secure Harris's obligations to him. No

[3] Tr. Ex. 1.

documentation exists to confirm this unusual purpose.[4] Hartman's unproven claim of Harris's indebtedness comes amidst a contentious litigation history in which Harris has generally prevailed against Hartman's claims. In short, the Court rejects Hartman's claims as intervenor that Broadway's status as RHH's general partner was granted for the purposes of security on ongoing obligations of Harris.[5]

Harris says that Broadway should be removed as general partner because it has failed to meet its obligations, such as timely filing RHH's tax returns. This argument presumes that there is the judicial option of, first, replacing a general partner, presumably in a manner somewhat akin to replacing the trustee of a trust, and, second, divesting it of a record equity interest. Even if it is assumed that this pathway is a potentially viable remedy, Harris has not convinced the Court that Broadway's

[4] Whether the use of the limited partnership structure as a means of securing indebtedness would survive scrutiny under the statute of frauds is a question that the Court need not address. *See* N.Y. Gen. Oblig. Law § 5-701 (McKinney 2001).

[5] In 2003, the relationship between Harris and Hartman was much better than it is now. With the accountant's conclusion that he should not be involved with Broadway, Hartman would have been a convenient successor.

shortcomings, generally minor and ministerial in nature, reach the level of malfeasance that would justify such an extraordinary remedy.[6]

Yet, it is abundantly clear that leaving Harris and Hartman in any kind of a business relationship would serve no useful purpose. This is especially true when there is no apparent purpose for RHH. The holding of title to Harris's personal residence has no cognizable relationship to any business purpose for which RHH might exist.

There is, therefore, ample basis for authorizing and ordering the dissolution of RHH. Its purpose, however ill-defined, has ceased to exist. More specifically, "it is not reasonably practicable [for RHH] to carry on the business in conformity with the partnership agreement."[7] Accordingly, the Court will enter an order providing for the dissolution of RHH.

Such a conclusion, however, carries with it the collateral question of how to handle the single asset of RHH—Harris's personal residence. Broadway has a one

[6] The limited partnership agreement does not specify any "penalties" or "consequences" that might result from the general partner's failure to meet its obligations under that agreement. *See* 6 *Del. C.* §§ 17-406, 17-502(a).
[7] 6 *Del. C.* § 17-802.

percent interest in RHH. Therefore, RHH will be dissolved such that Broadway has a one percent undivided fee simple interest in that real property known as 87 Lotus Oval South, Valley Stream, New York. Harris, as the ninety-nine percent limited partner, will then hold an undivided ninety-nine percent fee simple interest in that real property known as 87 Lotus Oval South, Valley Stream, New York.[8] Broadway was supposed to have contributed an initial capital contribution of $1,000, but it never did. Broadway's interest shall be subject to a charge for the $1,000 capital contribution which it has failed to make.[9] That capital contribution will be allocated in accordance with their partnership interests: $990 to Harris and $10 to Broadway. Hartman's application for an award of attorney's fees or expenses arising out of Broadway's involvement with RHH is denied. First, any expenses incurred were Broadway's, and not Hartman's. Broadway's claims in this matter have been dismissed for failure to prosecute, or, more accurately, because it failed to retain counsel to represent it in this matter. Second, Hartman can point to no authorization that would entitle him to an

[8] Distribution of RHH's assets is, of course, subject to the prior payment of creditors. *See* 6 *Del. C.* § 17-804.
[9] Paragraph 6 of the limited partnership agreement provides, "the General Partner shall contribute to the capital of the Partnership $1,000.00."

advancement of expenses in his personal capacity. Third, nothing about this case suggests that the Court should deviate from the so-called American Rule in which each party to litigation bears its own costs. This is particularly appropriate in light of Hartman's decision to intervene in this matter and assert a claim which the Court has substantially rejected.

The Court will file an order implementing these post-trial findings of fact and conclusions of law.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K