

**SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST**

IN THE MATTER OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED

RE: ONTARIO SECURITIES COMMISSION, Applicant

AND:

CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, et al.,
Respondents

BEFORE: HAINEY J.

COUNSEL: *Catherine Weiler*, for the Applicant, Ontario Securities Commission

Steven K. Graff and *Mark van Zandvoort*, for Grant Thornton Limited, in its
capacity as Court-Appointed Receiver

Michael Finley, for Tony Whitehouse

Alistair Crawley, *Melissa MacKewn* and *Kate McGrann*, Proposed Representative
Counsel

Clayton Smith, Respondent In Person

HEARD: June 30, 2017

ENDORSEMENT

Overview

[1] The law firm of *Crawley MacKewn Brush LLP* (“CMB”) brings this motion for an order appointing it as representative counsel to the approximately 3,000 investors (“Investors”) in the proprietary funds offered by *Crystal Wealth Management Systems Inc.* (“Crystal Wealth”) in the receivership of *Crystal Wealth*.

[2] *Crystal Wealth*’s receiver, *Grant Thornton Limited* (“Receiver”) opposes CMB’s motion to be appointed representative counsel of *Crystal Wealth*’s Investors.

[3] On April 26, 2017, on an application brought by the Ontario Securities Commission (“OSC”), the Receiver was appointed as receiver and manager of all of the assets, undertakings and property of all of the respondents. The appointment of the Receiver was based, in part, on

the OSC's concerns regarding potential breaches of the *Securities Act*, R.S.O. 1990, c. S.5, as amended ("*Act*") by Crystal Wealth and its principal, Clayton Smith ("Smith").

Analysis

[4] The Receiver's role is to protect and enhance the interests of the Investors. Since its appointment, I am satisfied that the Receiver has maintained regular communications with the Investors while investigating and evaluating the Crystal Wealth funds to determine the appropriate approach to maximize Investors' returns.

[5] The Receiver, as a court-appointed officer, has as its primary objective the interests and needs of the Investors. I am satisfied, based upon the Receiver's actions to date, that it has and will continue to advance the interests of the Investors in an objective and impartial manner with a view to recognizing the unique interests of the Investors in each of Crystal Wealth's different and unique funds.

[6] The Receiver has begun monetizing certain of Crystal Wealth's funds to make interim distributions to some Investors. Further, a sales process has been proposed by the Receiver to accomplish either a purchase or a management takeover of certain of Crystal Wealth's funds.

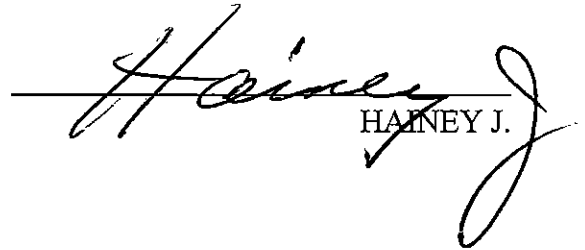
[7] The OSC and certain of the Investors oppose the appointment of CMB as representative counsel on the grounds that it would be duplicative of the Receiver's role and will result in unnecessary professional fees that will be incurred by all Investors. Smith supports the appointment of CMB as representative counsel.

[8] Having considered the balance of convenience, I have concluded that the appointment of representative counsel is not necessary for the following reasons:

- (a) The Investors' interests are being protected and advanced by the Receiver which is why the appointment was made by Newbould J. in the first instance;
- (b) Although the Investors may be vulnerable, their vulnerability will be protected by the Receiver, who has been appointed by the Court for the sole purpose of acting in their best interest;
- (c) The appointment of representative counsel will add unnecessary expense to the receivership which will adversely affect Investors; and
- (d) There is no good reason to appoint representative counsel to effectively duplicate the Receiver's role.

[9] I have, therefore, concluded for these reasons that CMB's motion should be dismissed. In view of this conclusion, it is not necessary for me to determine whether CMB is conflicted from acting as representative counsel due to a previous related retainer.

[10] CMB's motion is dismissed. If counsel cannot settle the costs of the motion they may schedule a 9:30 a.m. attendance with me to deal with costs.

 HAILEY J.

Date: July 5, 2017