

Matter of HBK Master Fund LP (Amherst Advisory & Mgt. LLC)
2019 NY Slip Op 33059(U)
October 10, 2019
Supreme Court, New York County
Docket Number: 157812/2019
Judge: Eileen A. Rakower
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SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 6

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In the Matter of the Application of **HBK
MASTER FUND LP,**

Index No.
157812/2019

Petitioner,

**DECISION
AND
ORDER**

to Enforce a Subpoena Duces Tecum served
upon **AMHERST ADVISORY & MANAGEMENT
LLC,**

Mot. Seq. 1

Respondent.

In connection with an action styled
*In the Matter of Merrill Lynch Mortgage
Investors Trust, Series 2006-RM4 and Merrill
Lynch Mortgage Investors Trust, Series 2006-RM5,*
Court File No. 62-TR-CV-18-43,
currently pending in Ramsey County,
Minnesota, Second District Court, Probation Division.

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HON. EILEEN A. RAKOWER, J.S.C.

This is an action to compel compliance with a subpoena arising out of an action in which Petitioner HBK Master Fund LP (“Petitioner”) is a party in the District Court of the State of Minnesota. Respondent Amherst Advisory & Management LLC (“Respondent”) opposes the application.

Relevant Background

The action is captioned *In the Matter of Merrill Lynch Mortgage Investors Trust, Series 2006 RM4 and Merrill Lynch Mortgage Investors Trust, Series 2006-RM5* (collectively, “the Trusts”), Court File No. 62-TR-CV 18-43 (“The Minnesota action”). It is currently pending in Ramsey County, Minnesota, Second District Court, Probation Division. U.S. Bank, National Association (“U.S. Bank” or

“Trustee”) commenced the Minnesota action as Trustee of the Trusts. U.S. Bank seeks an Order approving a proposed settlement agreement (“Settlement Agreement”). The Settlement Agreement would resolve a separate action that was commenced on behalf of the Trusts in New York.¹

According to the Petition that U.S. Bank filed in the Minnesota action, U.S. Bank informed all of the Trusts’ Certificateholders on June 29, 2019, of the Settlement Agreement. U.S. Bank “solicited a vote from Certificateholders regarding the Trustee’s acceptance or rejection of the Settlement Agreement.” The “Certificateholders overwhelmingly supported the Trustee’s acceptance of the Settlement Agreement.” Prior to filing the Petition, U.S. Bank hired Compass Lexecon to review and assess the Settlement Agreement. Compass Lexecon opined that its terms were “reasonable and adequate.” After considering the advice provided by Compass Lexecon, U.S. Bank “determined that the terms of the Settlement Agreement are reasonable as a whole.” (Kleban Aff. Ex. 1).

Respondent “is the designated collateral manager for a Delaware statutory trust ... that is the beneficial owner of Certificates constituting over 25% of the aggregate Voting Rights in each of the Trusts.” Respondent, in its capacity as collateral manager, “negotiated the proposed settlement with Bank of America and then presented it for consideration by U.S. Bank.” U.S. Bank and Bank of America “subsequently agreed to modify certain provisions of the Settlement Agreement.” Respondent has not appeared and is not a party to the Minnesota action.

On October 17, 2018, Petitioner appeared in the Minnesota action to oppose U.S. Bank’s Petition for approval of the Settlement Agreement. Petitioner contends that the proposed settlement “is lower than the range of comparable RMBS Putback cases,” and “unfairly benefits senior certificateholders.”

In the Minnesota action, the parties entered into an Amended Stipulation Scheduling Order, which is dated July 1, 2019, regarding discovery.

Pending Application

¹ Pursuant to a Stipulation dated July 5, 2018, the New York action has been “stayed in all respects, pending the Trustee’s evaluation of the Proposed Settlement and pending any TIP Proceeding, should the Trustee choose to initiate such a proceeding.”

On or about June 10, 2019, Petitioner served Respondent with the Subpoena in its offices in New York County. The Subpoena relates to Respondent's role in the negotiation of the Settlement Agreement for which U.S. Bank is seeking approval in the Minnesota action. More specifically, the Subpoena seeks documents relating to Respondent's valuation and assessment of the claims. Petitioner argues that the information sought by the Subpoena is highly material and necessary to Petitioner's investigation and defense of the Minnesota action.² Petitioner argues that Respondent was actively involved in the negotiation and approval of the Settlement Agreement, and has knowledge of the value of the claims in the New York action and how the value was established. Petitioner argues that this information is relevant to the reasonableness of the Settlement Agreement.

Respondent argues that the documents which Petitioner seeks are not relevant, privileged and/or do not exist. Respondent argues that the documents concerning Petitioner's "valuation" of the underlying claims and "reasons" for proposing the Settlement Agreement are not relevant to the issue presented in the Minnesota action and are protected from disclosure.

The Honorable Marcy S. Friedman's decision in the action *In re U.S. Bank Nat'l Ass'n*, Index No. 652382/2014, on August 5, 2015 is instructive to the issues raised in the pending application. There, the moving parties also sought to compel the disclosure of documents relating to the negotiations of the proposed settlement. Justice Friedman held that the moving parties had failed to demonstrate "that the requested documents are material and relevant to the issue in this proceeding of whether the trustees failed to exercise their discretion reasonably or abused their discretion in approving the settlement." Justice Friedman further held that the moving parties had not "ma[d]e any showing that the reasonableness of the Trustees' approval of [the proposed settlement agreement] cannot be evaluated on its face." See generally *So-Ordered Tr., In re U.S. Bank Nat'l Ass'n*, Index No. 652382/2014 (N.Y. Sup. Ct. N.Y. Cnty. Aug. 5, 2015) (Kleban Aff. Ex. 3) at 80-87.

Here, Petitioner seeks the disclosure of documents relating to Respondent's negotiations of the Settlement Agreement. Petitioner has not shown the requested documents are material and relevant to the issue that is before the Minnesota action

² Petitioner has withdrawn three of the Requests for documents contained in the Subpoena (Requests 1, 2 and 7). Moreover, the Court notes that since the Subpoena was issued, U.S. Bank has produced to Petitioner a schedule dated August 2, 2012 detailing the Directing Holder's beneficial ownership of Certificates.

which is the whether the Trustee exercised its discretion reasonably and in good faith in deciding to approve the Settlement Agreement.

Wherefore, it is hereby

ORDERED that the Order to Show Cause to compel compliance with the Subpoena served upon Respondent is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: OCTOBER ¹⁰, 2019



Eileen A. Rakower, J.S.C.