

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC,</p> <p>Defendants.</p>	<p>DATE FILED: August 15, 2018 1:55 PM FILING ID: 45E3BDA686E4D CASE NUMBER: 2018CV33011</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>CYNTHIA H. COFFMAN, Attorney General ROBERT W. FINKE, 40756* First Assistant Attorney General MATTHEW J. BOUILLON MASCARENAS, 46684* Ralph L. Carr Judicial Building 1300 Broadway, 8th Floor Denver, CO 80203 Tel: (720) 508- 6376 Fax: (720) 508-6037 Robert.Finke@coag.gov *Counsel of Record</p>	<p>Case No.:</p> <p>Courtroom:</p>
<p>EX PARTE VERIFIED COMBINED MOTION FOR TEMPORARY RESTRAINING ORDER, ORDER FREEZING ASSETS, ORDER OF NON- DESTRUCTION OF RECORDS, AND PRELIMINARY INJUNCTION WITH SUPPORTING LEGAL AUTHORITY</p>	

Based upon the grounds set forth below, Plaintiff, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), by and through his counsel, the Colorado Attorney General, moves this Court for an *Ex Parte*

Temporary Restraining Order and Preliminary Injunction, Order Freezing Assets, and Order of Non-Destruction of Records against Defendants Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc.

1. Section 11-51-602, C.R.S. authorizes the Commissioner to bring this action to temporarily, preliminarily, and permanently restrain and enjoin Defendants' violations of the Colorado Securities Act ("Act" or "CSA") and to enforce compliance with the Act. The Commissioner incorporates his contemporaneously filed Complaint for Injunctive and Other Relief by reference.

2. The Commissioner seeks issuance of the Temporary Restraining Order, Order Freezing Assets, and Order of Non-Destruction of Records in this matter *ex parte* because the time delay between the date the Defendants receive notice of the hearing and an actual hearing may result in additional injury to unsuspecting investors in Colorado and other states. The undersigned attorney certifies that due to concerns that notice would only serve to accelerate the rate at which investor funds are being dissipated, the Commissioner seeks *ex parte* relief with notice to follow issuance of the Court's order or injunction.

3. A time delay may permit Defendants to convert investors' equity in real estate assets to cash; transferring title to real estate with receiving reasonably equivalent value; diminishing investor funds by transferring and concealing

fungible assets (including money in bank accounts); and dissipating investor funds to support the Defendants' lifestyle absent other earnings sources.

4. An initial review by the Division of Securities ("Division") reveals that Defendant Dragul established a scheme to defraud investors and that from the proceeds of this scheme he is funding his own lifestyle by transferring investor funds to his personal bank account.

5. Should Defendants be permitted to continue their current course of conduct without a temporary restraining order in place, the Defendants may be able to continue unlawfully offering and selling investments to unsuspecting investors in Colorado and across the nation - in defiance of the Act and to the detriment of investors. Additionally, if an order freezing assets is not put in place, the Defendants will continue selling residential and commercial real estate purchased with investor funds, financing properties to converting equity to cash, and misappropriating the funds to pay personal expenses.

6. Thus, given the actions of the Defendants, there is an immediate threat of harm to Colorado investors, an immediate threat of dissipation of assets, and irreparable damages to investors in Colorado and nationwide if a temporary restraining order and an asset freeze are not put in place.

INTRODUCTION

7. The investments offered and sold by Defendants are securities in that they are at least a “stock,” “certificate of interest or participation in any profit-sharing agreement,” “investment contract,” or, “in general, any interest or instrument commonly known as a ‘security.’”

8. The Defendants have violated the Act by selling their securities in and from Colorado in violation of the antifraud provisions of the Act, § 11-51-501, C.R.S. Therefore, to protect investors, the Commissioner is seeking and is entitled to a temporary restraining order (“TRO”) and preliminary injunction barring the Defendants’ sales of their securities in and from Colorado. § 11-51-602(1), C.R.S.

9. The Commissioner’s application is governed by special procedures of § 11-51-602(1) expressly providing that the Commissioner is not required to post a bond and that “the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law.” § 11-51-602(1), C.R.S. Further, “the district court’s discretion in reviewing a claim for injunctive relief under the CSA is narrower than that permitted by C.R.C.P. 65 and the related common law test for injunctive relief.” Specifically, the Commissioner “shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law.” *Joseph v. Equity Edge, LLC*, 192 P.3d 573, 577 (Colo. App. 2008) (citations omitted); *Accord Kourlis v. District Court*, 930 P.2d 1329, 1335 (Colo. 1997)

(citation omitted) (“Special statutory procedures may supersede or control the more general application of a rule of civil procedure.”).

10. In addition to an injunction, the Commissioner seeks an ancillary order freezing Defendants’ assets. Where, as here, there are concerns that Defendants are dissipating assets, a freeze Order may be based upon the inference that a violation of the Act has occurred and a finding that there is an immediate threat of dissipation of assets. *E.g.*, *SEC v. Unifund Sal*, 910 F.2d 1028 (Courts may order a freeze even where the SEC has failed to meet the standard necessary to enjoin future violations of the securities laws.)

11. The conduct of Defendants demonstrates that there is an immediate and ongoing threat of dissipation of assets, misuse of investor funds, and that irreparable damage that will occur to investors in Colorado and nationwide if an order is not entered by this Court on an *ex parte* basis. Also, any future disgorgement order may not meaningful unless Defendants’ assets are frozen.

FACTUAL BACKGROUND

12. Since at least 2008, Defendant Dragul has been in the business of soliciting investor funds for investment in commercial real estate. Dragul, through his companies GDA Real Estate Services, LLC (“GDARES”) and GDA Real Estate Management, Inc. (“GDAREM”) (collectively “GDA”), promised regular returns

from the operation of commercial properties as well as additional returns upon a sale of the properties.

13. From early 2008 until late 2015, Defendant Dragul sold more than \$52 million worth of interests in 14 different LLCs (“LLC Entities”) to approximately 175 investors. Unbeknownst to investors, Dragul commingled investor funds across all the LLC Entities to such an extent that it is difficult, if not impossible, to determine which funds belong to which investor and/or project. For this reason, the Commissioner seeks to restrain Dragul from accessing or spending monies that can be traced to those of the original investors, irrespective of where they may be found.

14. In particular, Defendant Dragul raised \$9.7 million from the sale of membership interests in Plaza Mall North 08 A Junior, LLC to 47 investors. In December 2008, Dragul used investor funds to purchase a property known as the Plaza at the Mall of Georgia for \$25.9 million. In April 2017, Dragul sold this interest in the Plaza Mall property for \$32 million but failed to inform investors that the sale had taken place. Instead, Dragul continued to make monthly payments to investors as though the property were still under GDA’s management. Once investors began to discover that Dragul had indeed sold the property and to request the return of their funds, Dragul responded that he did not have money to pay them.

15. As set forth in detail in the Complaint (incorporated herein by reference), since at least 2008, Dragul has accepted funds from approximately 175 investors for projects similar in type to the Plaza Mall property.

16. Dragul directed and controlled all aspects of the operations of GDA. He has always had unfettered access to GDA bank accounts and records.

17. Dragul frequently did not provide investors with lengthy disclosure documents; rather, the investments he offered contained minimal information and virtually no disclosure of material risks involved in commercial real estate investments. In return for their funds, investors in GDA were offered and sold others units of interest in an LLC, or limited partnership interests.

18. Dragul would offer investors whose investments had ostensibly not yielded the desired return the chance to “roll over” their funds into a different LLC investment vehicle, often on the condition that they commit additional funds to the new investment. In this way, Dragul kept investors from knowing the true financial state of the various investment strategies.

19. GDA is presently experiencing extreme cash flow issues. The GDA entity bank accounts no longer have enough funds with which to repay investors. Little to no payments to Plaza Mall investors have been made as of June 2018, and investor withdrawals are not currently being processed.

20. On April 12, 2018, a Colorado state grand jury sitting in the city and county of Denver returned a nine-count indictment alleging nine instances of securities fraud arising out of Dragul's failure to repay promissory notes issued to investors.

**LEGAL STANDARD APPLICABLE TO MOTION FOR TEMPORARY
RESTRAINING ORDER OR PRELIMINARY INJUNCTION AND
ORDER FREEZING ASSETS**

21. Section 11-51-602(1), C.R.S. outlines the specific statutory procedure governing the Commissioner's authority to obtain a preliminary injunction or temporary restraining order. Section 11-51-602(1) provides, in relevant part:

Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of this article or of any rule or order under this article, the securities commissioner may apply to the district court of the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. . . . In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the securities commissioner to post a bond.

22. Unlike C.R.C.P. 65 and the six factor test described in *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982), § 11-51-602(1) specifies that the Commissioner is not required to prove irreparable injury, demonstrate an

inadequate remedy at law, or post bond. Furthermore, section 602(1) of the Act specifies that in order to obtain a temporary restraining order or an injunction the Commissioner need only establish that a person has or is about to violate any provision of the Act. In resolving any conflict between *Rathke* and 602(1), *Kourlis v. District Court*, 930 P.2d 1329, 1335 (Colo. 1997) is dispositive. See *Joseph v. Equity Edge*, 193 P.3d 573 (Colo. App. 2008).

23. In *Kourlis*, 930 P.2d at 1334-37, the court considered the authority of the Commissioner of Agriculture to obtain a temporary restraining order or preliminary injunction. The Commissioner of Agriculture's authority, outlined in § 35-80-111(3), C.R.S., conflicted with the more general requirements of C.R.C.P. 65. The Court determined that the specific requirements of § 35-80-111(3) prevailed over the general standards in C.R.C.P. 65.

24. Section 35-80-111(3) provided, in relevant part:

Whenever the Commissioner *possesses sufficient evidence satisfactorily indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or any rule adopted under this article*, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question.... In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Id. at 1334 & n.12 (emphasis added).

25. The Supreme Court concluded that § 13-80-111(3) specifically did not require the Commissioner of Agriculture to show irreparable injury, demonstrate the inadequacy of a remedy at law, and to post bond. *Kourlis*, 930 P.2d at 1336. The court reasoned that the remaining factors identified in *Rathke* should not be applied to frustrate the purposes of the Pet Animal Care and Facilities Act (“PACFA”). *Id.* Therefore, if the Commissioner of Agriculture demonstrated that he possessed “sufficient evidence satisfactorily indicating that any person has engaged in or is about to engage in” a violation of PACFA, he could obtain a preliminary injunction and a temporary restraining order. *Id.* at 1336-37.

26. The Act’s section 602(1) is materially identical to § 35-80-111(3). It sets forth a specific statutory procedure as part of a comprehensive statutory scheme. *See* § 11-51-101 through § 11-51-908, C.R.S. Accordingly, the standards in § 11-51-602(1) prevail over the more general requirements of C.R.C.P. 65 and *Rathke*. *See Feigin v. Digital Interactive Assocs., Inc.*, 987 P.2d 876, 883 (Colo. App. 1999) (Under section 602(1), the Commissioner is not required to satisfy the more general requirements of Rule 65 when applying for a temporary restraining order). The Commissioner thus only needs to produce “sufficient evidence satisfactorily indicating that [Defendants Dragul and GDA] have engaged in or [are] about to engage in” a violation of the Act to obtain a temporary restraining order or temporary injunction. *Kourlis*, 930 P.2d at 1336.

27. Moreover, an order freezing assets is appropriate to ensure that sufficient funds are available to satisfy any final judgment the Court might enter against the Defendant and to ensure a fair distribution to investors. *See, e.g., SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972); *SEC v. Unifund SAL*, 910 F.2d 1028 (2d Cir. 1990). An asset freeze is appropriate to assure satisfaction of whatever equitable relief the court ultimately may order and to preserve investor funds. *Unifund Sal*, 910 F.2d at 1041; *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). Additionally, an asset freeze “facilitates enforcement of any disgorgement remedy that might be ordered” and may be granted “even in circumstances where the elements required to support a traditional SEC injunction have not been established.” *See Unifund Sal*, 910 F.2d at 1041. It is well recognized that an asset freeze is sometimes necessary to ensure that a future disgorgement order will not be rendered meaningless. *See, e.g., United States v. Cannistraro*, 694 F. Supp. 62, 71 (D.N.J. 1988), *modified*, 871 F.2d 1210 (3d Cir. 1989); *SEC v. Vaskevitch*, 657 F. Supp. 312, 315 (S.D.N.Y. 1987); *SEC v. R.J. Allen & Assocs., Inc.*, 386 F.Supp 866,881 (S.D. Fla. 1974).

28. The ancillary remedy of a freeze order requires a lesser showing than that needed to obtain injunctive relief. *See SEC v. Gonzalez de Castilla*, 145 F. Supp. 2d 402, 415 (S.D.N.Y. 2001) (“courts may order a freeze even where the SEC has failed to meet the standard necessary to enjoin future violations”). The lower

standard is the direct result of the recognition that injunctive relief raises the possibility of future liability for contempt; an asset freeze only preserves the status quo. *Unifund Sal*, 910 F.2d at 1039. Accordingly, where there are concerns that defendants might dissipate assets, a freeze order requires only that the court find some basis for inferring a violation of securities laws. *Id.* at 1041.

LEGAL ARGUMENT AND ANALYSIS

29. In the Complaint, the Commissioner has alleged that the Defendants have violated the antifraud provisions of the Act.

30. Section 11-51-501(1), C.R.S., the antifraud section of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

- a. to employ any device, scheme, or artifice to defraud;
- b. to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. to engage in any act, practice or course of business which operates or would operate as a fraud or deceit on any person.

A. The Investments Offered by the Defendants are Securities.

31. The investments offered by the Defendants are securities as contemplated under § 11-51-201(17), C.R.S. in that they are at least a “stock,” “certificate of interest or participation in any profit-sharing agreement,”

“investment contract,” or, “in general, any interest or instrument commonly known as a ‘security.’”

32. Colorado courts, when considering whether an investment vehicle is an “investment contract” and therefore a security, have adopted the test first announced in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), as modified by *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975). See *Lowery v. Ford Hill Inv. Co.*, 556 P.2d 1201, 1205 (Colo. 1976); *Rome v. HEI Resources, Inc.*, 2014 COA 160 (Nov. 20, 2014). An “investment contract” under Colorado law, therefore, is: (1) a contract, transaction, or scheme whereby a person invests his or her money (2) in a common enterprise, and (3) is led to expect profits derived from the entrepreneurial or managerial efforts of others. *E.g., HEI Resources, Inc.*, 214 COA 160, ¶ 20 (citations omitted). This definition “embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.” *Id.* (citing *Howey*, 328 U.S. at 299) (*see also Lowery*, 556 P.2d at 1205 (holding that the expansive language in the definition of a “security” under the federal securities act “indicates a legislative intent to provide the flexibility needed to regulate the various schemes devised by those who seek the use of the money of others with the lure of profits”)).

33. Here, GDA offered investments that are securities in that the GDA sold fractional units of interest in numerous discrete LLCs, each of which had the stated purpose of garnering a return on the purchase, operation, and sale of a particular commercial property.

34. Units of interest in the various partnership interests offered and sold by Defendants are securities in the form of investment contracts. The structure of the investment clearly contemplated that the investors were to expect profits in return. As structured, investors were passive. All profits were to come from the managerial efforts of the Defendants, who were responsible for selection of the investors and the investment properties, acquisition of the properties, and the post-acquisition management of the properties.

B. The Commissioner Has Met His Burden for the Entry of a Temporary Restraining Order and a Preliminary Injunction.

35. Pursuant to § 11-51-602(1), C.R.S. and *Kourlis*, the Commissioner only needs to produce sufficient evidence satisfactorily indicating that the Defendants have engaged in a violation of the Act to obtain a temporary restraining order or a preliminary injunction. As set forth in this Verified Motion and the Complaint, the Defendants have offered and sold their securities in violation of § 11-51-501, the antifraud provision of the Act, to the detriment of the securities markets and the investing public in Colorado and other jurisdictions.

36. Defendant Dragul has created an investment scheme to defraud investors, enticing them with low-risk and guaranteed returns. Instead of running a legitimate business, Defendant has misappropriated investor funds by siphoning them away from GDA accounts and directing them to his personal accounts.

37. In addition, Defendants have offered and sold securities in Colorado without disclosing numerous material facts, including that the properties were not operated responsibly to assure repayment of capital invested, that the funds invested for the Plaza Mall property would be commingled with those of other investors in other projects, and that as a result of the managerial decisions made by Dragul investors were at high-risk of losing their entire investment. *See Exhibit 1: (Lahner Affidavit.)*

38. Because of the Defendants' continuing violations of the Act, and the evidence that Defendants have an extensive history of misappropriating investor funds, a temporary restraining order enjoining Defendants from bringing in new investor money and freezing bank accounts of Defendants is necessary to preserve the status quo, and at a minimum, allow the Plaintiff an opportunity to seek the appointment of a receiver.

39. The conduct by the Defendants in liquidating the assets of GDA is presumed to be ongoing.

40. The issuance of a temporary restraining order or a preliminary injunction will not create an undue hardship on Defendants since the Defendants' conduct is in violation of the Act, and it is established that compliance with the Act and similar laws is necessarily in the public interest for a variety of reasons. In *Black Diamond Fund v. Joseph*, 211 P.3d 727, 738 (Colo. App. 2009), the Colorado Court of Appeals recognized that “[c]ompliance with the [Colorado Securities Act] is necessarily in the public interest. The passage of such laws by the legislature establishes the public interest underlying such provisions.” *See also, Reich v. Monfort*, 144 F.3d 1329, 1335 (10th Cir. 1998) (recognizing that compliance with regulatory schemes serves numerous purposes, including protecting the public interest to prevent continuous unlawful conduct, taking away the gains and the prospect of gains from violators, and even to protect those who do comply with the law from having to compete with those who fail to comply). The purpose of the Act is to “protect investors and maintain public confidence in the securities markets....” See § 11-51-101(1), C.R.S. And, § 11-51-602, C.R.S. specifically authorizes the Commissioner to seek injunctive relief as an enforcement tool to enjoin such violations. Thus, as statutorily authorized, enjoining the unlawful acts of the Defendants will serve the public interest by protecting investors.

41. Based on his investigation, the Commissioner believes that the Defendants have in their possession documents and information relevant to this matter, which information and documents may be concealed, destroyed, or otherwise altered. The Commissioner requests that the Court enter an order, in connection with the temporary restraining order and preliminary injunction, directing the Defendants to not destroy, mutilate, or otherwise dissipate any books, records or documents in its possession relating to the subject matter of this action pending further order of the Court as destruction, concealment or other alteration of books, records, or documents in Defendants' possession may irreparably damage the Court's ability to grant effective final relief for Colorado investors in the form of restitution, rescission, disgorgement and other equitable relief.

42. The issuance of a temporary restraining order or a preliminary injunction freezing the funds and securities in the accounts controlled and held by the Defendants, together with the temporary restraining order or preliminary injunction and the order of non-destruction of records, will serve to preserve the status quo and prevent the further dissipation of investor assets. Such an order will further the public interest by ensuring that the seized assets remain available to return to investors in the event of any disgorgement or damages

award, and to ensure that to the extent that there are any investor funds remaining, that those assets are able to be returned at the conclusion of the case.

CONCLUSION

43. The Defendants have engaged in a scheme, operated from Colorado, to defraud investors through the sale of securities. The evidence establishes that the Commissioner has a strong likelihood of success on the merits, and that the entry of a temporary restraining order or preliminary injunction, order of non-destruction of records, and order freezing assets is necessary and appropriate in the public interest, as well as consistent with the legislative intent embodied in the Colorado Securities Act. Therefore, the Commissioner requests that the Court enter the orders submitted contemporaneously herewith, entering a temporary restraining order or preliminary injunction, freezing the assets and accounts of the Defendants pending the hearing on the motion for preliminary injunction, ordering the Defendants to preserve all records, and enter such other and further relief as this Court deems just and equitable.

WHEREFORE, the Commissioner respectfully requests that the Court enter relief as follows:

1. A temporary restraining order and preliminary injunction or other Order of this Court, enjoining Defendants Gary Dragul, GDA Real Estate Services,

LLC, and GDA Real Estate Management, Inc. as well as their officers, agents, servants, employees, successors and attorneys, as may be; any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under the common control with Defendants; and all those in active concert or participation with Defendants who receive actual notice of the Court's Order by personal service, email, facsimile transmission or otherwise, from engaging in the following acts:

- a. Offering to sell or selling any security, including but not limited to the Defendants' securities, to any person in or from Colorado, until further order of this Court;
- b. Transacting business in or from Colorado as a sales representative, until further order of this Court;
- c. In connection with the offer, sale, or purchase of any security or investment in Colorado, directly or indirectly:
 - (1) Employing any device, scheme, or artifice to defraud;
 - (2) Making any written or oral untrue statements of material fact, or omitting to state material facts necessary to make the statements made, in light of the circumstances under which they are made, not misleading; or

(3) Engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation of § 11-51-501(1), C.R.S.;

d. Engaging in any conduct in violation of any provision of the Colorado Securities Act; and

e. Destroying, mutilating, altering or in any other way dissipating the books and records of Defendants Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc.

2. Issue on an *ex parte* basis, an Order Freezing Assets and Order of Non-Destruction of Records, in the form submitted;

3. For expedited discovery in advance of the hearing on Preliminary Injunction; and

4. Enter and issue such further and other relief as this Court deems just and equitable.

Respectfully submitted: August 15, 2018.

CYNTHIA H. COFFMAN
Attorney General

/s/ Matthew J. Bouillon Mascareñas

ROBERT FINKE, 40756*
First Assistant Attorney General
MATTHEW J. BOUILLON MASCARENAS,
46684*
Assistant Attorney General
Financial and Health Services Unit
Attorney for Plaintiff Gerald Rome, Securities
Commissioner
*Counsel of Record

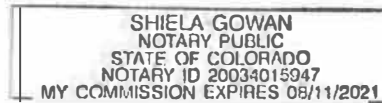
VERIFICATION

I, Jon Block, being duly sworn, state as follows:

1. I am employed by the Colorado Division of Securities as an Investigator.
2. I am familiar with the information contained in the foregoing *Ex Parte* Verified Combined Motion for Temporary Restraining Order, Order Freezing Assets, Order of Non-destruction of Records, and Preliminary Injunction with Supporting Legal Authority ("Verified Motion").
3. I have reviewed the Verified Motion. The facts stated therein are true and correct to the best of my knowledge.

FOR THE STAFF OF THE COLORADO
DIVISION OF SECURITIES

Jon Block
Jon Block
Investigator



Signed and sworn before me on this 15 day of August, 2018 in the City of Denver and County of Denver, Colorado.

NOTARY PUBLIC Shiela Gowan
My Commission Expires: 08/11/2021

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC,</p> <p>Defendants.</p>	<p>DATE FILED: August 15, 2018 1:55 PM FILING ID: 45E3BDA686E4D CASE NUMBER: 2018CV33011</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>BY THE COURT</p>	<p>Case No.:</p> <p>Courtroom:</p>
<p style="text-align: center;">TEMPORARY RESTRAINING ORDER, ORDER FREEZING ASSETS, ORDER OF NON-DESTRUCTION OF RECORDS, AND PRELIMINARY INJUNCTION</p>	

This matter is before the Court on Plaintiff's Verified *Ex Parte* Combined Motion for Temporary Restraining Order, Order Freezing Assets, Order of Non-Destruction of Records, and Preliminary Injunction (the "Verified Motion"), and the Court having reviewed the Verified Motion of the Plaintiff, the Complaint for Injunctive and Other Relief ("Complaint") filed contemporaneously in this matter, the evidence presented and argument of counsel (if any), and further being fully advised in the premises, the Court finds as follows:

1. It appears, from the specific facts shown by the Plaintiff's Complaint, Verified Motion, and supporting evidence, that immediate and future injury, loss or damage will result to investors and to the securities markets if Defendants Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc. are not temporarily enjoined and restrained from engaging in conduct in violation of the Colorado Securities Act (the "Act"), and specifically, offering to sell or selling securities. Further, damage and loss may result if Defendants, their agents or

attorneys, receive notification of the Plaintiff's Verified Motion or this action prior to the entry of the *ex parte* Order.

2. The Commissioner is entitled to a temporary restraining order in this matter, pursuant to the provisions of § 11-51-602, C.R.S., C.R.C.P. 65, and the evidence in this matter. Based on the foregoing, the Court finds as follows:

a. The People of the State of Colorado will suffer real, immediate and future harm and injury if an *ex parte* temporary restraining order, order freezing assets, and order of non-destruction of records is not granted, since it appears to the Court that the Defendants have and will continue to violate the Act if not so restrained and enjoined;

b. Defendants appear to have violated §11-51-501 C.R.S. of the Act;

c. The relief sought by the Plaintiff is provided by law.

WHEREFORE, IT IS HEREBY ORDERED:

1. Defendants Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc., their officers, agents, servants, employees, successors and attorneys, as may be; any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under the common control with Defendants; and all those in active concert or participation with Defendants who receive actual notice of the court's Order by personal service, facsimile transmission or otherwise, from engaging in the following acts:

a. Offering to sell or selling any security to any person in or from Colorado, until further order of this Court;

b. Engaging in the business of effecting purchases or sales of securities for the accounts of others, employing others to engage in the business of effecting purchases or sales of securities for the accounts of others, or engaging, for compensation, in the business of advising others, either directly or indirectly, as to the value of securities or the advisability of investing in, purchasing, or selling securities, until further order of this Court;

c. In connection with the offer, sale, or purchase of any security or investment in Colorado, directly or indirectly;

(1) Employing any device, scheme, or artifice to defraud;

(2) Making any written or oral untrue statements of material fact, or omitting to state material facts necessary to make the statements made, in light of the circumstances under which they are made, not misleading; or

(3) Engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation of §11-51-501(1), C.R.S.;

- d. Engaging in any conduct in violation of any provision of the Colorado Securities Act;
- e. Destroying, mutilating, altering or in any other way dissipating the books and records of the Defendants including but not limited to any electronic documents such as e-mails, computer files, or any other electronic record kept in any form whatsoever; and
- f. Accepting funds from investors for investment in any investment program, taking control of, or depositing in any financial institution additional funds from any potential investors.

IT IS FURTHER ORDERED that:

2. The accounts, property, and assets of the following parties, wherever located, which are derived from any investor funds by or on behalf of the Defendants in connection with the scheme alleged in the Commissioner's Complaint for Injunctive and Other Relief, are to be frozen immediately until further order of this Court. Accounts within the scope of this Order include:

- a. All bank, trading, or other financial accounts in the name of the following Defendants:
 - 1. Gary Dragul
 - 2. GDA Real Estate Services, LLC
 - 3. GDA Real Estate Management, Inc.

Any bank, financial or brokerage institution or other persons or entities holding any funds, securities or other assets derived from investor proceeds raised in the scheme alleged in the Complaint and/or held in the name of, for the benefit of, or under the control of any named Defendant, or their officers, directors, successor corporations, affiliates, agents, servants, employees, attorneys-in-fact, shall hold and retain within their control and prohibit the withdrawal, removal, transfer or other disposal of any such funds or other assets except as directed by this Court in a future Order.

3. Defendants or their officers, directors, successor corporations, affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent any disposition, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal whatsoever of any of their funds or other assets or things of value presently held by them, under their control, or over which they exercise actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located.

4. All persons who hold or possess the direct or indirect proceeds of the misconduct described in the Complaint, including but not limited to Shelly Dragul, in whatever form such funds or other assets may presently exist and wherever located, who receive actual notice of this order by personal service, including via facsimile or email transmission, or overnight delivery service, or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent any disposition, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal whatsoever of any of their funds or other assets or things of value presently held by them, under their control, or over which they exercise actual or apparent investment or other authority, in whatever form such assets may presently exist, which are hereby frozen.

5. The Plaintiff may apply to this Court on an *ex parte* basis for an expedited Order freezing further accounts should additional affiliates of the Defendants be identified.

6. The Plaintiff may provide notice by personal service or otherwise, to the property manager or landlord for the offices of Gary Dragul, GDA Real Estate Services, LLC, or GDA Real Estate Management, Inc. Pursuant to this Order, the property manager, landlord, or other responsible party for the premises, as may be, shall lock and secure the offices of Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc., and prevent access by any party, including the Defendants.

IT IS FURTHER ORDERED that:

7. Discovery prior to conduct and completion of the preliminary injunction hearing is expedited as follows: pursuant to Rules 26, 30, 31, 33, 34, 36 and 45 of the Colorado Rules of Civil Procedure, and without the requirement of a case management order pursuant to C.R.C.P. 26, the parties may:

- a. Take depositions, subject to two calendar days' notice by facsimile or otherwise;
- b. Obtain the production of documents, within three calendar days from service by facsimile or otherwise of a request or subpoena from any person or entities, including non-party witnesses;
- c. Obtain other discovery, including further interrogatories, and requests to inspect files within three calendar days from the date of service by facsimile or otherwise of such discovery requests, interrogatories, or requests for inspection; and
- d. Service of any discovery requests, notices, or subpoenas may be made by personal service, facsimile, overnight courier, or first class mail on any individual, entity or the individual's or entity's attorney, provided that in the event that any service is made by first class mail, three additional days will apply to the response time.

IT IS FURTHER ORDERED that this *Ex Parte* Temporary Restraining Order shall expire on the _____ day of _____, 2018 at _____ .M., at which time Plaintiff's Motion for Preliminary Injunction shall be heard in Courtroom ____ of the Court.

DONE in open Court this _____ day of August, 2018 at _____ .M.

BY THE COURT:

District Court Judge