

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p>	<p>DATE FILED: August 21, 2018 5:33 PM FILING ID: 73F406C782C88 CASE NUMBER: 2018CV33011</p>
<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>▲ COURT USE ONLY ▲</p>
<p>CYNTHIA H. COFFMAN, Attorney General ROBERT W. FINKE, 40756* First Assistant Attorney General SUEANNA P. JOHNSON, 34840* Senior Assistant Attorney General MATTHEW J. BOUILLON MASCARENAS, 46684* Assistant Attorney General Ralph L. Carr Judicial Building 1300 Broadway, 8th Floor Denver, CO 80203 Tel: (720) 508-6000 Fax: (720) 508-6037 robert.finke@coag.gov sueanna.johnson@coag.gov matthew.bouillon@coag.gov *Counsel of Record</p>	<p>Case No.: 2018 CV 33011</p> <p>Courtroom: 424</p>
<p align="center">THE SECURITIES COMMISSIONER'S RESPONSE IN OPPOSITION TO THE MOTION FOR CONTINUANCE OF THE PRELIMINARY INJUNCTION HEARING</p>	

GERALD ROME, by and through his counsel the Colorado Attorney General and undersigned counsel, hereby opposes the request for continuance of the August

22, 2018 preliminary injunction hearing, and as grounds therefore, states the following:

INTRODUCTION

This case involves a \$52 million fraudulent scheme in which Gary Dragul and his companies through agents convinced individuals to invest or roll their investments into single purpose LLCs without adequate disclosure, nor return of principal or profit. As a result, the Securities Commissioner filed this action on August 15, 2018 that sought and obtained an *ex parte* order temporarily enjoining Dragul from running his company and freezing assets. The Securities Commissioner also requested an appointment of a Receiver that was not ruled on by the Court. This matter is scheduled for a preliminary injunction hearing on Wednesday, August 22, 2018. Dragul, through counsel, requests a continuance of the hearing at the eleventh hour. But the Securities Commissioner opposes because circumstances following the issuance of the August 15, 2018 TRO necessitate a hearing sooner rather than later to determine the appointment of a Receiver.

LEGAL STANDARD

A temporary restraining order may be extended beyond the fourteen day period of time only if good cause is shown or the person to whom the order is directed consents to an extended period. C.R.C.P. 65(b). But a decision whether to grant a motion for continuance is within the discretion of the district court. *Brown v. Hollywood Bar and Cafe*, 942 P.2d 1363, 1365 (Colo. App. 1997).

ARGUMENT

A Receiver needs to be appointed as soon as possible because Dragul's "house of cards" is collapsing.

There are at least three circumstances following the issuance of the August 15th TRO that demonstrate that Dragul's business is a Ponzi scheme. Each day that passes where a determination is not made whether to appoint a Receiver is delay to the detriment of investors, who have already suffered losses and will suffer additional losses unless assets can begin to be marshalled for equitable distribution.

First, on Friday, August 17, 2018, the Securities Commissioner's counsel met with counsel for Dragul, Harvey Steinberg (partner to Jeff Springer), as well as Dragul's real estate compliance attorney, Benjamin Kahn. Instead of prepping for this hearing, Dragul's counsel spent several hours discussing and requesting an exemption from the TRO so that the company could issue profit distributions to investors in the Plaza Mall of Georgia. It was represented to the Securities Commissioner's counsel that Dragul was just about to issue the profit distributions to the Plaza Mall of Georgia before the Court's August 15th TRO. But evidence to be presented at the preliminary injunction hearing will reveal that the Plaza Mall of Georgia was sold over 15 months ago in April 2017, and investors, except for two preferential members of the LLC, knew about the sale of the mall and received profit distributions.

Second and related to the first point, it is unclear to the Securities Commissioner how Dragul intends on paying for a profit distribution for the Plaza Mall of Georgia investors. Based on information received from JP Morgan Chase

Bank in response to the Court's order freezing assets, there is virtually no money in accounts in which Dragul is a signatory. Dragul has 59 accounts at Chase, and as evidenced by attached EXHIBIT 1, there is little to no money in those accounts, and many are extensively overdrawn. Dragul either is representing an "angel investor" will pay the profit distribution, which begs the question why he needs funding if his businesses are profitable, or monies are hidden in other accounts, which begs the question why such funds are not in the accounts of the specific LLCs.

The Commissioner is ready to present evidence that because of Dragul's business model, he failed to disclose that he commingled investor funds. Likewise, the Commissioner is prepared to present evidence that based on Dragul's business model, he routinely rolled investors from prior failed investments into new projects, while concomitantly requiring additional capital contributions from those investors. This has the effect of a single purpose LLC having more equity ownership than the asset could likely profitably pay out.

Specifically, for the Plaza Mall of Georgia, because Dragul had rolled other investors into this project (which would be presented at hearing), and based on settlement statements from the closing in April 2017 when the mall sold, Dragul sold the property for over \$9 million of its purchase price of \$25 million. Yet, besides two preferential investors who received immediate distributions following the sale of the mall in April 2017, it is unclear how monies for the distribution exist based on EXHIBIT 1, and if all investors would even be fully compensated what was promised to them.

Finally, Dragul's counsel has represented that a lease payment of approximately \$270,000.00 needs to be made for the restaurant known as Senior Frog's held by the Rose, LLC. EXHIBIT 1 reveals that the Rose, LLC is withdrawn over \$276,000.00 but such money was ostensibly transferred to Dragul's main operating account. Without documentation as to the lease terms at issue, or identity of the source of funds for the \$276,000.00 that exists in the main operating account, the Commissioner is reluctant to approve such a payment. That said, however, the Commissioner certainly does not want the August 15th TRO to impair the good standing of existing real estate assets held for the benefit of investors.

The purpose of this enforcement action is not just about preventing Dragul from further violating the Securities Act. This action was also brought on behalf of investors to obtain restitution for them, if possible. §§ 11-51-602(1), (2), C.R.S. The appointment of a Receiver is typical in cases where, as here, little liquidity but real assets exist to hopefully leverage to the benefit of the investors for an equitable return. *SEC v. Bowler*, 427 F.2d 190, 198 (4th Cir. 1970) (“[A] receiver is permissible and appropriate where necessary to protect the public interest and where it is obvious, as here, that those who have inflicted serious detriment in the past must be ousted.”). Although the Commissioner does not owe the investors a fiduciary duty, *see Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 31-32 (Colo. 2001), his ability to present evidence for the quick appointment of a Receiver for the benefit of the investors is impaired if the hearing is delayed. Consequently, it is imperative that this Court determine as soon as possible whether a Receiver should be appointed so that, if appointed, the Receiver may quickly assess issues like the

lease payment for the Rose, LLC, among others, and determine the action that would best serve the investors.

WHEREFORE, based upon the foregoing, the Securities Commissioner requests that this Court exercise its discretion to deny the motion to continue and proceed with the August 22, 2018 preliminary injunction hearing so that the Court can also determine whether a Receiver should be appointed.

Respectfully submitted this 21st day of August, 2018.

CYNTHIA H. COFFMAN
Attorney General

/s/ Sueanna P. Johnson

ROBERT FINKE, 40756*

First Assistant Attorney General

SUEANNA P. JOHNSON, 34840*

Senior 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

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within THE SECURITIES COMMISSIONER'S RESPONSE IN OPPOSITION TO THE MOTION FOR CONTINUANCE OF THE PRELIMINARY INJUNCTION HEARING and EXHIBIT 1 upon all parties herein by e-filing pursuant to C.R.C.P. 121, or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 21st day of August, 2018, addressed as follows:

Jeffrey A. Springer, Esq.
Harvey Steinberg, Esq.
SPRINGER AND STEINBERG, P.C.
1600 Broadway Street, Suite 1200
Denver, CO 80202
Attorneys for Defendants

/s/ William Russell
Office of the Colorado Attorney General

DATE FILED: August 21, 2018 5:33 PM
FILING ID: 73F406C782C88
CASE NUMBER: 2018CV33011

**THE SECURITIES COMMISSIONER'S RESPONSE IN OPPOSITION TO
THE MOTION FOR CONTINUANCE OF THE PRELIMINARY
INJUNCTION HEARING**

Exhibit 1



P.O. Box 183164
Columbus, OH 43218-3164

Friday, August 17, 2018

Jonathan Block
Jonathan.block@state.co.us

Re: Gary Dragul, et al.
Case No: COAL-16Aug18-4588

JPMorgan Chase Bank, N.A. ("JPMC") has received your Temporary Restraining Order against the defendants referenced above.

Received Date	Account Number	Amount of Hold	Present Balance
GARY JULE DRAGUL 08/16/2018	7073	\$99,999,999,999.99	(-\$489.68)
GDA REAL ESTATE SERVICES, LLC 08/16/2018	9881	\$99,999,999,999.99	\$0.65
GDA REAL ESTATE SERVICES, LLC 08/16/2018	5225	\$99,999,999,999.99	\$276,314.42

The following accounts held due to Defendant Gary Dragul having an Ownership or Signing Interest:

HAPPY CANYON BOX 17 B, LLC 08/16/2018	5723	\$99,999,999,999.99	\$304.20
CASSINELLI SQUARE 16 A, LLC 08/16/2018	3768	\$99,999,999,999.99	\$998.08
HICKORY CORNERS 16 B, LLC 08/16/2018	9297	\$99,999,999,999.99	\$34.27
HICKORY CORNERS BOX 16 B, LLC 08/16/2018	3090	\$99,999,999,999.99	\$26.09
GDA CLEARWATER INVESTORS, LLC 08/16/2018	5880	\$99,999,999,999.99	\$200.00
GDA DELTA MEMBER, LLC 08/16/2018	6659	\$99,999,999,999.99	\$180.00
MC LIQUOR 02, LLC 08/16/2018	8379	\$99,999,999,999.99	(-\$1,771.82)
2166 SOUTH ASH 17, LLC 08/16/2018	3890	\$99,999,999,999.99	\$91.66
2176 SOUTH ASH 16, LLC 08/16/2018	8873	\$99,999,999,999.99	\$10,753.75
2186 SOUTH ASH 16, LLC 08/16/2018	2510	\$99,999,999,999.99	\$116.67
2196 SOUTH ASH 16, LLC 08/16/2018	6131	\$99,999,999,999.99	\$29.50
2175 SOUTH BELLAIRE 16, LLC 08/16/2018	1669	\$99,999,999,999.99	\$49.22
41 SOUTH FAIRWAY 17, LLC 08/16/2018	8201	\$99,999,999,999.99	(-\$12,505.43)
891 FOURTEENTH STREET 17, LLC 08/16/2018	1866	\$99,999,999,999.99	\$10.86
2770 SOUTH GARFIELD 15, LLC 08/16/2018	5917	\$99,999,999,999.99	\$18.36

August 20, 2018

Received Date	Account Number	Amount of Hold	Present Balance
2989 SOUTH STEELE 15, LLC 08/16/2018	9919	\$99,999,999,999.99	\$104.55
3040 SOUTH GARFIELD 17, LLC 08/16/2018	3036	\$99,999,999,999.99	\$15.57
3142 SOUTH LEYDEN 14, LLC 08/16/2018	9223	\$99,999,999,999.99	\$29.64
3555 SOUTH HOLLY 15, LLC 08/16/2018	2938	\$99,999,999,999.99	\$89.96
3675 SOUTH HIBISCUS 15, LLC 08/16/2018	6035	\$99,999,999,999.99	\$58.14
5722 SOUTH LANSING 14, LLC 08/16/2018	0820	\$99,999,999,999.99	\$67.60
5746 SOUTH TRUCKEE 15, LLC 08/16/2018	6785	\$99,999,999,999.99	\$10.44
5788 SOUTH LANSING 17, LLC 08/16/2018	0712	\$99,999,999,999.99	\$72.82
6316 EAST FAIR 16, LLC 08/16/2018	5216	\$99,999,999,999.99	\$17.09
6403 SOUTH FLORENCE 16, LLC 08/16/2018	1213	\$99,999,999,999.99	\$21.82
7104 SOUTH SYRACUSE 16, LLC 08/16/2018	6063	\$99,999,999,999.99	\$162.67
7373 EAST FREMONT 15, LLC 08/16/2018	9836	\$99,999,999,999.99	\$83.28
7517 EAST DAVIES 17, LLC 08/16/2018	3911	\$99,999,999,999.99	\$55.01
7842 EAST BRIARWOOD 16, LLC 08/16/2018	8860	\$99,999,999,999.99	\$2,530.71
11188 CAMPSIE FELLS LV 17, LLC 08/16/2018	7960	\$99,999,999,999.99	\$88.49
2124 JADELEAF LV 17, LLC 08/16/2018	2093	\$99,999,999,999.99	\$47.83
1777 LARIMER 17, LLC 08/16/2018	6938	\$99,999,999,999.99	\$63.28
901 LARIMER 18, LLC 08/16/2018	0799	\$99,999,999,999.99	\$68.23
1660 NORTH LASALLE 16, LLC 08/16/2018	6812	\$99,999,999,999.99	\$3.12
1004 SCOTTSDALE EAST 6TH 17, LLC 08/16/2018	5761	\$99,999,999,999.99	\$10.15
1005 SCOTTSDALE EAST 6TH 17, LLC 08/16/2018	9516	\$99,999,999,999.99	\$327.99
X12 HOUSING, LLC 08/16/2018	5083	\$99,999,999,999.99	(-\$3,056.31)
FORT COLLINS WF 02, LLC 08/16/2018	0901	\$99,999,999,999.99	(-\$79.18)
GDA VILLAGE CROSSROADS, LLC 08/16/2018	6817	\$99,999,999,999.99	\$282.41
DELTA 17 A, LLC 08/16/2018	1020	\$99,999,999,999.99	\$623.79
4205 NORTH LASALLE 18, LLC 08/16/2018	9800	\$99,999,999,999.99	\$175.83
GDA CLEARWATER 15, LLC 08/16/2018	9007	\$99,999,999,999.99	\$71.08
ROSE, LLC 08/16/2018	3320	\$99,999,999,999.99	(-\$276,157.14)
2195 SOUTH BELLAIRE 16, LLC 08/16/2018	5798	\$99,999,999,999.99	\$14.50
GDA PS MEMBER, LLC 08/16/2018	7379	\$99,999,999,999.99	\$93.66

August 20, 2018

Received Date	Account Number	Amount of Hold	Present Balance
GDA HICKORY 17, LLC 08/16/2018	5176	\$99,999,999,999.99	\$25.34
GDA WINDSOR MEMBER, LLC 08/16/2018	5570	\$99,999,999,999.99	\$35.00
PS 16, LLC 08/16/2018	3653	\$99,999,999,999.99	\$100.18
SSC AVIATION 06, LLC 08/16/2018	1825	\$99,999,999,999.99	\$47.10
WINDSOR 15, LLC 08/16/2018	7902	\$99,999,999,999.99	(-\$4,405.15)
YM RETAIL 07 A, LLC 08/16/2018	7855	\$99,999,999,999.99	\$57.25
PLAINFIELD 09 A, LLC 08/16/2018	2318	\$99,999,999,999.99	\$63.02
AV PAD 17, LLC 08/16/2018	5878	\$99,999,999,999.99	\$45.22
SUMMIT 06 A, LLC 08/16/2018	0223	\$99,999,999,999.99	\$622.18
CLEARWATER COLLECTION 15, LLC 08/16/2018	5519	\$99,999,999,999.99	\$36,090.26
PLAZA MALL NORTH 16, LLC 08/16/2018	5379	\$99,999,999,999.99	(-\$2.00)

The present balance may be subject to exemption claims, including claims which may permit the customer to withdraw additional funds.

Additional Profiles located, All Accounts Closed:

- HAPPY CANYON WINE & LIQUOR, LLC DBA SUGAR MOON BEVERAGE COMPANY;
- GDA MARKET AT SOUTHPARK, LLC;
- WALDEN 08 A LLC;
- PROSPECT SQUARE 07 A, LLC

This response is based on a search of data contained in JPMorgan Chase's centralized customer identification and account information system. This system may not necessarily capture all relevant information concerning the judgment debtor(s) or accounts.

Please allow this letter to serve as JPMC's answer to the **Temporary Restraining Order**. If you have any questions about this matter, please call us at 1-866-578-7022. We're here to help you Monday through Friday from 8 a.m. to 10 p.m., Saturday from 8 a.m. to 8 p.m. and Sunday from 9 a.m. to 5 p.m. Eastern Time.

Sincerely,

8-20-18

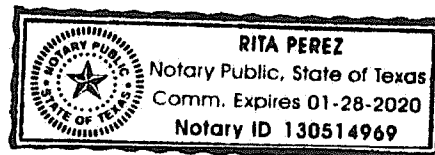
Stephen M. Kennedy
Document Review Specialist II

SUBSCRIBED AND SWORN to before me on this
20 day of August, 2018

NOTARY PUBLIC

Residing at: County of Bexar, State of TEXAS
My commission expires: 1/28/20

LCCSH051215
JPMorgan Chase Bank, N.A. Member FDIC



State of Texas
County of Bexar
Physically Appeared