

<p>DISTRICT COURT, COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202 Phone Number: 720.865.7800</p>	<p>DATE FILED: August 21, 2018 3:57 PM FILING ID: BABCCBB2EEEE86 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>Δ COURT USE ONLY Δ</p> <hr/> <p>Case Number: 2018CV33011</p>
<p>SPRINGER AND STEINBERG, P.C. Jeffrey A. Springer, Esq. (Bar No. 6793) 1600 Broadway, Suite 1200 Denver, Colorado 80202 Tel: 303.861.2800 Fax: 303.832.7116 Email: jspringer@springersteinberg.com ATTORNEYS FOR DEFENDANTS</p>	<p>Courtroom: 424</p>
<p>OPPOSED EXPEDITED MOTION TO CONTINUE TEMPORARY RESTRAINING ORDER AND HEARING UPON PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION</p>	

COMES NOW Defendants GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC, (collectively “Defendants”) by and through their counsel, and pursuant to C.R.C.P. 6(b) and the Constitution of the State of Colorado, art. II, sec. 14 and sec. 25 and the Constitution of the United States, Bill of Rights, art. V and art. XIV.

hereby submit the following Opposed Expedited Motion to Continue Temporary Restraining Order and Hearing Upon Plaintiff's Motion for Preliminary Injunction. The Defendants request an expedited consideration and ruling by the Court.

Certification of Consultation: The undersigned counsel for the Defendants hereby certifies that upon consultation counsel for the Plaintiff informed Defendants' counsel that the Plaintiff opposes the relief requested herein.

MOTION

1. Plaintiff's Complaint was filed on the afternoon of Wednesday, August 15, 2018. The Complaint alleges that the Defendants have engaged or are about to engaged in securities violations regarding interests in real property.

2. Plaintiff filed with its Complaint its *Ex Parte* Verified Motion for Temporary Restraining Order, Order Freezing Assets, Order of Nondestruction of Records, and Preliminary Injunction with Supporting Legal Authority ("TRO Motion"). The Motion is 20-pages in length.

3. Shortly following the filing of Plaintiff's Complaint and *ex parte* TRO Motion, the Court issued the Temporary Restraining Order, Order Freezing Assets, Order of Non-Destruction of Records, and Preliminary Injunction ("TRO"), restraining the Defendants, and their agents and / or representatives, from offering to sell or selling any security in or from Colorado, from engaging in the securities business, from engaging in any conduct in violation of any provision of the Colorado Securities Act, from dissipating their books and records, and from accepting any funds from investors. The TRO further froze the Defendants' accounts, property, and assets. The Court also provided for expedited discovery. The TRO provided for the TRO to expire on August 22, 2018, at 1:30 P.M., at which time a hearing was set upon Plaintiff's Motion for Preliminary Injunction ("PI Motion").

4. The Complaint, TRO Motion, and TRO were served upon the Defendants and / or received by Defendants' counsel on or about August 16, 2018, and service was waived by Defendants' counsel. A formal representation agreement was entered into between Defendants and their counsel on August 21, 2018, the day before the date set for the hearing on Plaintiff's Motion for Preliminary Injunction.

5. Defendants' response to the Motion for Preliminary Injunction requires that Defendants' counsel have an adequate time to research the law pertaining to the claims being asserted against the Defendants, interview each Defendant and possible witnesses, investigate the alleged facts and underlying circumstances, obtain the documentary and other evidence necessary for the defense to the PI Motion, locate and make arrangements for possible witnesses, and the prepare for the hearing on the Motion. The time between the receipt of the Complaint, TRO / PI Motion, and TRO, and certainly between the date of formal retention as counsel for Defendants, does not reasonably provide sufficient time for Defendants' counsel to adequately prepare for a hearing on August 22, 2018.

6. Because counsel for the Defendants has just been formally retained and only received the Complaint, *ex parte* TRO Motion, and TRO approximately 1-2 business days ago, Defendants' counsel has not had sufficient time to prepare to defend against the PI Motion. Defendants' are entitled to procedural due process of law. Colo. Const., art. II, sec. 15, provides that private "property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested" without the prior payment of just compensation. Colo. Const., art II, section 24, provides that "[n]o person shall be deprived of ...liberty or property without due process of law." *Accord.*, U.S. Const., Bill of Rights, art. V, sec. 1, and art. XIV. "The essence of procedural due process is fundamental fairness; this embodies adequate advance notice and an

opportunity to be heard prior to state action resulting in deprivation of a significant property interest.” *Meridian Ranch Metro. Dist. V. Colo. Ground Water Com’n*, 240 P.3d 382, 391 (Colo.App. 2009) (citing, *Barham v. Univ. of N. Colo.*, 964 P.2d 545, 550 (Colo.App. 1997)). The opportunity for a hearing refers to a “meaningful” hearing. *Copley v. Robinson*, 224 P.3d 431, 435 (Colo.App. 2009). The parties must be “afforded a reasonable opportunity in which to confront adverse witnesses and to present evidence and argument in support of their position.” *Id.*

7. Upon receiving the Complaint, *ex parte* TRO Motion and TRO, Defendants’ counsel contacted Plaintiff’s counsel to request that the hearing on the PI Motion be continued to provide Defendants’ counsel time to sufficiently prepare to properly represent the Defendants and defend their interests at the hearing on the PI Motion and that the TRO be continued in effect until the Court heard and ruled upon the PI Motion. Since the Defendants were agreeing to so continue the TRO, the Plaintiff was not and would not be prejudiced in any manner by the granting of a continuance of the hearing upon the PI Motion. The limited term of a TRO and the expedited setting of a preliminary injunction hearing are meant for the benefit of the defendant, not the plaintiff, since the TRO itself protects the plaintiff’s interests until the court rules upon a preliminary injunction. Even though Plaintiff was not prejudiced in any manner, Plaintiff’s counsel refused to agree to continue the hearing upon the PI Motion to provide Defendants’ counsel a reasonable opportunity to prepare for the hearing.

8. Denying Defendants and their counsel a reasonable opportunity to prepare to defend against the Motion for Preliminary Injunction not only deprives them of procedural due process and their interests in their property but also effectively their right to counsel by subjecting them to a trial by ambush. The Colorado Supreme Court declared long ago “trial by

ambush is no longer acceptable as a means for ascertaining the truth.” *People v. Robias*, 568 P.2d 57, 60 (Colo. 1977).

9. Pursuant to C.R.C.P. Rule 6(b) the Court has broad latitude in exercising its discretion to extend the time for the PI Motion’s hearing. *People v. McBeath*, 709 P.2d 38, 39 (Colo.App. 1985).

WHEREFORE, for good cause shown, the Defendants herein move this court for an order pursuant to C.R.C.P. 6(b) continuing the date for the hearing upon Plaintiff’s Motion for Preliminary Injunction by at least 7 days to provide Defendants a reasonable and fair opportunity to prepare and that, further, Defendants stipulate to the extension of the TRO to the time in which this Court issues its decision upon the Plaintiff’s Motion. An expedited ruling upon this motion is requested by the Defendants.

Respectfully submitted,

SPRINGER AND STEINBERG, P.C.

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ATTORNEYS FOR DEFENDANTS

*Original signature on file at the
Springer and Steinberg, P.C.*

Certificate of Service

The undersigned hereby certifies that this 21st day of August, 2018, he has caused the above **OPPOSED EXPEDITED MOTION TO CONTINUE TEMPORARY RESTRAINING ORDER AND HEARING UPON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** together with a Proposed Order Granting said motion to be served upon counsel for the parties, via ICCES e-filing and / or U.S. Mail, first class postage prepaid, as follows:

Robert Finke
Sueanna Johnson
Matthew Bouillon Mascarenas
Assistant Attorney General
1300 Broadway, 8th Floor
Denver, Colorado 80203

s/ Jeffrey A. Springer

Jeffrey A. Springer

*Original signature on file at the
Springer and Steinberg, P.C.*

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GERALD ROME, Securities Commissioner for the State of Colorado, Plaintiff, v. GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC, Defendants.	<p style="text-align: center;">Δ COURT USE ONLY Δ</p> <hr/> Case Number: 2018CV33011 Courtroom: 424
ORDER	

THIS MATTER having come before the Court pursuant to Defendants’ Opposed Expedited Motion to Continue Temporary Restraining Order and Hearing Upon Plaintiff’s Motion for Preliminary Injunction,

UPON the record herein and for GOOD CAUSE SHOWN,

Defendants’ Motion is GRANTED.

IT IS ORDERED that the hearing set upon Plaintiff’s Motion for Preliminary Injunction for August 22, 2018 at 1:30 PM before this Court is CONTINUED to _____, at which time Plaintiff’s Motion for Preliminary Injunction shall be heard in Courtroom 424 of the Court. It is FURTHER ORDERED that the *Ex Parte*

Temporary Restraining Order issued by this Court in this matter shall remain in effect until the Court has entered its decision upon Plaintiff's Motion for Preliminary Injunction.

DATED this ____ day of August, 2018.

BY THE COURT:

District Court Judge