DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF v. **Defendant(s)** GARY DRAGUL et al.	DATE FILED: November 9, 2018 9:19 AM CASE NUMBER: 2018CV33011 ⚠ **COURT USE ONLY** ⚠ Case Number: 2018CV33011 Division: 424 Courtroom:

Order: Motion to Stay (w/attach)

The motion/proposed order attached hereto: GRANTED WITH AMENDMENTS.

Consistent with the telephonic hearing conducted on November 9, 2018, the enforcement action shall be stayed for an initial period of 63 days from the date of this order. Counsel will file a joint status report on or before the 63rd day to advise the Court whether the stay should be continued for an additional period of time. The stay applies to the enforcement action only, and is not a bar to actions conducted by or on behalf of the receiver.

Issue Date: 11/9/2018

MARTIN FOSTER EGELHOFF
District Court Judge

DISTRICT COURT, COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202 Phone Number: 720.865.7800	
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.**	**Δ COURT USE ONLY Δ** Case Number: 2018CV33011 Courtroom: 424
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	
MOTION TO STAY	

COME NOW, Defendants Gary Dragul, GDA Real Estate Services, LLC and GDA Real Estate Management, LLC, by and through their counsel of record Jeffrey A. Springer of Springer and Steinberg, P.C., and hereby move that the Court stay proceedings in this matter until the case *The People of the State of Colorado v. Gary Dragul*, 18CR001092, which is pending in Arapahoe County District Court, is resolved.

CERTIFICATE OF CONFERRAL PURSUANT TO C.R.C.P. 121, § 1-15(8)

On October 26, 2018 undersigned counsel conferred with Attorney General Sueanna Johnson regarding the relief requested herein and she advised that the Plaintiff does take any position on the Motion.

GROUNDS FOR THE MOTION:

BACKGROUND

The Complaint[1] in this matter alleges that from January 2008 through December 2015 the Defendants committed multiple acts of securities fraud. As alleged, the Defendants persuaded investors to purchase membership interests in various limited liability companies ("companies") without disclosing material information to them. The companies were engaged in the practice of purchasing and selling commercial property. The Complaint also alleges that when the Defendants sold various parcels of commercial property, they did not repay all investors or even inform them that the property had been sold. It is also alleged that the Defendants comingled the assets of the companies.

In addition to this matter, Mr. Dragul has been indicted by a Colorado grand jury in Arapahoe County District Court case 18CR00192 ("Criminal Case"). The indictment[2] in the Criminal Case charges that in 2012 and 2013, as part of the conduct described in the Complaint, Mr. Dragul committed multiple acts of securities fraud against the investors who purchased membership interests in the companies.

[1] A true and correct copy of the Complaint is attached as Exhibit 1 and is incorporated herein by reference.

[2] A true and correct copy of the Indictment is attached as Exhibit 2 and is incorporated herein by reference.

ARGUMENT

This Court should stay this case until the Criminal Case has been resolved. A defendant in a civil case who is also defending criminal charges based on the same or similar allegations giving rise to the civil case must often choose between testifying in the civil case and asserting his Fifth-amendment privilege against self-incrimination. *See Creative Consumer Concepts, Inc. v. Kreisler*, 563 F.3d 1070, 1080 (10th Cir. 2009). In a criminal case, a fact finder cannot draw an adverse inference from the defendant's decision to invoke his Fifth-amendment privilege against self-incrimination, but in a civil case, the fact finder can. *Griffin v. Cal.*, 380 U.S. 609, 613-15 (1965); *People v. Ortega*, 597 P.2d 1034, 1036-37 (Colo. 1979); *McGillis Inv. Co. v. First Interstate Fin. Utah LLC*, 2015 COA 116, ¶27, 370 P.3d 295; *People v. Williams*, 100 P.3d 565, 566-67 (Colo. App. 2004). To prevent a defendant's assertion of his privilege against self-incrimination from prejudicing his civil case, a court may stay civil proceedings until the criminal case is resolved. *People v. Shirfrin*¸ 2014 COA 14, ¶26, 342 P.3d 506. Courts consider six factors when determining whether to stay civil proceedings pending the resolution of a criminal case:

> 1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.

Id.

Analyzing these factors, first, both the Criminal Case and this case allege that Mr. Dragul committed securities fraud in connection with selling membership interests in the companies. In fact, the allegations in the Criminal Case are completely subsumed in this case. Where this case alleges that the Defendants committed securities fraud from 2008 through 2015, the Criminal Case focuses on certain instances of alleged securities fraud that occurred during 2012 and 2013. Thus,

there is substantial legal and factual overlap between this case and the Criminal Case. Second, the Criminal Case commenced in April 2018 when a Colorado grand jury indicted Mr. Dragul. Since that time, the case has been progressing toward resolution without significant delays. These first two factors strongly weigh in favor of staying this case. *See id*. at ¶¶29-31.

The remaining factors also weigh in favor of staying this case. As to the third factor, the Plaintiff in this case will not suffer prejudice. Although the plaintiffs are nominally different in each case—Gerald Rome, Securities Commissioner for the State of Colorado in this case and the People of the State of Colorado in the Criminal Case—they are actually the same because Mr. Rome is acting in his official capacity for the State of Colorado. Both plaintiffs are also being represented by the State Attorney General's Office. Given the overlap between the two cases, the plaintiffs' shared identity, and the plaintiffs' shared counsel, prosecuting the Criminal Case will also move the civil case forward. Indeed, resolution of the Criminal Case may also resolve issues involved in this case. As to the fourth factor, Mr. Dragul's private interest is substantial. Staying the civil case will allow him to exercise his Fifth Amendment rights, if necessary, without an adverse inference being drawn in the civil case. Moreover, granting a stay will ease the financial burdens on Mr. Dragul by preventing duplicative hearings in both cases and by allowing his attorneys to focus their efforts on the Criminal Case and this case in succession, if necessary. As to the fifth factor, staying this case is also in the courts' best interest. It will avoid duplicative litigation, thus conserving the courts' resources. And finally, the public interest will still be served because the allegations against Mr. Dragul in the Criminal Case will still be resolved without delay, and again, the outcome of the Criminal Case may resolve issues pending in this case. Further a receiver has been appointed in this case so that actions to preserve the Estate and possibly to provide restitution to investors can still proceed. Moreover, the Defendants have been restrained

in this case and Mr. Dragul is subject to restrictions in the Criminal Case attendant to his posting of bond. Hence, the public interest is certainly not compromised in anyway by staying this action and as set forth above, is likely enhanced.

CONCLUSION

This Court should stay this case to protect Mr. Dragul's Fifth-amendment rights. He should not be forced to decide whether to testify in this case or to assert his Fifth-amendment rights. Indeed, the factors governing whether or not to grant a stay, especially the first and second factors, all weigh in favor of granting a stay.

WHEREFORE, the Defendants respectfully request that this Court stay this case until *The People of the State of Colorado v. Gary Dragul*, 18CR001092, which is pending in Arapahoe County District Court, is resolved.

Respectfully submitted this 26th day of October, 2018,

SPRINGER AND STEINBERG, P.C.

By: */s/ Jeffrey A. Springer*
Jeffrey A. Springer, #6793
ATTORNEYS FOR DEFENDANTS
Original signature on file at the Springer and Steinberg, P.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 26th day of October, 2018, the above and foregoing **MOTION TO STAY** was filed with the Court and a true and accurate copy of the same was served via ICCES to:

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

/s/ Michaela Lloyd
Michaela Lloyd

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