

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: February 19, 2019 5:21 PM FILING ID: A6C68AF264E16 CASE NUMBER: 2018CV33011
Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado v. Defendant: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424
RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE'S INTEREST IN RESIDENTIAL PROPERTIES	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary J. Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order authorizing him to sell the Estate’s interest in the 24 residential properties

identified below (the “Residential Properties”) pursuant to the agreement between the Receiver and Odyssey Acquisitions III, LLC Motion attached as **Exhibit 1**.

I. Background

1. On August 15, 2018, Gerald Rome, the former Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 29, 2018, the Commissioner and Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to COLO. REV. STAT. § 11-51-602(1), C.R.C.P. 66.

3. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender of Sender & Smiley, LLC as receiver for Dragul and the GDA Entities, and their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. The Receivership Order grants the Receiver the authority to sell or otherwise dispose of Estate property and obtain Court approval for any sale for greater than \$10,000 (Receivership Order at 12, ¶ 13(t)). The Receivership Order provides that “Court approval of any motion filed by the Receiver shall be given as a matter of course, unless any party objects . . . within ten (10) days after service by the Receiver or written notice of such request.” Receivership Order at 21, ¶ 34.

5. The Receiver seeks Court authority to sell the Estate’s interest in the 24 Residential Properties listed below for \$775,000 to Odyssey Acquisitions III, LLC (“Odyssey”¹ or “Buyer”) pursuant to the Agreement attached as **Exhibit 1**. Upon Court approval of the Agreement, the parties will prepare any additional documents necessary to transfer the Estate’s interest to Buyer and any other documents necessary to consummate the transaction.

II. The Properties

6. The following are the Residential Properties the Receiver seeks authorization to sell:

	ADDRESS	OWNER OF PROPERTY	EST. FMV	1ST LIEN	2ND LIEN
1	1660 N. LaSalle Drive, #3909, Chicago, IL 61614	1600 North LaSalle 16, LLC (100% owned by Gary J. Dragul)	\$298,898	\$277,026	N/A
2	1660 N. LaSalle Drive, #4205, Chicago, IL 61614	4205 North LaSalle 18, LLC (100% owned by X12 Housing, LLC)	\$307,000	\$245,600	N/A
3	5455 Landmark Place, #509, Greenwood Village, CO 80111	5455 Landmark Place 17, LLC (100% owned by X12 Housing, LLC)	\$672,000	\$585,548	N/A
4	5722 South Lansing Court, Englewood, CO 80111	5722 South Lansing 14, LLC (100% owned by X12 Housing, LLC)	\$491,000	\$292,544	N/A
5	5788 South Lansing Way, Englewood, CO 80111	5788 South Lansing 17, LLC (100% owned by X12 Housing, LLC)	\$470,000	\$410,850	\$1,200,000 ²

¹ Odyssey is independent of Dragul. It is a commercial real estate investment and advisory firm with offices in Las Vegas and Kansas City. Odyssey teams up with institutional real estate investment funds to acquire, develop, operate, improve and sell commercial properties.

² This South Lansing Way property and the other properties that show a second mortgage in favor of WBF/CT are all encumbered by the same \$1.2 million deed

	ADDRESS	OWNER OF PROPERTY	EST. FMV	1ST LIEN	2ND LIEN
6	6316 East Fair Avenue, Centennial, CO 80111	6316 East Fair 16, LLC (100% owned by X12 Housing, LLC)	\$525,000	\$358,875	\$500,000 ³
7	7373 East Fremont, Centennial, CO 80112	7373 East Fremont 15, LLC (100% owned by X12 Housing, LLC)	\$400,000	\$269,500	WBF/CT
8	7517 East Davies Place, Centennial, CO 80112	7517 East Davies 17, LLC (100% owned by X12 Housing, LLC)	\$450,000	\$327,949	WBF/CT
9	7842 East Briarwood Boulevard, Centennial, CO 80112	7842 East Briarwood 16, LLC (100% owned by X12 Housing, LLC)	\$426,040	\$308,125	WBF/CT
10	1777 Larimer, Unit 703, Denver, CO 80202	1777 Larimer 17, LLC (100% owned by X12 Housing, LLC)	\$440,000	\$402,169	N/A
11	1777 Larimer Street, #901, Denver, CO 80202	901 Larimer 18, LLC (100% owned by X12 Housing, LLC)	\$470,000	\$364,000	N/A
12	891 14th Street, #2417, Denver, CO 80202	891 Fourteenth Street 16, LLC ⁴	\$572,000	\$586,574	N/A
13	3142 South Leyden Street, Denver, CO 80222	3142 South Leyden 14, LLC (100% owned by X12 Housing, LLC)	\$540,000	\$307,311	WBF/CT
14	3555 South Holly Street, Denver, CO 80237	355 South Holly 15, LLC (100% owned by X12 Housing, LLC)	\$575,000	\$545,000	WBF/CT
15	3593 South Hudson Street, Denver, CO 80237	3593 South Hudson 17, LLC (100% owned by X12 Housing, LLC)	\$520,000	\$476,479	WBF/CT

of trust in favor of WBF/CT Associates, LLC to secure a loan that was made directly to Dragul.

³ The East Fair property is encumbered by a \$500,000 second deed of trust for the benefit of WBF/CT apparently to secure a loan made to Dragul personally.

⁴ There are two conflicting March 23, 2017, operating agreements for 891 Fourteenth Street 16, LLC. One shows that X12 Housing owns 100% of the LLC, the other shows that Dragul's son Spencer, who lives in the condominium, is the sole member.

	ADDRESS	OWNER OF PROPERTY	EST. FMV	1ST LIEN	2ND LIEN
16	3675 South Hibiscus Way, Denver, CO 80237	3675 South Hibiscus 17, LLC (100% owned by X12 Housing, LLC)	\$560,000	\$618,653	WBF/CT
17	41 South Fairway, Beaver Creek, CO 81620	41 South Fairway 17, LLC (100% owned by X12 Housing, LLC)	\$2,145,000	\$1,829,320	\$400,000
18	6937 East 6th Street, #1002, Scottsdale, AZ 85215	1002 East Scottsdale 6th 17, LLC (100% owned by X12 Housing, LLC)	\$450,000	\$378,581	WBF/CT
19	6937 East 6th Street, #1004, Scottsdale, AZ 85215	1004 East Scottsdale 6th 17, LLC (100% owned by X12 Housing, LLC)	\$450,000	\$374,996	WBF/CT
20	6937 East 6th Street, #1005, Scottsdale, AZ 85215	1005 East Scottsdale 6th 17, LLC (100% owned by X12 Housing, LLC)	\$450,000	\$351,793	WBF/CT
21	11188 Campsie Fells Court, Las Vegas, NV 89141	11188 Campsie Fells 17, LLC (100% owned by X12 Housing, LLC)	\$619,000	\$434,000	WBF/CT
22	4450 Timber Falls Court, #1702, Vail, CO 81657	Ownership presently in dispute	\$481,361	\$215,984	N/A
23	2432 South Newport Street, Denver, CO 80224	Gary J. Dragul	\$504,477	\$217,125	\$37,994 ⁵
24	2624 South Oneida Street, Denver, CO 80224	Gary J. Dragul	\$515,150	\$208,400	\$24,348
TOTAL			\$13,331,926	\$10,386,402	\$2,162,342

7. The first 21 listed properties are owned by special purpose entities Dragul formed, each of whose sole member is X12 Housing, LLC (“X12”), f/k/a GDA

⁵ The Receiver continues to investigate the balance and existence of the second lien but based on documents presently available it appears the South Newport property and the South Oneida property (no. 24) may cross-collateralize a \$1.4 million deed of trust in favor of Colorado Capital Bank.

Housing, LLC,⁶ whose sole member is Dragul. X12 is managed by X12 Housing Management, Inc., f/k/a GDA Housing Management, Inc.⁷, whose sole shareholder and President is Dragul. Based on information currently known to the Receiver, properties 23 & 24 appear to be owned by Dragul personally. All of these properties are therefore property of the Estate the Receiver is authorized to sell.

8. With respect to the Timber Falls Court property (no. 22), the Receiver has conflicting ownership information. At one point the property appears to have been wholly-owned by Dragul. In or about 2014, it appears Dragul transferred a 49% interest to a co-owner. The co-owner has contacted the Receiver and claims to have purchased Dragul's entire interest. The Receiver has requested but not yet obtained documents supporting the co-owner's claim. Regardless of the resolution that issue, the Estate is selling only whatever interest it may hold in the Timber Falls property.

III. The proposed sale is in the best interests of the Estate and its creditors.

9. There exists little Colorado authority with respect to factors the Court should consider regarding whether to approve a Receiver's proposed sale. In analogous bankruptcy contexts, approval of a sale of property pursuant to Section 363 of the Bankruptcy Code is warranted where there exists a "sound business

⁶ On April 17, 2018, Articles of Amendment changing the name of GDA Housing, LLC to X12 Housing, LLC was filed with the Colorado Secretary of State.

⁷ On April 17, 2018, Articles of Amendment changing the name of GDA Housing Management, Inc. to X12 Housing Management, Inc. was filed with the Colorado Secretary of State.

reason.” *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). “In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a ‘business judgment test.’” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

10. Factors bearing on whether a sound business reason or purpose supports a proposed sale of estate property in the bankruptcy context include (where applicable): (1) the proportionate value of the asset to the estate as a whole; (2) the amount of elapsed time since the filing; (3) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (4) the effect of the proposed disposition on the future plans of reorganization; (5) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (6) which of the alternatives of use, sale or lease the proposal envisions; and (7) most importantly perhaps, whether the asset is increasing or decreasing in value. *In re Medical Software Solutions*, 286 B.R. 431, 441 (Bankr. D. Utah 2002) (quoting *Lionel*, 722 F.2d at 1071) (emphasis omitted). Bankruptcy courts are granted considerable discretion in evaluating proposed sales. *Montgomery Ward*, 242 B.R. at 153; see *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (recognizing that “[r]ulings on motions to sell property of the estate other than in the ordinary course of business pursuant to section 363 are reviewed for abuse of discretion”).

11. In the Receiver's judgment, the proposed sale is in the best interest of the Estate and its creditors. If the Receiver were able to sell the Residential Properties individually for their currently estimated fair market value of \$13.3 million, assuming all of the second mortgages are valid, and the listed amounts would have to be paid at closing, the Estate's net return would be negative. Individual sales would require paying brokers' commissions of 5.5% (approximately \$733,000) and estimated closing costs of 1.5% (approximately \$200,000). And this does not account for the continued accrual of default interest on the Residential Properties' already high interest rate loans, many of which are already in default, and several of which are subject to pending or threatened foreclosure actions. Nor does it account for unpaid taxes, other unknown liens, or the administrative costs (attorneys' fees, Receiver fees, expenses) that the Estate would incur selling the Residential Properties individually.

WHEREFORE, the Receiver asks the Court to approve the agreement set forth in **Exhibit 1** pursuant to which the Estate will sell its interest in the Residential Properties to the Buyer, and to take all actions and execute all further documents necessary to consummate the transaction.

Dated: February 19, 2019.

CERTIFICATE OF SERVICE

I certify that on February 19, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE'S INTEREST IN RESIDENTIAL PROPERTIES** via CCE to the following:

Robert W. Finke
Sueanna P. Johnson
Matthew J. Bouillon Mascareñas
Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, Colorado 80203

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Securities Commissioner***

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Counsel for Robert Eisen

CERTIFICATION REGARDING E-SERVICE ON CLAIMANTS

A copy of the Motion was also served by electronic mail on all currently known creditors of the Receivership Estate for whom the Receiver has email addresses and who have asked to receive email notice as set forth on the service list maintained in the Receiver's records.

By: /s/ Victoria C. Ray

Allen Vellone Wolf Helfrich & Factor P.C.

February 2, 2019

Harvey Sender
Sender & Smiley, LLC
600 17th Street, Suite 2800
Denver, CO 80202
Via Electronic Mail

DATE FILED: February 19, 2019 5:21 PM
FILING ID: A6C68AF264E16
CASE NUMBER: 2018CV33011

RE: Purchase of Residential Properties

Dear Harvey:

Odyssey Acquisitions III, LLC, (“Purchaser”) offers to purchase from Harvey Sender, in his capacity as the Receiver (“Receiver”) of the Gary Dragul Receivership Estate (“Seller”), all of the Receivership Estate’s interests in the X12 Housing properties listed below (“the Interests”) as defined below under the following terms and conditions:

1. **PURCHASE PRICE:**

Purchaser shall pay the Receivership Estate Seven Hundred Thousand Dollars (\$700,000) at Closing for all Receivership Estate’s interests in the first deeds and second deeds of trusts listed below.

Address	Entity
41 South Fairway Drive Avon, CO	41 South Fairway 17, LLC
5722 Lansing Court Englewood, CO	5722 South Lansing 14, LLC
3142 South Leyden Street Denver, CO	3142 South Leyden 14, LLC
3675 South Hibiscus Way Denver, CO	3675 South Hibiscus 15, LLC
3555 South Holly Street Denver, CO	3555 South Holly 15, LLC
7842 East Briarwood Avenue Centennial, CO	7842 East Briarwood 16, LLC
6316 East Fair Avenue Centennial, CO	6316 East Fair 16, LLC
11188 Campsie Fells Court Las Vegas, NV	11188 Campsie Fells L 17, LLC
7517 East Davies Place Centennial, CO	7517 East Davies 17, LLC
7373 East Fremont Centennial, CO	7373 East Fremont 15, LLC

Address	Entity
6937 East 6 th Street, #1002 Scottsdale, AZ	1002 Scottsdale East 6 th 17, LLC
6937 East 6 th Street, #1004 Scottsdale, AZ	1004 Scottsdale East 6 th 17, LLC
6937 East 6 th Street, #1005 Scottsdale, AZ	1005 Scottsdale East 6 th 17, LLC
3593 South Hudson Street Denver, CO	3593 South Hudson 17, LLC
1777 Larimer Street, #703 Denver, CO	1777 Larimer 17, LLC
5788 South Lansing Way Englewood, CO	5788 South Lansing 17, LLC
891 14 th Street Unit 2417 Denver, CO	891 Fourteenth Street 17 LLC
5455 Landmark Place Unit 509 Greenwood Village, CO	5455 Landmark Place 17 LLC
1660 North LaSalle Unit 4205 Chicago, IL	4205 North LaSalle 18, LLC
1660 North LaSalle Unit 3909 Chicago, IL	1660 North LaSalle 16, LLC
1777 Larimer Street, #901 Denver, CO	901 Larimer 18, LLC

2. **RECEIVER APPROVAL:**

This letter and proposed transaction are subject to conditions acceptable to the Receiver and Purchase regarding ownership and management of the Interests.

3. **COURT APPROVAL:**

This transaction must be approved by the District Court, Denver County, State of Colorado (“the Court”).

4. **DEBT ASSUMPTION:**

Purchaser will assume the first and second deeds of trust or provide alternative financing within the due diligence period.

5. **SELLER’S REPRESENTATIONS:**

Seller warrants that to the best of their knowledge, other than those matters described in the Purchase Agreement, there are no outstanding fire, hazardous or toxic material, seismic or other restrictions, condemnations or violations which would affect the use, value, or income of the property. In addition, Seller represents and warrants that all items provided to Purchaser as part of the due diligence are true and correct.

6. **DOCUMENTATION:**
As a condition to this offer, Purchaser and Seller shall, in good faith, negotiate and execute a Purchase Agreement within five (5) days following the acceptance and delivery of this offer. Such Agreement shall not alter the rights of either party and shall reflect the terms and conditions contained herein.
7. **PRORATION, CREDITS:**
Taxes will be prorated in cash between Seller and Purchaser as of the Closing. The apportionment of real estate taxes shall be made pursuant to the present evidence of real estate taxes available as of the Closing, as contained herein. Seller shall pay all special assessments, if any, which are a lien at the time of the Closing. Seller shall transfer rent security deposits or provide credit to buyer of the same at Closing.
8. **DUE DILIGENCE:** Purchaser shall have a due diligence period of ten (10) days from the date of Court approval. Purchaser can terminate the transaction for any reason during the due diligence period.
9. **CLOSING:**
Closing will be ten (10) days following the due diligence period.

Closing Costs:

Purchaser will pay all of the closing costs including, but not limited to, the following:

- (i) the cost of preparation of a Warranty Deed to Purchaser;
- (ii) any escrow fees;
- (iii) the cost of satisfying any encumbrance that is not a Permitted Exception and the cost of recording the cancellations thereof;
- (iv) the cost of the new Owner's title insurance policy; and
- (v) all costs of an updated or new survey.
- (vi) all costs of obtaining, executing, recording and insuring any financing by Purchaser, including but not limited to Seller's outside counsel fees in relation thereto;
- (vii) the cost of recording all instruments transferring title of the Property to Purchaser;
- (viii) Purchaser's attorney fees and expenses.

10. **COUNTER PARTS:**

This document may be executed in counterparts. The parties agree to accept facsimile copies as originals until a formal contract is executed.

11. **RISK OF LOSS:**

Risk of Loss with regard to the Property shall remain with Seller until recordation of the Warranty Deed at the Closing.

12. **ASSIGNMENT:**

Purchaser may sell or assign its interest in this offer or in the Purchase Agreement.

THIS LETTER OF INTENT IS NOT BINDING ON EITHER PARTY UNLESS AND UNTIL A PURCHASE CONTRACT IS FULLY EXECUTED.

Approved and Accepted this

2nd day of February, 2019

Approved and Accepted this

_____ day of _____, 2019

PURCHASER:

Odyssey Acquisitions III, LLC

By: J. Graham Nelson

Its: MANAGER

Signature: J. Graham Nelson

SELLER:

Receiver of the Gary Dragul
Receivership Estate

By: Harvey Sender

Its: Receiver

Signature: _____

AMENDMENT

This is an Amendment to the letter of intent on the Purchase of Residential Properties ("**LOI**") dated, approved and accepted on February 2, 2019 by Odyssey Acquisitions III, LLC as Purchaser and February 5, 2019 by Receiver of the Gary Dragul Receivership Estate as Seller.

Section 1 of the LOI shall be Amended as follows:

- Purchase Price - \$775,000

- First and second deeds of trusts in LOI will be appended to include the following three (3) properties:
 1. 4450 Timber Falls Court, #1702, Vail, Colorado
 2. 2432 South Newport Street, Denver, Colorado (SSC 01, LLC)
 3. 2624 South Oneida Street, Denver, Colorado (SSC 01, LLC)

All other terms and conditions in the LOI will remain the same.

Approved and Accepted this

7th day of February, 2019

Approved and Accepted this

_____ day of _____, 2019

PURCHASER:

Odyssey Acquisitions III, LLC

By: _____

Its: GREGORY N. JOHNSON

Signature: MANAGER

SELLER:

Receiver of the Gary Dragul
Receivership Estate

By: Harvey Sender

Its: Receiver

Signature: _____