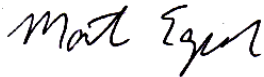


DISTRICT COURT, DENVER COUNTY, COLORADO		<p style="text-align: right;">DATE FILED: February 26, 2019 3:36 PM CASE NUMBER: 2018CV33011</p>
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202		
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF CO v. Defendant(s) GARY DRAGUL et al.		<p>⚠ COURT USE ONLY ⚠</p> <p>Case Number: 2018CV33011 Division: 424 Courtroom:</p>
Order: RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE'S INTEREST IN HAGSHAMA PROJECTS w/attach		

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 2/26/2019



MARTIN FOSTER EGELHOFF
 District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendant: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</p>	
<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</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE’S INTEREST IN HAGSHAMA PROJECTS</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary 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 approving the “Master Agreement” submitted with this Motion as **Exhibit**

1¹thereby authorizing the sale of the Estate's interest in the eight "Hagshama Projects" described below.

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, 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

¹ To the extent any terms of this Motion are inconsistent with the Master Agreement, the Master Agreement shall control.

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 eight GDA related properties (the “Hagshama Projects”) for \$1 million to Odyssey Acquisitions III, LLC (“Odyssey”² or “Buyer”) pursuant to the Master Agreement. Upon Court approval of the Master Agreement, the parties will negotiate and prepare documents necessary to transfer the Estate’s interest in each of the Hagshama Projects to Buyer and any other documents necessary to consummate the transaction.

II. The Hagshama Projects

6. Each of the Hagshama Projects is owned as tenants-in-common by at least one Hagshama entity and at least one entity in which Dragul owns an interest. Equity in some of the Dragul entities which own interests in the Hagshama Projects is also held by other investors. The following table lists the Hagshama Projects and, based on the Receiver’s information and belief, summarizes the equity invested and equity percentages held in each project.

² 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. Under the Master Agreement, Buyer agrees that, to its knowledge, Gary Dragul shall not have an ownership interest in any of the Hagshama Projects or the Buyer, and will not be employed in any capacity by Buyer, or any successor of Buyer, in any activity related to the Projects. Master Agreement ¶ 9 (a).

	Receivership property	Hagshama investment	Total investment dollars	Hagshama equity %	Other investment equity	Dragul equity percentage³
1	Cassinelli Square (Cincinnati, OH)	\$2,880,000	\$3,180,000	90%	10%	4.27%
2	Clearwater Collection (Clearwater, FL)	\$4,199,940	\$6,545,669	53.79%	42.21%	6.76%
3	Delta Marketplace (Lansing, MI)	\$6,903,141	\$7,353,141	90%	10%	7.066%
4	DU Student Housing (Denver, CO)	\$2,800,000	\$3,650,000	80%	20%	20%
5	Happy Canyon Marketplace (Denver, CO)	\$3,595,298	\$4,035,298	83.71%	16.29%	9.41%
6	Hickory Corners (Hickory, NC)	\$4,280,888	\$5,180,888	64.59%	35.41%	25.875%
7	Prospect Square (Cincinnati, OH)	\$4,335,079	\$4,890,079	90%	10%	6.387%
8	Windsor Square (Knoxville, TN)	\$5,603,705	\$6,478,705	90%	10%	3.793%
	Totals	\$34,598,051	\$41,313,780			

7. Hagshama is an Israeli private investment firm that solicits investments from individuals. Those investor funds are then pooled and invested in real estate ventures throughout the world, including the United States. Hagshama is presently responsible for the investments of about 28,000 investors. Globally, it has invested over \$5 billion in various projects, including those with the Receivership Estate.

³ In some cases, the companies' records do not appear consistent with respect to Mr. Dragul's equity percentage in the Hagshama Projects and the above estimates are based on the best estimates currently available.

8. Seven of the eight Hagshama Projects are retail shopping centers: (1) Cassinelli Square, (2) Clearwater Collection, (3) Delta Marketplace, (4) Happy Canyon Marketplace, (5) Hickory Corners, (6) Prospect Square, and (7) Windsor Square.

9. The eighth Hagshama project is DU Student Housing. It is a development owned as tenants-in-common by GDA-DU A, LLC (95%), and GDA-DU B, LLC (5%) (the "DU tenants-in-common"). Gary Dragul owns 100% of GDA DU Student Housing Member, LLC, which owns 15.79% of GDA-DU A, LLC. Dragul is also purportedly the sole owner of GDA-DU B, LLC. The DU tenants-in-common acquired three single-family-homes across from the University of Denver intending to develop a 0.43-acre site with a 5-story 60,000 sq. ft. student housing development. Before the Receiver was appointed, a site development plan for the project had been approved and architectural plans and construction drawings had been prepared but not submitted for approval. No construction has started nor has construction financing been obtained for the project. Although Dragul purportedly owns 20% of the DU project, the Receiver has not discovered any evidence that he contributed any cash into the project. Rather, it appears that the other \$850,000 of equity capital in the DU project was provided by six other individuals independent from Dragul and the GDA Entities.

10. All of the purchase money loans on the Hagshama Projects are in default. Two of those loans – Hickory Corners Box and Prospect Square – have fully

matured and the first lienholders on those properties have commenced foreclosure actions. Additionally, before the Receiver was appointed the lenders on Clearwater Collection, Delta Marketplace, Hickory Corners, Prospect Square, and Windsor Square declared loan defaults. Other than the Delta lender, the lenders on these properties began to sweep the rental income from those properties and to apply them to their loans. The Delta rents are being held in a suspense account and are not currently available to the Estate.

11. As indicated above, Hagshama provided approximately 83% of the equity financing for the eight Hagshama Projects. Except for Clearwater, most of the other funding for the Hagshama Projects appears to have been obtained from a small number (approximately 10) of other third-party investors.

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

12. 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 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).

13. 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”).

14. In the Receiver’s judgment, the proposed sale is in the best interest of the Estate and its creditors. The potential economic benefits to the Estate are summarized in the following table:

Receivership property	Estimated sales proceeds if property were to be sold separately	Debt assumed in the proposed transaction	Potential equity claims satisfied	Estimated value of Dragul interest ⁴
Cassinelli Square (Cincinnati, OH)	\$2.9 million	\$800,000	\$495,143	\$4,000
Clearwater Collection (Clearwater, FL)	\$17.1 million	\$13.4 million	\$1,133,371	\$200,000
Delta Marketplace (Lansing, MI)	\$20 million	\$12.4 million	\$797,016	\$500,000
DU Student Housing (Denver, CO)	\$3 million		\$800,942	\$185,000
Happy Canyon Box (Denver, CO)	\$5 million	\$5.6 million	\$285,517	\$0
Hickory Corners (Hickory, NC)	\$13.6 million	\$11.6 million	\$1,718,422	\$240,000
Prospect Square (Cincinnati, OH)	\$7.9 million ⁵	\$10.2 million	\$611,675	\$0
Windsor Square (Knoxville, TN)	\$17 million	\$10.4 million	\$653,000	\$390,000
Total	\$87 million	\$64 million	\$6,495,086	\$1,519,000

15. **Purchase price.** Under the proposed transaction, the Estate would sell Dragul's minority, non-controlling interest in the Hagshama Projects for \$1 million to Odyssey. The estimated value of those interests is approximately \$1,519,000. In the Receiver's opinion, it is unlikely that marketing and selling those interests on the open market would yield a better monetary result for the Estate. And the proposed transaction also resolves potentially expensive and time-consuming litigation with Hagshama over control of, and the Estate's ability to sell, the Project properties.

⁴ The value of Dragul's equity interest is estimated based on applicable operating agreements.

⁵ \$7.9 million is the estimated value as is.

16. **Closing and potential exclusions.** Buyer has 30 days to conduct due diligence. Master Agreement ¶ 4. During the due diligence period, Buyer can terminate the Agreement without penalty, or under paragraph 7 may elect to exclude some of the Hagshama Projects from the purchase. Excluding any Hagshama Project will not however reduce the purchase price. *Id.* ¶ 6. Closing is to occur on the later of the first business day after the due diligence period expires or the fifth business day after the Court approves the Master Agreement. *Id.* ¶ 5.

17. Under the Master Agreement, the Receiver will continue to market the Hagshama Project properties until Buyer closes. *Id.* ¶ 7. If the Receiver executes a letter of intent or sale agreement for any of the Hagshama Projects before Buyer closes the contemplated transaction, the Receiver is to provide notice of that agreement to Buyer and Buyer has 14 days from receiving that notice to elect to exclude that Project from the Master Agreement. *Id.* Failure to exclude the Project during that 14 days constitutes Buyer's definitive election to acquire the Project. *Id.* If Buyer excludes any Project, Hagshama has agreed not to object to the Receiver abandoning the underlying property, and has consented to the Receiver selling the property at a price within a range of estimates previously provided by the Estate's brokers, Marcus & Millichap. *Id.* ¶ 8.

18. **Assumed liabilities.** For any acquired Hagshama Project, Buyer will take subject to all debts associated with that Project, including all mortgages,

mechanics' liens, unpaid taxes, etc. The proposed sale transaction may eliminate over \$65 million in claims against the Estate (most of which are secured).

19. **Investor consents.** The majority of the Hagshama Projects have a limited number of non-Dragul related investors (the "Hagshama Project Investors"). Under the terms of the proposed transaction, informed written consent is to be obtained from each of the Hagshama Project Investors, who will be required to either: (a) elect to retain their membership interest in the Hagshama Projects, admit Buyer as a member and manager, and release any claim they may have against the Estate and as to the Buyer prior to the date of closing relating to that investment, or (b) relinquish their membership interest in exchange for filing a claim against the Estate. Copies of the Disclosure and Information Statement and Consent and Release forms being provided to Hagshama Project Investors are attached as **Exhibit 2**. Obtaining Investor consents is a material part of the Master Agreement. To the extent a Hagshama Project Investor does not timely object to this Motion or return a Consent and Release Form, they should be deemed to have consented to the relief sought in this Motion and the terms of the Master Agreement. Notice of this Motion is being provided to all investors and interested parties as provided in this Court's February 1, 2019, Order Granting the Receiver's Motion to, among other things, Clarify Ongoing Notice Procedure, and upon acceptance by the Court will be posted on the Receiver's website, <http://dragulreceivership.com>. Should Hagshama Project

Investors retain their membership interests, claims against the Estate could potentially be reduced by \$6,495,086 as set forth in the table in paragraph 14.

20. Critically, absent the proposed sale, the Estate is at risk of losing any interest in the Hagshama Projects. Each of the loans on the Projects is in default. Two are in foreclosure. All rental income being generated from the underlying properties is either now being swept or will soon be swept by the lenders. Meanwhile, the Estate is unable to pay the critical expenses for the Hagshama Projects using income generated from other Estate properties. The Estate lacks funds to pay debt service on any of the Hagshama Project properties. Due to the cash position of the Estate, there is a risk the Hagshama Project properties may ultimately be lost to foreclosure eliminating any return to the Estate.

21. Clearwater is the only Hagshama Project that involves a substantial number of smaller investors (the "Clearwater Investors"). According to the Receiver's preliminary cash-in, cash-out analysis, Clearwater Investors may have claims against the Estate for approximately \$1.13 million. If Hagshama Investors opt out of the transaction, they will retain claims against the Estate. If those claims are allowed and ultimately paid, those investors will be required to transfer their equity interests to the Estate. If that occurs, the Receiver, Odyssey, and Hagshama have agreed to negotiate in good faith on a possible amendment to the Master Agreement to address that issue. Alternatively, the Estate would retain the relinquished equity interest.

22. The proposed sale transaction also avoids potential costly litigation with Hagshama concerning the Receiver's authority to sell the Hagshama Projects without Hagshama's consent. Hagshama contends the operating agreements for the Projects require its consent to any sale of the underlying property and has indicated it will not consent to the Receiver selling the properties now. The Hagshama properties are, however, held in tenancies-in-common with Dragul entities now controlled by the Receiver, affording the Receiver equal rights to control the disposition of the property. Litigating these control and liquidation issues will be expensive and time consuming for the Estate, during which time the properties may ultimately be lost to foreclosure or otherwise depreciate. The Master Agreement resolves these issues without litigation with its attendant costs and uncertainties.

WHEREFORE, the Receiver asks the Court to approve the Master Agreement submitted as **Exhibit 1**, to sell the Estate's interest in the Hagshama Projects to Odyssey, and to take all actions and execute all further documents necessary to consummate the transaction.

Dated: February 14, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: /s/ Michael T. Gilbert

Patrick D. Vellone

Michael T. Gilbert

Rachel A. Sternlieb

1600 Stout Street, Suite 1100

Denver, Colorado 80202

(303) 534-4499

E-mail: pvellone@allen-vellone.com

E-mail: mgilbert@allen-vellone.com

E-mail: rsternlieb@allen-vellone.com

ATTORNEYS FOR THE RECEIVER

Attachment to Order - 2018CV33011

CERTIFICATE OF SERVICE

I certify that on February 14, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE'S INTEREST IN HAGSHAMA PROJECTS** 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

***Counsel for Chris Myklebust, Colorado
Securities Commissioner***

Kenneth Rossman, Esq.
Lewis Roca Rothgerber Christie, LLP
1200 17th Street, Suite 3000
Denver, CO 80202
E-mail: krossman@lrrc.com

Counsel for the Hagshama Entities

Ari M. Charlip
Dickinson Wright, PLLC
2600 Big Beaver Rd., Suite 300
Troy, MI 48084
E-mail: ACharlip@dickinson-wright.com

Counsel for Wells Fargo N.A.

Michael J. Baum
Jeffery M. Lippa
Greenberg Traurig, LLP
77 West Wacker Dr., Ste. 3100
Chicago, IL 60601
E-mail: baumm@gtlaw.com
E-mail: lippaj@gtlaw.com

Counsel for AFF II Denver, LLC

Jeffery A. Springer, Esq.
Springer and Steinberg P.C.
1600 Broadway, Suite 1200
Denver, Colorado 80202

***Counsel for Defendants, Gary Dragul, GDA
Real Estate Services, LLC and GDA Real
Estate Management, LLC***

Geoffrey D. Fasel
Shareholder
900 W. 48th Place, Suite 900
Kansas City, MO 64112
E-mail: gfasel@polsinelli.com

Counsel for Odyssey Real Estate Partners

Richard Bolton
Ragsdale Liggett PLLC
2840 Plaza Place, Suite 400
Raleigh, NC 27612
E-mail: rbolton@rl-law.com
E-mail: andy@novacap.com

Counsel for Nova Capital Partners, LLC

Alvin D. Lodish
Morgan L. Swing
Duane Morris LLP
200 S. Biscayne Blvd., Suite 3400
Miami, FL 33131-2318
E-mail: ALodish@duanemorris.com
E-mail: MLSwing@duanemorris.com

Counsel for Rialto Capital Advisers, LLC

David S. Chipman
Dean B. Shaffer
Chipman Glasser, LLC
2000 S. Colorado Blvd.
Tower One, Ste. 7500
Denver, CO 80222
E-mail: dchipman@chipmanglasser.com
E-mail: dshaffer@chipmanglasser.com

Counsel for U.S. Real Estate Credit Holdings III, L.P.

Charles H. Jacobs
Lohf Shaiman Jacobs Hyman & Feiger PC
950 S. Cherry St., Suite 900
Denver, CO 80246-2666
E-mail: cjacobs@lohfsheiman.com

Counsel for Greeley Asset Funding, LLC

Jose Luis Machado
Law Offices of Machado & Herran, P.A.
8500 S.W. 8th Street, Suite 238
Miami, FL 33144
E-mail: jose@machadolaw.com

Counsel for Fortune Capital Partners, Inc.

CERTIFICATION REGARDING ON CREDITORS

A copy of the Motion will also be served by electronic mail in accordance with the Court's Order regarding same 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 Ray
Allen Vellone Wolf Helfrich & Factor P.C.