

DISTRICT COURT, DENVER COUNTY, COLORADO
1437 Bannock Street
Denver, CO 80202
(720) 865-8612

Plaintiff: Chris Myklebust, Securities Commissioner
for the State of Colorado,

v.

Defendants: Gary Dragul, GDA Real Estate Services,
LLC, and GDA Real Estate Management, LLC.

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SECURITIES COMMISSIONER FOR THE STATE OF
COLORADO**

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Case No.: 2018 CV 33011

Courtroom: 424

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**JOINT MOTION OF THE SECURITIES COMMISSIONER AND THE
RECEIVER FOR AN ORDER REQUIRING DRAGUL TO TURNOVER AND
ACCOUNT FOR PROPERTY OF THE ESTATE**

Plaintiff, Chris Myklebust, Securities Commissioner for the State of Colorado, and the Receiver, Harvey Sender (jointly, “Movants”), submit this Joint Motion and ask the Court to enter an Order requiring Dragul to turnover and account for various Estate property.

I. Conferral

The Receiver has conferred with Counsel for Dragul concerning the relief requested in this Motion who advised that Dragul does not consent.

II. Introduction

On August 30, 2018, this Court appointed Harvey Sender as Receiver over Defendants, Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc. pursuant to its “Receivership Order.” Contemporaneously, the Court also issued its Order of Preliminary Injunction (“PI Order”) pursuant to the Securities Commissioner’s authority to obtain injunctive relief against individuals who have or are about to violate the Colorado Securities Act under COLO. REV. STAT. § 11-51-602(1). Both of these Orders required Dragul as well as his agents and employees to retain, turnover and make available to the Receiver all assets of, and all material information about, the Receivership Estate.

As set forth below, Movants request an Order requiring Dragul to immediately turnover and/or account for the following Estate assets that have been withheld, concealed, and/or misappropriated: (1) SSC 02, LLC; (2) \$74,240.46 in income received from vacation rentals by owner (“VRBO Income”) that Dragul concealed from and failed to pay the Estate, and \$34,345.33 for the unauthorized use of Estate property by Dragul and his employees; and (3) Dragul’s personal vehicles. Movants

further request that Dragul be ordered to provide access to his personal residence located at 10 Cherry Lane Drive, Englewood, Colorado 80113 (the “Personal Residence”), so the Receiver can inventory and appraise the personal property located at or in the Residence in anticipation a sale. Finally, Movants request that the Court order that the net proceeds from the sale of Dragul’s Personal Residence be held in escrow pending a complete accounting by the Receiver of the source of funds used to obtain the equity (if any) in the property.

III. Argument

A. The Court should enter an order confirming SSC 02, LLC is property of the Estate, requiring Dragul to turnover \$87,000 in fraudulently obtained loan proceeds, and to provide a complete accounting for SSC 02.

The August 30, 2018, Receivership Order defines the property of the Estate broadly to include:

Dragul . . . [GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, Inc. (“GDAREM”)], and all of their assets, including, but not limited to, all real and personal property, including tangible and intangible assets, . . . (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint, or derived indirectly [sic] or indirectly from investor funds (the “Receivership Property,” and altogether this “Receivership Estate”). Except that the personal residence of Dragul, located at 10 Cherry Vale [sic] Drive,¹ Englewood, Colorado 80113, shall not be considered “Receivership Property” or part of the “Receivership Estate,” *unless* the Receiver determines that an improvement to or increase in equity in such residence is

¹ The address in the Receivership Order is incorrect: “Dragul’s Personal Residence” is instead located at 10 Cherry Lane Drive, Englewood, Colorado 80113.

directly related to the proceeds from the sale of the securities or matters referenced in the Complaint, in which case the improvements or equity shall be considered “Receivership Property” or part of the “Receivership Estate.”

Receivership Order ¶ 9 (emphasis added).

SSC 02, LLC (“SSC 02”) is an entity Dragul incorrectly represented was wholly-owned by his three adult children, Spencer, Samuel and Charli Dragul. SSC 02’s April 22, 2002, operating agreement does not list ownership percentages. In 2002, Dragul signed the operating agreement on behalf of Spencer, Samuel and Charli as their Custodian under the Colorado Uniform Transfers to Minors Act. *See* SSC 02, LLC Operating Agreement, attached as **Exhibit 1**. The Receiver has not discovered any superseding operating agreement for SSC 02 that reflects the Dragul children’s respective percentage ownership.

Contrary to Dragul’s representation, the most recent SSC 02 tax return available to the Receiver (2016) shows that Dragul owns 71.58% of the membership interests in SSC 02, and his children own minority interests: Spencer (9.12%), Samuel (12.33%), and Charli (6.97%). *See* 2016 SSC 02, LLC Tax Return, attached as **Exhibit 2**. Furthermore, bank statements the Receiver discovered show that in 2018, alone, a substantial amount of money flowed into and out of SSC 02 from and to various money market accounts owned by Dragul. *See* 2018 SSC 02, LLC Fortis Private Bank Account Statements, attached as **Exhibit 3**. These money market accounts are the very same accounts into which investor funds were deposited. SSC 02 was therefore funded, at least in part, with money Dragul obtained from investors. The Receiver understands that Dragul’s children have not earned livings sufficient to support

themselves. They provided no consideration for their purported interests in SSC 02, which were simply gifted to them by Dragul, as consistent with several other entities in which Dragul represented to the Receiver that his children held ownership interests and received distributions therefrom. SSC 02 is property of the Estate.

1. SSC 02's assets include three real properties.

SSC 02 owns two residential properties at 2624 Oneida and 2432 Newport Streets in Denver, and a storage unit located at 7152 East Blackhawk Unit D2, Englewood, CO 80112 (the "Blackhawk Storage Unit"). After the Receiver was appointed, Dragul apparently directed the tenants at the Oneida and Newport properties to send their monthly rent payments to a non-Receivership account. Despite several requests, Dragul has not provided an accounting to the Receiver for this rental income. The Receiver is proposing to sell the Estate's interest in the Oneida and Newport properties under the Receiver's May 10, 2019, Motion for Order Authorizing Sale of Estate's Interest in 22 Residential Properties. No objection to that motion has been filed either by Dragul or his children.

2. Dragul misrepresented SSC 02's ownership in order to encumber the Blackhawk Storage Unit.

Contrary to SSC 02's governing documents and tax returns, in December 2018, Dragul represented to the Receiver that SSC 02 was, and since its formation had been, owned exclusively by his children and that Dragul never held any interest in SSC 02. Susan Markusch, Dragul's long-time CFO, presented documents to the Receiver that appeared to confirm Dragul's representation. Dragul and Markusch also provided the Receiver with limited accounting records and represented the Blackhawk Storage Unit had been purchased entirely with funds advanced by

institutional lenders, and had since been funded exclusively using rental income from the Storage Unit.

In reliance on Dragul and Markusch's representations, the Receiver did not object to SSC 02 entering into a loan agreement with Greeley Asset Funding, LLC ("Greeley") pursuant to which SSC 02 borrowed \$65,000 in December 2018 secured by a December 5, 2018, deed of trust on the Blackhawk Storage Unit. Unbeknownst to the Receiver, on or about April 5, 2019, SSC 02 borrowed another \$22,000 from Greeley and agreed to modify the Greeley deed of trust to secure this additional loan. Greeley now has a deed of trust on the Blackhawk Storage Unit to secure this \$87,000. Upon information and belief, Dragul pocketed the entire \$87,000, which he obtained by mortgaging property of the Estate under false pretenses. Later, Dragul contacted the Receiver indicating he wanted to sell the storage unit. The title company handling the transaction asked the Receiver to obtain a Court order authorizing the Estate to abandon any interest it might have in SSC 02. The Receiver refused to do so without conducting further investigation into the entity and its assets. Shortly thereafter the Receiver began combing through documents buried on the GDA server and discovered Dragul and Markusch's representations regarding the ownership and funding of SSC 02 were untruthful and misleading.

The Receiver anticipates entering into a contract to sell the Blackhawk Storage Unit for approximately \$120,000. After paying the Greeley liens, the Receiver estimates the Estate may receive approximately \$30,000 from the sale. Movants therefore ask the Court to enter an Order confirming that SSC 02 is property of the Estate the Receiver may sell subject to further motion and order. Also, because

Dragul has recently changed the locks/access code to the Blackhawk Storage Unit to preclude the Receiver from obtaining access, the Court's order should provide the Receiver with authority to change the locks and preclude Dragul and his agents from accessing the Storage Unit.

The Receivership Order requires Dragul or any person in active participation with him to deliver immediately to the Receiver all Receivership Property and to provide the Receiver with all reasonably requested documents. Receivership Order ¶ 10. Movants therefore also ask the Court to order Dragul to turnover the \$87,000 he received from the loan to SSC 02, and to provide a complete accounting to the Receiver of all income, assets, and liabilities of SSC 02, together with all supporting documents.

B. Dragul should be ordered to reimburse the Estate \$74,240.46 for VRBO income and pay the Estate \$34,345.33 for the unauthorized use of Estate property.

1. Dragul has misappropriated VRBO rental income

Between the Receiver's appointment on August 30, 2018, and March 15, 2019, when Dragul's staff was terminated, Dragul and his team concealed that \$74,240.46 had been collected in rental income from VRBO of the following Estate properties: (1) a single-family house at 41 S. Fairway, Beaver Creek, Colorado; (2) a condominium at 4451 Timber Falls Lane, #1702, Eagle, Colorado; and (3) three condominiums at 6937 E. 6th Street, Scottsdale, Arizona. The VRBO Company records for these three properties are attached as **Exhibit 4**. The table below reflects the Estate income collected by Dragul and concealed from the Receiver, based on records obtained from the VRBO leasing agent:

Deposit Date	Scottsdale	Fairway House	Timber Falls	Total Payments Per Premier Vacation Rental
8/31/2018	\$1,874.84			\$1,874.84
9/30/2018	\$2,455.85	\$654.76		\$3,110.61
10/31/2018	\$4,095.12			\$4,095.12
11/30/2018	\$8,164.66			\$8,164.66
12/31/2018	\$5,070.77		\$229.35	\$5,300.12
1/31/2019	\$8,027.79	\$431.70	\$101.10	\$8,560.59
2/28/2019	\$15,905.83	\$7,367.23	\$1,474.10	\$24,747.16
3/31/2019	\$6,402.08	\$251.99	\$1,733.29	\$8,387.36
Advances		\$1,000.00	\$9,000.00	\$10,000.00
	\$51,996.94	\$9,705.68	\$12,537.84	\$74,240.46

See **Ex. 4**, at pp. 11, 16, 22. Despite repeated demands, Dragul has not turned over any of this misappropriated rental income to the Estate. Dragul has also refused to provide an accounting of all VRBO income he has received since the Receiver was appointed, providing only an incomplete and incorrect accounting of income through December 2018. See **Exhibit 5**. Most importantly, Dragul has not turned over any of the Estate's rental income to the Receiver.

2. Dragul and his employees have used Estate properties without the Receiver's consent.

Dragul and his employees have, without the Receiver's knowledge or authorization, used Estate properties since the Receiver was appointed without paying the fair market rental value therefor, and have refused to recompense the Estate for their use. See **Ex. 4**, at pp. 18 and 24. The table below reflects the reasonable rental value that should be turned over to the Estate for the unauthorized use of these assets by Dragul and his employees:

Rental Date	Property	Name	Days	Average Daily Rent per Month	Rent	Cleaning Fees	Less Commission Saved (25% of Rent)	Amount Due
8/7/2018	Fairway House	Cleaning for Owner Occupancy - Charged after 8/31/2018				\$410.00		\$410.00
9/5/2018	Fairway House	Cleaning for Owner Occupancy - Charged after 8/31/2018				\$250.00		\$250.00
9/18/2018	Fairway House	Cleaning for Owner Occupancy - Charged after 8/31/2018				\$150.00		\$150.00
12/16/2018	Fairway House	Susan Markusch	4	\$2,562.50	\$10,250.00	\$375.00	(\$2,562.50)	\$8,062.50
12/23/2018	Fairway House	Susan Markusch	6	\$2,562.50	\$15,375.00	\$425.00	(\$3,843.75)	\$11,956.25
2/18/2019	Fairway House	Susan Markusch	2	\$1,492.56	\$2,985.12	\$150.00	(\$746.28)	\$2,388.84
3/2/2019	Fairway House	Susan Markusch	2	\$325.97	\$651.93	\$450.00	(\$162.98)	\$938.95
3/8/2019	Fairway House	Susan Markusch	12	\$325.97	\$3,911.58	\$450.00	(\$977.90)	\$3,383.69
3/21/2019	Fairway House	Susan Markusch	12	\$325.97	\$3,911.58	\$450.00	(\$977.90)	\$3,383.69
1/19/2019	Timber Falls	Sarah RTG	3	\$429.17	\$1,287.50	\$150.00	(\$321.88)	\$1,115.63
1/23/2019	Timber Falls	Gary Dragul	1	\$429.17	\$429.17	\$150.00	(\$107.29)	\$471.88
2/8/2019	Timber Falls	Susan Markusch	2	\$429.17	\$858.33	\$150.00	(\$214.58)	\$793.75
3/25/2019	Timber Falls	Gary Dragul	4	\$266.70	\$1,066.80	\$250.00	(\$266.70)	\$1,050.10
3/29/2019	Timber Falls	Gary Dragul	3	\$266.70	\$800.10	\$150.00	(\$200.03)	\$750.08
			<u>51</u>		<u>\$41,527.11</u>	<u>\$3,960.00</u>	<u>(\$10,381.78)</u>	<u>\$35,105.33</u>

See **Ex. 4**, at pp. 18 and 24. Movants hereby request that Dragul be ordered to reimburse the Estate a total of \$108,585.79 for the rental income and unauthorized use of Estate property.²

C. The Court should order Dragul to turnover his personal vehicles to the Receiver.

Movants further request that Dragul be ordered to turnover to the Estate the following personal vehicles:

² If the Estate is not paid the reasonable rental value for the use of the Estate's properties, the Receiver reserves the right to sue the users to recover that value.

Year	Vehicle	Title Name	Amount Paid from GDA Real Estate Services
2018	Toyota Tundra	Gary Dragul	
2017	Chevy Tahoe	Gary Dragul	
2002	RV	Gary Dragul	
1997	Land Rover	Gary Dragul	
	Honda ATV	Gary Dragul	
2016	Land Rover	Shelly Dragul	\$15,482.25
2012	Land Rover	Shelly Dragul	\$54,345.33

The five vehicles titled in Dragul's name are certainly property of the Estate that should be turned over, together with all certificates of title and documents concerning potential liens so that the Receiver can sell them for the benefit of the Estate's creditors. As to the two vehicles purportedly owned by Shelly Dragul (Dragul's wife), both were purchased with funds that GDA Real Estate Services, LLC obtained from defrauded investors and are therefore also assets of the Estate that should be turned over.

Movants also request that Dragul be ordered to provide an accounting of the following vehicles, which at one time were owned or leased by the Dragul family and may be Estate property:

Year	Vehicle	Title Name
2018	Dodge Ram	Shelly Dragul
2013	Land Rover	Shelly Dragul
2010	Mercedes	Gary Dragul
2007	Chevy	Gary Dragul
2007	Chevy	Shelly Dragul
2006	Mini Cooper	MC Liquor
2000	Range Rover	Shelly Dragul
1997	Land Rover	Gary Dragul

The accounting should state whether the cars are still owned by Dragul or his relatives. If any vehicles were sold, Movants request that Dragul be ordered to

produce *all* documents reflecting (a) when the vehicle was sold and (b) the disposition of all sales proceeds. As to vehicles that may still be owned by Dragul or his family members, the accounting should include all documents reflecting (a) the purchase of each; (b) all current loan information (*i.e.*, promissory notes, loan documents, insurance documents, holders of the certificates of title, *etc.*); and (c) all other supporting documents.

D. The Court should order Dragul to provide the Receiver access to his Personal Residence so the Receiver can inventory and sell the personal property located at the house.

Recently, Dragul listed his Personal Residence for sale. The marketing brochure is attached as **Exhibit 6**. The brochure shows that personal property located at the Residence includes, but is not limited to, a grand piano (which Dragul estimated is worth more than \$24,000), and what appears to be high-end exercise equipment, among other valuable furnishings. Dragul has refused to provide access to the Receiver to inventory the personal property, contending the Receivership Order excludes all personal property located in the house from the Estate. It does not.

The Receivership Order provides that all of Dragul's personal property is property of the Estate. Receivership Order ¶ 9. The Order excludes from the Estate only Dragul's Personal Residence, subject to the exception discussed below. Although the Receivership Order was negotiated between the Commissioner and Dragul's legal team, nothing in the Order purports to exclude *any* personal property from the scope of the Estate. Indeed, had the Order done so, Dragul could have gathered all personal property, irrespective of the source of the funds used to acquire it, from any location and stored it at the house to insulate it from creditors and the Receiver.

Cataloguing the personal property will allow the Receiver to ascertain its value. *See SEC v. Aquacell Batteries, Inc.*, Case No. 6:07-CV-608-Orl-22DAB, 2008 WL 4661824, at *1 (M.D. Fla. Sept. 25, 2008) (authorizing Receiver to take possession of and expand the constructive trust to personal furnishings in home). The personal property is part of the Estate and was purchased with money obtained from investors. As with all other property of the Estate, any personal property from Dragul's Residence the Receiver wishes to sell for more than \$10,000 will be sold only pursuant to separate motion and order from this Court. Movants therefore ask the Court to enter an order requiring Dragul to allow the Receiver and his agents unrestricted access to his Personal Residence so the Receiver can inventory and sell the personal property at the house.

E. Any net sales proceeds from Dragul's Personal Residence should be held in escrow pending a complete accounting by the Receiver.

Presently, Dragul is attempting to sell his Personal Residence and take, for his own use to the exclusion of his creditors, equity from that property that may rightfully belong to the Receivership Estate. The listing price for the 12,286 square-foot home was originally \$6.95 million, and has since been reduced to \$5.99 million. *See* MLS Property Listing attached as **Exhibit 6**. As reflected in the MLS listing, the house includes an inside basketball court, movie theatre, personal gym, swimming pool, and hot tub. It is unclear how much if any equity there is in the Residence.

Movants have determined that Dragul's Personal Residence was purchased with funds obtained from GDA Real Estate Services, LLC and with funds obtained from defrauded investors. The Commissioner's preliminary accounting records demonstrate that from January 2011 to May 2016, Dragul paid at least \$1,494,520.27

in mortgage payments on his Personal Residence using GDA funds. A copy of a spreadsheet detailing these payments is attached as **Exhibit 7**. The Receiver has determined that investor funds were used to make some of these mortgage payments.

The Commissioner has also determined that from December 2010 to May 2016, Dragul paid at least \$983,506.38 for improvements on his Personal Residence. *See Exhibit 8*. Some or all of these payments were made with GDA funds obtained from Dragul's defrauded investors.

Pursuant to the Receivership Order, to the extent an improvement to or increase in equity in the Personal Residence is attributable to the proceeds from the sale of the securities or matters referred to in the Complaint, the improvements or equity is part of the Estate. *See Receivership Order*, at ¶ 9. Movants therefore request that any net sale proceeds from the sale of the Personal Residence be held in escrow pending a complete accounting by the Receiver as to the source of funds used to buy, maintain, and improve the Residence, and pending further Order from this Court.

IV. Conclusion

WHEREFORE, Movants ask the Court to enter an Order: (1)(a) declaring that SSC 02, LLC is property of the Estate, (b) requiring Dragul to repay the Estate the \$87,000 he obtained by mortgaging SSC 02's assets, (c) requiring Dragul to provide the Receiver with a complete and accurate accounting of all SSC 02 income, assets, and liabilities, and (d) granting the Receiver authority to change the locks on the Blackhawk Storage Unit and precluding Dragul and his agents from accessing the Storage Unit; (2) requiring Dragul to reimburse the Estate \$74,240.46 for VRBO income he concealed from and failed to pay the Estate, and an additional \$34,345.33

for the unauthorized use of Estate property; (3) requiring Dragul to turnover the personal vehicles identified in the first table on page 9 of this Motion, and provide the Receiver a complete and accurate accounting of the vehicles in the second table on page 9; (4) requiring Dragul to provide the Receiver with unrestricted access to his Personal Residence in order to inventory and sell the personal property located at the house; and (5) requiring that the net proceeds from the sale of Dragul's Personal Residence be held in escrow pending a complete accounting by the Receiver of funds used to obtain the equity (if any) in the property and pending further Order of this Court.

Dated: June 4, 2019.

Respectfully submitted:

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*Attorneys for Harvey Sender, Court Appointed
Receiver*

CERTIFICATE OF SERVICE

I certify that on June 4, 2019, I served a true and correct copy of the foregoing **JOINT MOTION BY THE SECURITIES COMMISSIONER AND THE RECEIVER FOR AN ORDER REQUIRING DRAGUL TO TURNOVER AND ACCOUNT FOR PROPERTY OF THE ESTATE** via CCE to the following:

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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/ Salowa Khan _____
Allen Vellone Wolf Helfrich & Factor P.C.