


**GRANTED BY COURT**

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| <p>DISTRICT COURT, DENVER COUNTY, STATE<br/>OF COLORADO<br/>Denver District Court<br/>1437 Bannock St.<br/>Denver, CO 80202<br/>720.865.8612</p>   | <p>12/17/2019<br/>DATE FILED: December 17, 2019 8:40 AM<br/>CASE NUMBER: 2018CV33011<br/><br/>Martin Foster Egelhoff<br/>Judge</p> |
| <p><b>Plaintiff:</b> David S. Cheval, Acting Securities<br/>Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> Gary Dragul; GDA Real Estate<br/>Services, LLC; and GDA Real Estate Management,<br/>LLC</p>   | <p>▲ COURT USE ONLY ▲</p>   |
| <p>Attorneys for Receiver:<br/>Patrick D. Vellone, #15284<br/>Michael T. Gilbert, #15009<br/>Rachel A. Sternlieb, #51404<br/>ALLEN VELLONE WOLF HELFRICH &amp; FACTOR P.C.<br/>1600 Stout St., Suite 1100<br/>Denver, Colorado 80202<br/>Phone Number: (303) 534-4499<br/>E-mail: pvellone@allen-vellone.com<br/>E-mail: mgilbert@allen-vellone.com<br/>E-mail: rsternlieb@allen-vellone.com</p> | <p>Case Number: 2018CV33011<br/>Division/Courtroom: 424</p>   |
| <p><b>RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH<br/>DRAGUL CONCERNING TURNOVER MOTION</b></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 an Agreement he has reached with Gary and Shelly Dragul that

resolves the issues raised in the Joint Motion for an Order Requiring Dragul to Turnover and Account for Property of the Estate (“Turnover Motion”) filed June 4, 2019, by the Commissioner and the Receiver. A copy of the “Agreement” is submitted as **Exhibit 1**.

## **I. Background**

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

2. On August 29, 2018, the Commissioner, 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 receiver for Dragul and the GDA Entities and their respective properties and assets, as well as their interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. On June 4, 2019, the Securities Commissioner and the Receiver filed a Joint Motion for an Order Requiring Dragul to Turnover and Account for Property of the Estate (“Turnover Motion”). A hearing on the Turnover Motion was scheduled for November 21, 2019. Prior to the hearing date, Gary and Shelly Dragul and the

Receiver, with the Commissioner's approval, entered into the Agreement to resolve the issues raised in the Turnover Motion.

**II. The Agreement is in the best interests of the Estate and its creditors.**

5. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver's agreement with an opposing party. In analogous bankruptcy contexts courts consider whether "the agreement is fair and equitable and in the best interests of the estate." In considering whether to approve a settlement, bankruptcy courts consider four primary factors: "the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views." *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that deference should be given to the business judgment of the Receiver. *See, e.g., In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

6. Considering these factors, the Court should approve the Agreement. The issues raised in the Turnover Motion that had not been mooted by subsequent events were: (a) ownership of SSC 02, LLC; (b) Dragul's failure to turnover VRBO income or to pay the Estate for the use of Estate property without the Receiver's consent;

(c) turnover of various vehicles; and (d) turnover of personal property.<sup>1</sup> The proposed Agreement resolves those issues and avoids the additional expense and uncertainty of litigation.

7. In summary, the Agreement resolves these issues as follows:<sup>2</sup>

A. The Draguls agree SSC 02, LLC and all its assets are property of the Estate to be turned over to the Receiver. This includes the Blackhawk Storage Unit which appears to have \$20,000 or more in equity;

B. Mr. Dragul stipulates to the entry of judgment against him for \$120,000;

C. The disputed vehicles are property of the Estate. Dragul contends the vehicles are encumbered and have little or no equity. The vehicles will be evaluated by the Receiver, and to the extent any vehicle has more than \$1,000 in equity, it will either be turned over to the Receiver for sale or Dragul will pay the Estate the amount of any equity and retain the vehicle; and

D. The Draguls will turnover items of jewelry and various Sports Memorabilia to the Receiver for sale.

8. The Receiver believes the Agreement is in the best interest of the Estate and its creditors. It resolves the issues raised in the Turnover Motion without further litigation or risk and achieves a result that is close to what the Receiver was likely to obtain by litigating the Turnover Motion and prevailing.

9. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below,

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<sup>1</sup> Issues concerning equity in Dragul's personal residence had been mooted by its foreclosure.

<sup>2</sup> The Agreement should be reviewed for a complete description of the settlement terms.

this Motion is being served on all parties who have appeared in this case and on all currently known creditors of the Estate.

WHEREFORE, the Receiver respectfully requests the entry of an Order approving the Dragul Agreement.

Dated: December 5, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR  
P.C.



By: /s/ Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on December 5, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH DRAGUL CONCERNING TURNOVER MOTION** via CCE to the following:

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Dragul, GDA Real Estate Services,  
LLC and GDA Real Estate  
Management, LLC*

A copy of the Motion was also served by electronic mail and/or U.S. Mail first-class, postage-prepaid on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

  
/s/ Teresa Silcox