

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 (303) 606-2429</p>	
<p>Plaintiff: HARVEY SENDER, as Receiver for Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC</p> <p>v.</p> <p>Defendants: GARY J. DRAGUL, an individual; BENJAMIN KAHN, an individual; THE CONUNDRUM GROUP, LLP, a Colorado limited liability company; SUSAN MARKUSCH, an individual; ALAN C. FOX, an individual; ACF PROPERTY MANAGEMENT, INC.; a California corporation, MARLIN S. HERSHEY, an individual; and PERFORMANCE HOLDINGS, INC., a Florida corporation; JOHN AND JANE DOES 1 – 10; and XYZ CORPORATIONS 1 – 10.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: Patrick D. Vellone, #15284 Rachel A. Sternlieb, #51404 Michael T. Gilbert, #15009 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout Street, Suite 1900 Denver, Colorado 80202 Phone (303) 534-4499 pvellone@allen-vellone.com rsternlieb@allen-vellone.com mgilbert@allen-vellone.com</p>	<p>Case Number: 2020CV30255</p> <p>Division/Courtroom: 414</p>
<p style="text-align: center;">RECEIVER’S MOTION TO DISMISS THE CONUNDRUM GROUP, LLP’S COUNTERCLAIMS</p>	

Harvey Sender, receiver for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDA RES”), GDA Real Estate Management, LLC, and related

entities (collectively, “Dragul and the GDA Entities”), pursuant to C.R.C.P. 12(b)(1) & (5), hereby moves to dismiss the four counterclaims asserted against the Receivership Estate by The Conundrum Group, LLP (the “CG Firm”).

Certificate of conferral per C.R.C.P. 121, § 1-15(8)

Counsel for the Receiver has conferred with counsel for the CG Firm which opposes the requested relief.

I. Introduction

The CG Firm is a law firm that performed legal work for Dragul and the GDA Entities beginning in at least September 2012.¹ Counterclaims and Jury Demand of the Conundrum Group, LLP (“Counterclaims”) ¶ 12. It asserts four Counterclaims against the Receivership Estate: (1) breach of contract; (2) account stated; (3) quantum meruit/unjust enrichment; and (4) accounting. The first three seek to recover \$735,588.81 for unpaid legal fees, \$382,149.13 for work performed for Dragul and the GDA Entities before the Receiver was appointed, and \$353,439.48 after appointment. Counterclaims ¶¶ 27, 185, 187. The fourth seeks an “accounting” of payments the CG Firm received from Dragul and the GDA Entities *before the Receiver* was appointed, purportedly so the CG Firm can “defend against the Receiver’s claims” in this case. Counterclaims ¶ 412.

¹ Since 2002, Benjamin Kahn, the CG Firm’s principal, represented GDA RES and its affiliates while working at the Brownstein Hyatt Farber Schreck law firm. See The CG Firm’s Equitable Claims Application at 2 (submitted as **Exhibit 1**).

This Court lacks subject matter jurisdiction over the CG Firm's first three Counterclaims, which the CG Firm expressly agreed not to pursue outside the Receivership case. The fourth Counterclaim is a premature discovery request and not an independent claim for relief. The Counterclaims should therefore be dismissed.

II. This Court lacks subject matter jurisdiction over the first three Counterclaims, and the fourth fails to state a claim for relief.

A. The Receivership Court has exclusive jurisdiction to determine claims.

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the "Commissioner"), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities, *Cheval v. Dragul, et al.*, Case No. 2018CV33011 (the "Receivership Action").

2. On August 30, 2018, the Receivership 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, thereby creating the "Receivership Estate" or the "Estate." Receivership Order at 2, ¶ 5 (attached as **Exhibit 2**).

3. The Receivership Order required the Receiver to establish a procedure for creditors to assert claims against the Estate, for resolving disputes regarding those claims, and for distributing the assets of the Estate. Receivership Order at 12, ¶ 13(u). On November 13, 2018, the Receivership Court entered its Order Granting

the Receiver's Motion to Establish Claims Administration Procedure and to Set Claims Bar Date. **Exhibit 3.**

4. The Receivership Order makes the Receivership Court the exclusive forum for determining those claims:

Any parties holding claims against Dragul, GDARES and GDAREM or the Receivership Estate shall not be entitled to participate as creditors in the distribution of recoveries from the Receiver's administration of the Receivership Estate and collection and liquidation of the assets thereof, unless such parties: (I) agree not to file or prosecute independent claims such parties may have (a) on insurance policies and surety bonds issued in connection with Dragul, GDARES and GDAREM operations, or (b) against Dragul, GDARES and GDAREM or any of their Representatives, and (II) promptly dismiss any lawsuits currently pending in connection therewith.

Ex. 1, at 14, ¶ 16.

5. The Receivership Order also determines the priority for paying claims against the Estate:

(a) First, to payment of costs and expenses of the Receivership Estate, and including the costs and expenses of preserving and liquidating the Receivership Property, taxes incurred from the appointment of the Receiver through the conclusion of the Receivership Proceeding and discharge of the Receiver, and to compensation due the Receiver and any employees, consultants, or professionals retained by the Receiver or employed by the Receiver to operate GDARES or GDAREM;

(b) Second, to the payment of any outstanding Receiver's Certificates;

(c) Third, to creditors holding obligations secured by the Receivership Property, in the order of their priority of record;

(d) Fourth, to the payment of any unsecured tax obligations determined to be due for periods prior to the entry of this Order, pursuant to the tax filing obligations imposed on the Receiver;

(e) Fifth, to the payment of unsecured creditors determined to hold legitimate claims against Dragul, GDARES and GDAREM pursuant to the claims administration procedure adopted by the Receiver, in their legal order of priority; and

(f) Sixth, to the preferred and common partners, members, or other equity interest holders of Dragul, GDARES and GDAREM, as their rights are defined in their governing documents, with the exception of any rights or interests held or owned by or for the benefit of Dragul, GDARES or GDAREM, or any insiders or related parties, with all such rights or interests to be determined by the Court.

Id., at 16-17, ¶ 22.

6. The Receivership Order authorizes the Receiver to hire and pay professionals necessary to administer the Estate, *id.* at 9, ¶ 13(l), and finally, it enjoins all actions in equity or law against the Receiver or the Estate absent leave from the Receivership Court. *Id.* at 18, ¶ 26. Bringing the Counterclaims here violates multiple provisions of the Order, as well as Colorado law, which requires that any claims brought against the Receiver or the Receivership Estate must be brought before the Receivership Court. *See, e.g., Francis v. Camel Pt. Ranch, Inc.*, 2019 COA 108M, ¶7 (citing *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369,

373 (D. Colo. 1995)); *Aronoff v. Pioneer Mut. Compensation Co.*, 304 P.2d 1083, 1091 (Colo. 1956).

B. The Counterclaims duplicate claims the CG Firm has filed with the Estate.

7. Pursuant to the claims process established by the Receivership Court, on January 30, 2019, the CG Firm filed a \$385,015.32 claim with the Estate to recover for legal services performed for Dragul and the GDA Entities before the Receiver was appointed.² **Exhibit 4.** In its initial claim, the CG Firm argued it “should be treated as an unsecured creditor with a legitimate claim and paid before any unsecured creditors who consciously absorbed investment risk *and* any preferred and common partners, members or other equity interest holders of those who are subject to the Receivership Estate.” **Exhibit 2**, at 7 (*italics in original*).

8. The CG Firm’s initial claim did “not address or encompass services rendered by the firm on or after September 1, 2018 pursuant to Paragraphs 13(l) and 22(a) of the Stipulated Receivership Order or otherwise.” *Id.* Paragraph 13(l) of the Receivership Order authorizes the Receiver to hire professionals, and paragraph 22(a) gives these administrative expenses first priority.

9. On March 12, 2019, the CG Firm submitted its supplemental claim to the Estate seeking \$353,439.48 for legal fees it allegedly incurred representing

² This is \$2,866.19 more than the amount sought in the Counterclaims for the same pre- Receivership legal services.

Dragul and the GDA Entities from September 1, 2018, through February 28, 2019.

Counterclaims Ex. J & submitted as **Exhibit 5**.

10. In both its claims, the CG Firm certified under oath

that it has dismissed any other pending suits or proceedings it has commenced against Dragul, the Dragul Entities, or the Receivership Estate and *that it will not file (or re-file) any suit or proceeding in another forum without the Receiver's permission or leave of this Court.*

Exhibits 4 & 5, at 2. Notwithstanding these certifications, the CG Firm has not obtained the Receiver's or the Receivership Court's permission to pursue its Counterclaims in this case, nor has it filed a motion in the Receivership Court seeking allowance and payment of its post-appointment fees as an administrative expense.

C. The Receivership Court has exclusive jurisdiction over the Counterclaims.

11. It is black-letter law that the Receivership Court has exclusive jurisdiction over the assets and administration of the Receivership Estate. *See, e.g. Eller*, 929 F. Supp. at 371 & n. 2 (citing cases supporting receivership court's exclusive jurisdiction); 65 AM. JUR. 2D RECEIVERS § 126 (2d ed. Feb. 2020 update) (court appointing receiver has exclusive jurisdiction over property of the estate). Upon appointment of a receiver, all property in the possession of the entities placed into receivership passes into the custody of the receivership court and becomes subject to its authority and control. *Id.* at 372. The exclusive jurisdiction of the Receivership Court includes determining and paying claims. *See Eller Indus.* at 372.

12. The CG Firm's first three Counterclaims seek to recover legal fees allegedly owed by the Estate. These are unsecured claims which the CG Firm has already filed in the Receivership Action. They are brought again here in a backdoor attempt to obtain priority over other unsecured Estate creditors contrary to the distribution scheme established by the Receivership Order. And, although the CG Firm seeks to recover \$353,439.48 in legal fees it incurred in the six months from September 1, 2018, through February 28, 2019, nowhere in the Counterclaims' 418 paragraphs is there an allegation the Receiver hired the Firm to represent him or the Estate or agreed to pay those fees.³ If the CG Firm seeks to recover these fees as an administrative expense, the exclusive forum for doing so is the Receivership Court.

13. Because the Receivership Court has exclusive jurisdiction over the CG Firm's fee claims, this Court lacks subject matter jurisdiction to hear them and they must be dismissed. *See, e.g. Kobobel v. State Dept. of Nat. Res.*, 215 P.3d 1218, 1221 (Colo. App. 2009) (district court lacked subject matter jurisdiction to hear complaint within the exclusive jurisdiction of the water court).

14. The CG Firm is also judicially estopped from asserting these claims here. Judicial estoppel precludes a party from taking a position in a case that is totally inconsistent with a position it successfully took in an earlier, related proceeding in an intentional effort to mislead the court. *Arko v. People*, 183 P.3d 555, 560 (Colo.

³ During that time, the CG Firm represented Dragul in both the Commissioner's enforcement action and the State of Colorado's criminal proceedings, fees for which it now seeks to recover from the Receivership Estate.

2008). Here, to obtain the Estate's consideration of its claims, the CG Firm swore under oath it would not file (or re-file) any suit or proceeding in another forum without the Receiver's permission or leave of this Court. That position is totally inconsistent with reasserting the Counterclaims here.

15. The CG Firm's fourth Counterclaim seeks an "accounting from the Receiver of who paid the CG Firm and how GDA RES treated any such payments internally" Counterclaims ¶ 412. An accounting is a form of relief, not a separate claim upon which relief can be granted. *E.g., Warner v. Atkinson Freight Lines Corp.*, No. 04-123-P-S, 2005 WL 1926641, at *10 (D. Maine Aug. 11, 2005). The claim seeks discovery the CG Firm purportedly needs to defend against the Receiver's claims here, *including who paid it*. Counterclaims ¶ 412. Plainly the Firm already knows who paid it what and when. And because any additional relevant information can be obtained in discovery, the accounting claim should also be dismissed. *See, e.g., Lovett v. HSBC Mortg. Servs., Inc.*, Civ. A. No. 3:13-cv-3593-O, 2014 WL 547031, at *6 (N.D. Tex. Feb. 11, 2014) (dismissing accounting claim under FED. R. CIV. P. 12(b)(6) when information could be obtained in discovery).

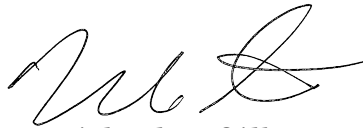
16. Finally, the Counterclaims are enjoined by the Receivership Order, and are not compulsory because when this action was filed, they had already been filed and remained pending in the Receivership Action. See C.R.C.P. 13(a)(1).

III. Conclusion

The Counterclaims should be dismissed because this Court lacks subject matter jurisdiction over the first three claims in which the CG Firm seeks to obtain a priority distribution from the Receivership Estate for pre- and post-appointment legal fees, because the claim for an accounting fails to state an independent claim for relief, and because all of the claims are enjoined by the Receivership Order.

Dated: April 7, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.



By: s/ Michael T. Gilbert

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2020, a true and correct copy of the foregoing **RECEIVER'S MOTION TO DISMISS THE CONUNDRUM GROUP, LLP'S COUNTERCLAIMS** was filed and served via the Colorado Courts E-Filing system to the following:

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EXHIBIT LIST
**To Receiver's Motion to Dismiss the Conundrum Group, LLP's
Counterclaims**

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
1.	The Conundrum Group LLP's Equitable Claims Application dated January 30, 2019
2.	Receivership Order dated August 30, 2018
3.	Order Granting the Receiver Motion to Establish Claims Administration Procedure and to Set Claims Bar Date dated November 13, 2018
4.	The Conundrum Group LLP's Claim Form dated January 30, 2019
5.	The Conundrum Group LLP's Claim Form dated March 13, 2019



The Conundrum Group LLP
Attorneys at Law

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January 30, 2019

Via email to: Harvey Sender, Receiver:
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RE: The Conundrum Group, LLP Equitable Claims Application (1/29/19);

Gerald Rome v. Gary Dragul, GDA Real Estate Services, LLC and GDA Real Estate Management, LLC [sic], Denver County District Court, Case No. 2018C33011 (the “State Civil Action”);

Stipulated Order Appointing Receiver (8/30/18) (the “Receivership Order”) and Receiver’s Motion to Establish Claims Administration Procedure and to Set Claims Bar Date (10/24/18) (the “Equitable Claims Motion”).

Dear Harvey:

Attached please find the firm's Equitable Claims Application in the State Civil Action pursuant to the Receivership Order and the Equitable Claims Motion. (Ex. A, Conundrum Group Equitable Claims Applications (1/29/19).)

September 1, 2012 Fee Agreement

Mr. Kahn left the Brownstein firm effective August 31, 2012. He previously had represented GDA Real Estate Services ("GDA RES") and its affiliates for over a decade on litigation and risk management matters.

This firm therefore entered into a written fee agreement with GDA RES on or about September 4, 2012 that was effective September 1, 2012. (Ex. B, GDA Fee Agreement (9/1/12); Ex. C1-4, Retainer Correspondence (9/4/12).) The fee agreement applies to the services rendered in the firm's Equitable Claims Application.

The fee agreement outlines contractual terms for the provision and payment of legal services. In relevant part, the fee agreement provides that hourly rates usually increase on an annual basis and that the firm is entitled to 18% interest on any overdue amounts. (Ex. B, GDA Fee Agreement (9/1/12).) The rates charged by the firm initially were and currently remain less than Mr. Kahn's hourly rate at Brownstein of \$465/hr as of August 31, 2012.

The fee agreement also references a retainer paid in trust. (Id.) There was no remaining trust account balance as of September 1, 2018, however, and the firm did not ask GDA to replenish the trust account thereafter.

August 30, 2018 Accounts Receivable Balance and Related Interest

The firm regularly provides its clients with Accounts Receivable Reports, and contemporaneously provided GDA RES with an Accounts Receivable update as of the end of August. (Ex. D, AR Report (8/31/18).) The applicable Accounts Receivable Report notes an account balance with the firm at the end of August in the amount of \$382,149.13. (Id.)

For the most part, the Accounts Receivable Report through August reflects that GDA was current on its obligations to the firm through the onset of the State criminal action in April of 2018. The one exception was a trailing bill in the amount of \$19,543.15 for a trial that occurred in January of 2018 on the Vineyard matter. (Id.)

The firm has chosen to forego any claim to interest that accrued on the receivables that existed prior to September 1, 2018 or to compounding interest, to simplify the claim calculations and avoid nickel and diming the Receivership Estate. Based on the remaining interest entitlement outlined in the fee agreement, the firm still is entitled to \$2,866.19 in addition to the Accounts Receivable balance for interest that accrued between September 1, 2018 and February 1, 2019. (Ex. B, GDA Fee Agreement (9/1/12).)

Given the Accounts Receivable balance at the end of August and the amount of accrued interest through February 1, 2019, the firm has submitted an Equitable Claims Application in the amount of \$385,015.32. (Ex. A, Conundrum Group Equitable Claims Applications (1/29/19).)

Substantive Work Performed

The Accounts Receivable Report for GDA at the end of August reflects that the firm worked on and billed for twenty (20) matters. (Ex. D, AR Report (8/31/18).) Of those twenty matters, eleven (11) involved active litigation or claims (including the receivership transition) and the other nine (9) involved potential lending issues. (*Id.*) This is a fair indicator of the type of work performed by the firm for GDA prior to September 1, 2018.

Notably, GDA used the Brownstein group and other law firms prior to August 30, 2018 for any business formation, real estate transaction or securities advisement needs. This firm had nothing to do with conceptualizing or conforming the 2013 Promissory Notes or the Plaza Mall Georgia SPE offering or property disposition. GDA has never used this firm for such work and the firm does not otherwise practice as transactional or securities counsel. Likewise, Mr. Kahn never performed such work for GDA or any other clients when he was an equity partner with Brownstein.

The substance of the work performed by the firm is well documented in detailed billing records. (Ex. E1-E38, Applicable Billing Records.) The firm took care to bill by matter for client accounting purposes. (*Id.*) The work performed by the firm was necessary, reasonable and added value under any measure. GDA and its affiliates were obligated to have defense counsel in active litigation as corporate entities, and had fiduciary duties to member investors with respect to open lending obligations. The firm's efforts on behalf of GDA were defensive and risk-management oriented during this timeframe, and were both necessary and advisable for the preservation and protection of ongoing business operations and Receivership Property.

The matter balances reflected on the Accounts Receivable Report as of the end of August for the most part are modest and proportionate both on their face and based on the matter billing records. For example, the firm's work on matter #373 resulted in the voluntary dismissal of a Colorado Real Estate Commission licensing complaint. (*Compare* Ex. F1 (CREC Complaint (6/6/18) with Ex. F2 (CREC No Further Action Decision (8/29/18).)

There are a few line items in the Accounts Receivable Report that deserve greater explanation, given the size of the involved matter balances. In particular, the six largest matter balances – *i.e.*, matter numbers 151 (Vineyard Promissory Notes), 354 (Hershey DOJ Investigation), 361 (State Securities Note Enforcement), 370 (MC Liquor Incredible Lease), 390 (State Securities PMG Enforcement), and 393 (Receivership Transition) – together amount to \$363,824.01 or 95.21% of the August 31, 2018 Accounts Receivable balance.

With respect to the Vineyard Promissory Notes matter (#151), Mr. Kahn successfully managed the defense of a series of 2008 Promissory Note breach claims where the Plaintiffs sought \$350,000.00 plus significant interest. (Ex. G1, Proposed Trial Management Order (11/6/17).) The three named Defendants in the litigation are all subject to the Receivership Estate, *i.e.*, GDA RES, GDA Real Estate Management, Inc. ("GDA REM"), and Mr. Dragul. (*Id.*) GDA RES issued the Notes and either GDA REM or Mr. Dragul guaranteed the Notes. (*Id.*)

Defense efforts in the Vineyard matter resulted in an Order dated November 27, 2017 that was adverse to the Note claimants and forced a trial on the merits. (Ex. G2, Order re Plaintiffs' MSJ

(11/27/17).) On the first day of trial, the Plaintiffs settled their claims. (Ex. G3, Minute Order re Settlement (12/4/17).) The Parties then entered into a Settlement Agreement on January 2, 2018 in which the Plaintiffs compromised their claims for \$315,000.00 or 90% of the Note values excluding interest and without accounting for the net present value of staggered payments. (Ex. G4, Settlement Agreement (1/2/18).) The Court subsequently dismissed the case on January 10, 2018. (Ex. G5, Order Granting Stipulated Motion to Dismiss (1/10/18).)

On the MC Liquor matter involving the Lease for Incredibles, the named Defendants were MC Liquor 02 LLC d/b/a Incredible Wine & Spirits and any other property occupants. (Ex. H1, FED Complaint (6/15/18).) MC Liquor 02 LLC falls within the definition of the Receivership Estate.

Mr. Kahn arranged for local defense counsel, elongated the Plaintiff's possession timeline, and took steps to protect the Defendant's inventory and otherwise defend enforcement efforts on collectability and/or bankruptcy grounds. (E.g., Ex. H2, Landlord Notice Ltr. (8/1/18).) Shortly thereafter, the Receiver took control and the Plaintiff compromised or abandoned a paper Judgment on possession in the amount of \$228,034.54.

Regarding the Department of Justice investigation into GDA finder Marlin Hershey (#354), Mr. Kahn properly managed the response to a United States Attorney Subpoena in the Western District of North Carolina. (Ex. I1, Subpoena (2/14/18).) The Subpoena was directed to GDA RES and Mr. Dragul, who are both within the Receivership Estate. (Id.)

Mr. Kahn provided precise response direction by Memorandum dated March 27, 2018 and thereafter to help ensure the Respondents' compliance with the Subpoena in the Hershey DOJ matter. (Ex. I2, Memorandum (3/27/18).) The Brownstein firm actually collected, reviewed and produced the responsive documents. (Id.) At this time, the United States Attorney has not asked the Respondents to supplement their production and has not interviewed Mr. Dragul as a witness or otherwise compelled his testimony.

On the State Securities Note Enforcement matter (#361), Mr. Kahn completed due diligence and developed defenses to the pending State action regarding 2013 Promissory Notes issued by GDA RES and guaranteed by either GDA REM or Mr. Dragul (the "State Note Action"). Mr. Dragul is the named Defendant in the State Note Action, and GDA RES, GDA REM and Mr. Dragul are all within the defined Receivership Estate.

Working nearly full time on the matter from the State Note Action filing through the filing of the State Civil Action, Mr. Kahn completed more than seventy-three (73) projects related to due diligence and defense needs for the State Note Action between April 16, 2018 and August 10, 2018. (Ex. J1, Inventory of AC Work Product.) Each project resulted in demonstrable work product critical to any due diligence and defense responses to the State Note Action. (Id.) In addition, Mr. Kahn personally presented the defense strategy to the State prosecution team on July 17, 2018 and presented a resolution proposal to a larger State prosecution group on August 21, 2018. (Ex. J2, AG Mtg Outline (7/17/18); Ex. J3, Proposed Resolution Terms (8/21/18).) Mr. Kahn also provided the Receiver on September 13, 2018 with complete access to a joint defense database he had prepared and organized that contains over a thousand relevant documents in disclosure ready form. (Ex. J4, Receiver Transmission (9/13/18); Ex. J5, Receiver Transmission (Revised) (9/13/18).) If the case proceeds Mr. Kahn has completed the bulk of the necessary due diligence and defense efforts and identified any defense gap fill needs for representation transition purposes in advance of trial, and has created a turnkey defense database for qualified criminal defense counsel. The State has delayed its prosecution of the State Note Action since August, however.

Likewise, Mr. Kahn helped develop advisement and formation defenses to the State Civil Action matter (#390) until the Receiver took control. The State Civil Action lists Mr. Dragul, GDA RES and GDA Real Estate Management, LLC as Defendants, and each Defendant falls within the scope of the Receivership Order.

In particular, Mr. Kahn helped the named Defendants compile an advise of counsel defense chronology and identify Operating Agreement and offering disclosure defenses applicable to the State Civil Action. (E.g., Ex. K1, Advisement Chronology (8/28/18).) Further, Mr. Kahn was instrumental in securing the Defendants' acceptance of the Stipulated Receivership Order in the State Civil Action. (Ex. K2, Stipulated Receivership Order (8/30/18).) After entry of the Stipulated Receivership Order, however, Mr. Kahn all but stopped engaging in active defense efforts with respect to the State Civil Action in the absence of clearer Receiver direction.

Mr. Kahn facilitated and coordinated the receivership transition and the Defendants' compliance with the Stipulated Receivership Order in the State Civil Action as well (matter #393). The Stipulated Receivership Order applies on its face to Mr. Dragul, GDA RES, and GDA Real Estate Management, LLC and the Receivership Estate as defined encompasses Mr. Dragul, GDA RES and GDA REM along with any related companies or SPE management or membership interests. (Ex. K2, Stipulated Receivership Order (8/30/18).) The bulk of this work occurred prior to August 31, 2018 in anticipation of a stipulated or compelled receivership and culminated in Mr. Kahn's presentation to the Receiver with the GDA RES team on September 4, 2018 and the Defendants' simultaneous production of transition notebooks and an extensive database of transition materials. These actions allowed for an efficient receivership transition and a positive relationship with the Receiver on a going forward basis.

Client Representation Considerations

The firm has worked on behalf of the entities subject to the Receivership Estate consistently. All of its efforts were designed to protect the operations and assets ultimately within the Receivership Estate.

GDA RES retained the firm and GDA RES representatives communicated with the firm throughout the attorney-client relationship. ((Ex. B, GDA Fee Agreement (9/1/12); see also, e.g., Ex. C1-4, Retainer Correspondence (9/4/12).) Pursuant to the Fee Agreement, the firm directed its bills and reported on accounts receivables to GDA RES representatives as well. (Ex. D, AR Report (8/31/18); Ex. E1-E38, Applicable Billing Records.)

The firm performed its defense work on the DOJ Subpoena response, the State Note Action and the State Civil Action on behalf of GDA RES and shared its work with GDA RES employees – the firm therefore provided the Receiver with access to the related underlying joint defense materials and all of its other file materials notwithstanding certain privilege reservations.

Corporate Defendants in litigation cannot proceed *pro se* and must be represented by counsel in any formal proceeding. Accordingly, some attorney would have had to perform the work completed by the firm with respect to the vast bulk of the matters included in the Accounts Receivable Report.

Mr. Kahn ultimately arranged for Mr. Dragul to have personal counsel in any matter that might conflict with the interests of GDA RES or another entity within the Receivership Estate, and made

clear to the Receiver in person on September 4, 2018 and in writing on September 10, 2018 that the firm was acting as counsel for GDA RES and GDA REM.

Hardship Considerations

The firm is a small mom and pop shop that eschews the traditional law firm Associate Attorney leverage model as inefficient. Instead, the firm's Partners rely on collecting a fixed commodity of about 2,200 billable hours a year for income purposes. In addition, the firm bills clients for approximately 500 hours of paralegal support time each year at a rate that includes a modest margin.

During the twelve years that Mr. Kahn worked at the Brownstein firm, he averaged the most realized billable hours out of 275 attorneys. Mr. Kahn averaged approximately 2,160 billable hours annually over this time period and had a 97% realization rate. This robust and portable practice allowed for the formation of an independent firm. The firm was profitable in its second month of operations.

Since that time, Mr. Kahn has maintained his entire Brownstein client base and the firm is remarkably oversubscribed. Indeed, the Partners at the firm average a combined 2,400 billable hours annually and until April of 2018 the firm had a realization rate in excess of 98%. The firm refers out or rejects approximately a dozen cases every month; has not advertised or otherwise marketed its services in over four years; and, has not accepted a new client in over three years. The firm's clients and their affiliates have more work than the firm can perform, and provide work to the firm on a project basis based on the firm's available capacity.

The firm relies on collecting its bills to stay afloat, however. The firm was profitable without a hiccup for over six years until April of 2018. Without the cushion of a larger professional collective and shared risk, however, the Partners cannot afford to forego fees for professional services rendered. The firm has to pay its overhead and the Partners have cost of living expenses, and the firm has no other source of income absent realization of its fees.

The firm's Partners need to make income at this level to support their family. We have three young children, including a special needs toddler who suffers from the genetic disorder Tuberos Sclerosis. Our young son has a sega brain tumor, has daily seizures, requires special care, and has extensive medical bills.

Since the firm stopped receiving fees from GDA RES for work performed in 2018, it has been unable to pay its accrued bills in the normal course for the first time and the firm's Partners have incurred debt in excess of \$485,000.00 to satisfy their ongoing financial obligations. To cover these accrued debts prior to the equitable claims distribution, the Partners have obtained a \$500,000.00 loan that is secured by their family home.

In addition, the firm discounted the amounts billed to reflect approximately 5% in pre-bill discounts and absorbed its own lodging costs for Denver trips. Accordingly, the firm already has afforded this client group sufficient billing courtesies.

Summary

The firm has asserted a valid equitable claim in the amount of \$385,015.32. (Ex. A, Conundrum Group Equitable Claims Applications (1/29/19).) The firm adequately memorialized its billings,

provided sufficient value for services it rendered, and worked tirelessly on behalf of entities eventually subject to the Receivership Estate.

Under such circumstances, it would be untenable and inequitable to stiff the firm for the professional services it rendered. The Receiver has discretion under the Receivership Order to pay obligations incurred by the Receivership Estate parties prior to the appointment of the Receiver if deemed necessary *or* advisable for the preservation or protection of the Receivership Property. (Ex. K2, Stipulated Receivership Order at ¶¶13(h), 13(q).) At minimum, the firm should be treated as an unsecured creditor with a legitimate claim and paid before any unsecured creditors who consciously absorbed investment risk *and* any preferred and common partners, members or other equity interest holders of those who are subject to the Receivership Estate. (*Id.* at ¶22(e).) Failure to pay the firm for services it rendered would have a devastating and long-lasting impact on our son's medical care and our family.

The firm is prepared to agree not to file or prosecute any claims it may have against those subject to the Receivership Estate for professional services rendered through August 30, 2018 in exchange for an acceptable equitable claims distribution. This Claims Application does not address or encompass services rendered by the firm on or after September 1, 2018 pursuant to Paragraphs 13(l) and 22(a) of the Stipulated Receivership Order or otherwise, however.

* * *

As we have explained, the firm will withdraw from representing those subject to the Receivership Estate as of February 1, 2019 or as soon as practicable thereafter given the firm's submission of this equitable claim application. We will be in touch to coordinate related particulars under separate cover soon.

It has been an honor for Mr. Kahn to represent GDA RES and GDA REM over the past two decades with respect to its claims defense needs, and the firm and its Partners have enjoyed working with Mr. Dragul and his responsive staff. The firm also appreciated the professionalism of the receivership team as we coordinated transition efforts.

Please let us know if you have any questions regarding the firm's equitable claims application, or need any additional materials to support the application or for any other representation or transition purposes.

Sincerely,



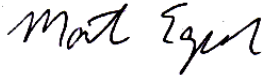
Megan Rae Kahn

cc: Benjamin A. Kahn, Esq.

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: August 30, 2018 8:27 AM CASE NUMBER: 2018CV33011 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424 Courtroom:
Order: (Proposed) Stipulated Order Appointing Receiver also filed on behalf of Defendants Gary Dragul and GDA Real Estate Service, and GDA Real Estate Management LLC)	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 8/30/2018



MARTIN FOSTER EGELHOFF
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>BY THE COURT</p>	<p>Case No.: 2018 CV 33011</p> <p>Courtroom: 424</p>
<p>STIPULATED ORDER APPOINTING RECEIVER</p>	

THIS MATTER having come before this Court on the Stipulated Motion to Appoint Receiver (the “Motion”) filed by the Plaintiff Gerald Rome, Securities Commissioner for the State of Colorado and Defendants Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), and GDA Real Estate Management, Inc. (“GDAREM”), and the Court, being otherwise fully advised in the premises,

HEREBY FINDS:

1. The Court has jurisdiction and venue is proper pursuant to C.R.C.P. 98(a).
2. Dragul is an individual and a resident of Colorado, and the manager of

GDARES and GDAREM, among other businesses.

3. GDARES is a Colorado limited liability company with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

4. GDAREM is a Colorado corporation with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

5. The Parties have stipulated to the appointment of a Receiver without bond or other security for Dragul, GDARES, and GDAREM, as well as for their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses as set forth herein.

6. The appointment of a receiver is reasonable and necessary for the protection of the assets and the rights of the parties in this case. Based on the standards set forth in C.R.C.P. 66 and case law thereunder, the Parties have stipulated that the Commissioner is entitled to entry of this Order.

7. Nothing in this stipulated Order shall be deemed an admission by Dragul to any allegations or as a waiver of any defenses thereto or limit Dragul's 4th, 5th, or 6th Amendment rights or other Constitutional and statutory protections and privileges afforded to any criminal defendant, or prevent him from invoking such rights in his personal capacity. Nothing in this Order operates as a waiver or an abrogation of the attorney-client privilege held by Dragul in his personal capacity.

8. Harvey Sender of Sender & Smiley LLC, has been determined to be suitable to serve as Receiver for Dragul (as such term is defined below in this

Order), GDARES and GDAREM, as set forth in this Order. Mr. Sender's business address is 600 17th Street, Suite 2800, Denver, Colorado 80202.

IT IS THEREFORE ORDERED THAT:

9. Harvey Sender ("the Receiver") is hereby appointed as Receiver for Dragul (limited to the definition of the "Receivership Property" or "Receivership Estate" as defined herein), GDARES, GDAREM, and all of their assets, including, but not limited to, all real and personal property, including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights, claims, and causes of action, wherever located, including without limitation the "LLC Entities" identified in the Commissioner's Motion and Complaint for Injunctive and Other Relief, or 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 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 Drive, 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 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." Consistent with

Colorado's dissolution statutes and applicable law, and as set forth in greater detail below, the Receiver may, in the exercise of his reasonable judgment, investigate any claims and causes of action which may be pursued for the benefit of Dragul, GDARES, GDAREM, their creditors, members, and equity holders, and make recommendations to interested parties and this Court regarding the prosecution of any such claims and causes of action; establish a process for the assertion of claims against the Receivership Estate; make recommendations to this Court for the allowance and payment of such claims; and investigate and make recommendations to this Court for the ongoing operation, sale or distribution of any remaining Receivership Property, or the proceeds thereof, pursuant to the terms hereof.

10. Dragul, GDARES, and GDAREM, and all persons in active participation them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (collectively, the "Representatives"), are hereby ordered to deliver immediately to the Receiver or his agents all of the Receivership Property and to fully cooperate with the Receiver including, but not limited to, providing the Receiver all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials; together with stock certificates or other indicia of

ownership of any subsidiaries or related companies, and any and all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials, related to the operation of any subsidiaries or related companies. Dragul, GDARES, and GDAREM and their Representatives, when necessary or when requested (subject to Dragul's Constitutional protections, including the Fifth Amendment), shall explain the operation, maintenance and management of the Receivership Property, including any subsidiaries or related entities or companies, to the Receiver or his agents, without compensation therefor. Any claims for nonpayment for services shall not be used as a defense to turning over Receivership Property. All privileges in connection with professional representation of GDARES and GDAREM shall accrue to the sole benefit of the Receiver and the Receivership Estate and may only be waived by the Receiver, except that Dragul maintains all such privileges in his personal capacity. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of any Representatives or any other foregoing persons acting on behalf of or for Dragul, GDARES and GDAREM, to comply fully and completely with this Order.

11. Any creditors of Dragul, GDARES or GDAREM that are in the possession of, or have taken any action to seize any books, records, or assets of the Receivership Estate (hereinafter called "Creditors") and all persons in active

participation with such Creditors, including without limitation, such Creditors' officers, managers, members, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (hereafter called "Creditors' Representatives") are hereby ordered to deliver immediately to the Receiver all of the Receivership Property in such Creditors' or Creditors' Representatives' possession, and to fully cooperate with the Receiver in connection with such turnover. Any claims against Dragul, GDARES or GDAREM shall not be used as a defense to turning over as set forth in this paragraph. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of Creditors or Creditors' Representatives or any other foregoing persons acting on behalf of or for the Creditors to comply fully and completely with this Order.

12. If the Receiver determines, after reasonable inquiry that a person or entity is in violation of the turnover provisions set forth in Paragraphs 9 and 10 of this Order, the Receiver is instructed to give written notice thereof to the person or entity violating such provisions, with a copy of this Order attached, demanding turnover of such Receivership Property. If the person or entity in possession fails or refuses to turn over the Receivership Property after receiving notice, the Receiver shall file a Request for an Order to Show Cause with this Court.

13. The Receiver shall have all the powers and authority usually held by equity receivers and reasonably necessary to accomplish the purposes stated

herein, including, but not limited to, the following powers which the Receiver may execute without further order of this Court, except as expressly provided herein:

(a) To take from Dragul's, GDARES' and GDAREM's Representatives, and all persons acting in participation with Dragul, GDARES and GDAREM, and from Creditors and Creditors' Representatives, immediate possession and control of all of the assets of Dragul, GDARES and GDAREM, including the Receivership Property, to the exclusion of Dragul, GDARES and GDAREM, and their Representatives or all persons acting in participation with Dragul, GDARES and GDAREM, and Creditors and Creditors' Representatives;

(b) To exercise such control over all subsidiaries and related companies owned or managed by Dragul, GDARES and GDAREM, consistent with the governance documents or operating agreements applicable to the subsidiaries and related companies, including to exercise all rights of Dragul, GDARES and GDAREM to elect new officers, directors, or management of the subsidiaries and related companies, in their respective capacities and not as an assignee;

(c) To take charge of the subject Receivership Property, regardless of where such property is located, including, but not limited to, bank accounts, cash, checks, drafts, notes, security deposits, bonds, books, records, contracts, claims, leases, files, furniture, certificates, licenses, fixtures and equipment, property located in any real property either owned or leased by Dragul, GDARES and GDAREM and any personal property located in storage facilities;

(d) As appropriate, to take possession of offices of Dragul, GDARES

and GDAREM and to change any and all locks on such offices and to limit access to such offices to the Receiver and his agents, subject to any privileges maintained by Dragul in his personal capacity;

(e) To collect in a timely fashion all accounts receivable and other obligations due to Dragul, GDARES and GDAREM, including, as necessary to negotiate and deposit checks made payable to them into accounts maintained by the Receiver and as necessary to review mail directed to Dragul, GDARES and GDAREM and their Representatives in order to collect incoming accounts receivable and other obligations due and owing to Dragul, GDARES and GDAREM;

(f) To contract for and obtain such services as utilities, supplies, equipment and goods as is reasonably necessary to manage, preserve, and protect the Receivership Property as the Receiver may reasonably deem necessary; however, no contract shall extend beyond the termination of the Receivership without the permission of the Court;

(g) To obtain, review and analyze Dragul, GDARES and GDAREM books and records relating to the Receivership Property, including without limitation accounting records, banking records, tax records, and any other books or documents necessary to perform the duties of the Receiver;

(h) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

(i) To borrow from third parties on such reasonable terms as may be acceptable to the Receiver, such funds that may be required for the fulfillment of the Receiver's obligations hereunder, and to meet the needs of the Receivership Estate in excess of the income from the Receivership Estate. The Receiver may issue Receiver's Certificates secured by all assets of the Receivership Estate, including, but not limited to, all claims on insurance policies, surety bonds, and similar assets of the Receivership Estate, in exchange for funds advanced during the term of this receivership, and such Receiver Certificates shall be a first and prior lien and preference claim upon the Receivership Property or a portion of it at the Receiver's election;

(j) To open and maintain accounts at a financial institution insured by the federal government in the name of the Receiver and to deposit all sums received by the Receiver into such account and to make such withdrawals as are necessary to pay the reasonable costs and expenses incurred by the Receiver;

(k) To exercise all rights of an owner incidental to the ownership of the Receivership Property;

(l) To hire and pay general counsel, accounting, and other professionals as may be reasonably necessary to the proper discharge of the Receiver's duties, and to hire, pay and discharge the personnel necessary to fulfill the obligations of the Receiver hereunder, including the retention of companies affiliated with the Receiver, or other third parties to assist the Receiver in the performance of its duties hereunder, all within the Receiver's discretion;

(m) In the Receiver's discretion as appropriate, to hire and pay employees with the necessary skills and experience to operate GDARES and GDAREM efficiently and with least amount of cost or expense, and to preserve the assets of GDARES and GDAREM and the Receivership Estate.

(n) After consultation with the Commissioner and agreement on the amount and funding of a budget related thereto, to institute such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order to protect the Receivership Property, and to prosecute causes of action of Dragul, GDARES and GDAREM against third parties in this or any other jurisdictions, including foreign countries;

(o) After consultation with the Commissioner and agreement on the amount and funding of a budget related to anticipated out of pocket expenses related thereto, to retain special counsel, and other professionals as needed, on a contingency fee basis containing commercially reasonable terms, as determined by the Receiver in the exercise of his reasonable business judgment, to recover possession of the Receivership Property from any persons who may now or in the future be wrongfully possessing Receivership Property or any part thereof, including claims premised on fraudulent transfer or similar theories, in this or any other jurisdictions, including foreign countries;

(p) To notify any and all insurers under insurance policies and issuers of surety bonds affecting the Receivership Property of the pendency of these proceedings, and that any proceeds paid under any such insurance policy or surety

bond shall be paid to the Receiver to be administered for the benefit of all creditors of Dragul, GDARES and GDAREM;

(q) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

(r) To notify and make demands on any insurers under insurance policies and issuers of any such policies or surety bonds affecting Receivership Property for the turnover and payment of proceeds to the Receiver for the benefit of Creditors, and as necessary, and after consultation with Plaintiffs and agreement on the amount and funding of a budget related thereto, commence litigation against such insurers and/or sureties in order to recover the proceeds of such insurance policies and surety bonds for the benefit of Dragul, GDARES and GDAREM and their creditors; and further provided that, in connection with any such claims or causes of action, the Receiver shall not be deemed to be asserting claims of Dragul, GDARES and GDAREM pursuant to any "insured vs. insured" exclusions that may be set forth in such insurance policies or surety bonds, but rather shall, in accordance with subparagraph (p) below, be deemed to be prosecuting claims of creditors of Dragul, GDARES and GDAREM in connection therewith;

(s) To prosecute claims and causes of actions held by Creditors of Dragul, GDARES and GDAREM, and any subsidiary entities for the benefit of

Creditors, in order to assure the equal treatment of all similarly situated Creditors:

(t) In the Receiver's discretion as appropriate, to consider the potential sale of assets of Dragul, GARDES, and GARDEM to a third-party or to sell or otherwise dispose of any personal property of the Receivership Estate, provided that Court approval shall not be required of any sale or disposition of any property being sold for a sales price of less than \$10,000;

(u) To establish a procedure for the assertion of claims against Dragul, GDARES and GDAREM or the Receivership Property, for the resolution of any disputes regarding such claims, and for the distribution of the proceeds of the Receivership Property;

(v) To issue subpoenas, institute, prosecute, defend, compromise, or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection, preservation and maintenance of the Receivership Assets or proceeds therefrom;

(w) To do such other and further lawful acts as the Receiver reasonably deems necessary for the effective recovery of the Receivership Property, and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado, or the laws of the United States; and

(x) To do any and all acts necessary, convenient or incidental to the foregoing provisions of this Order and this equity receivership.

14. The Receiver is further directed to review the books and records of Dragul, GDARES and GDAREM, to account for receipts and disbursements of their funds, and to provide a report and accounting of their operations, for a period of time determined by the Receiver to be reasonable under the circumstances, to this Court and to the Commissioner, and any parties that have filed an entry of appearance herein. An initial report shall be filed with the Court within ninety (90) days of entry of this Order. In such report, the Receiver shall identify any claims and causes of action of Dragul, GDARES and GDAREM, identified as of the date of such report, including under insurance policies, on surety bonds, against any of their representatives or third parties, or arising under the Uniform Fraudulent Transfer Act, or any similar statute; and the Receiver's recommendations related thereto. The Receiver shall be authorized to act on his recommendations upon agreement with the Commissioner regarding budgets related to the prosecution thereof, and funding of such litigation, as set forth in this Order.

15. To the extent they have not already done so, Dragul, GDARES and GDAREM and their representatives, Creditors, and Creditors' Representatives, and their agents, are ordered to deliver over immediately to the Receiver, or his agents, all Receivership Property, including, but not limited to, unpaid bills, bank accounts, cash, checks, drafts, notes, security deposits, books, records, contracts, claims, leases, deeds, files, furniture, certificates, licenses, fixtures, escrow, sales contracts, equipment, and stock certificates or other evidence of ownership related to the Subsidiaries, relating to the Receivership Property and shall continue to

deliver immediately to the Receiver any such property received at any time in the future.

16. Any parties holding claims against Dragul, GDARES and GDAREM or the Receivership Estate shall not be entitled to participate as creditors in the distribution of recoveries from the Receiver's administration of the Receivership Estate and collection and liquidation of the assets thereof, unless such parties: (I) agree not to file or prosecute independent claims such parties may have (a) on insurance policies and surety bonds issued in connection with Dragul, GDARES and GDAREM operations, or (b) against Dragul, GDARES and GDAREM or any of their Representatives, and (II) promptly dismiss any lawsuits currently pending in connection therewith.

17. If necessary, the Receiver may request of this Court letters rogatory or commissions or supplemental orders as necessary to require out-of-state directors, officers, employees, agents, representatives, managers, attorneys, accountants, banks, contractors, or any other person acting in t participation with Dragul, GDARES and GDAREM and their Representatives, through the appropriate court of appropriate jurisdiction, to comply with any of the Orders of this Court.

18. The Receiver shall be compensated for his services at the rate of \$400 per hour, together with reimbursement for all reasonable costs and expenses incurred in connection with his duties, which compensation and reimbursement shall be paid from the assets of the Receivership Estate, proceeds of the disposition of Receivership Property, or the proceeds of loans secured by the Receiver.

19. Except as may be expressly authorized by the Court, Dragul, GDARES and GDAREM and all persons in active participation them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them, are enjoined from:

- (a) Collecting any revenues from the Receivership Property, or withdrawing funds from any bank or other depository account relating to the Receivership Property;
- (b) Binding, or purporting to bind, Dragul, GDARES and GDAREM or the Receivership Estate, to any contract or other obligation;
- (c) Holding themselves out as, or acting or attempting to take any and all actions of any kind or nature as Representatives of Dragul, GDARES and GDAREM, or subsidiary entities they own or control, or in any other purported capacity, except with the permission of the Receiver or by further order of this Court; and
- (d) Otherwise interfering with the operation of the Receivership Property, or the Receiver's discharge of his duties hereunder.

20. Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business entity shall also be bound by this Order.

21. Should the Receiver determine that tax returns were not filed for periods prior to the entry of this Order for which tax returns were required of

Dragul, GDARES and GDAREM, as funds are available in the Receivership Estate, the Receiver shall use reasonable efforts to have prepared and filed tax returns for any missing periods prior to the entry of this Order. To the extent it is determined that any outstanding tax obligations are due to the Internal Revenue Service, the Colorado Department of Revenue, or any other taxing authorities for any period of time prior to the entry of this Order, such taxes shall be paid, as funds are available in the Receivership Estate. The Receiver shall not be considered a responsible person, or otherwise have any personal liability, for any unpaid tax obligations of Dragul, GDARES and GDAREM (including for any trust fund taxes, such as payroll or sales tax) withheld but not paid to the proper taxing authority for any period prior to the entry of this Order. The Receiver shall file tax returns for periods commencing on the date of the entry of this Order through completion of the dissolution of Dragul, GDARES and GDAREM and discharge of the Receiver, as required by applicable federal, state, or local law.

22. The Receiver is directed and empowered to apply revenues, incomes and sales proceeds collected by the Receiver:

(a) First, to payment of costs and expenses of the Receivership Estate, and including the costs and expenses of preserving and liquidating the Receivership Property, taxes incurred from the appointment of the Receiver through the conclusion of the Receivership Proceeding and discharge of the Receiver, and to compensation due the Receiver and any employees, consultants, or professionals retained by the Receiver or employed by the Receiver to operate

GDARES or GDAREM;

(b) Second, to the payment of any outstanding Receiver's

Certificates;

(c) Third, to creditors holding obligations secured by the Receivership Property, in the order of their priority of record;

(d) Fourth, to the payment of any unsecured tax obligations determined to be due for periods prior to the entry of this Order, pursuant to the tax filing obligations imposed on the Receiver;

(e) Fifth, to the payment of unsecured creditors determined to hold legitimate claims against Dragul, GDARES and GDAREM pursuant to the claims administration procedure adopted by the Receiver, in their legal order of priority; and

(f) Sixth, to the preferred and common partners, members, or other equity interest holders of Dragul, GDARES and GDAREM, as their rights are defined in their governing documents, with the exception of any rights or interests held or owned by or for the benefit of Dragul, GDARES or GDAREM, or any insiders or related parties, with all such rights or interests to be determined by the Court.

23. The debts or liabilities incurred by the Receiver in the course of his operation and management of the Receivership Property, whether in the Receiver's name or in the name of the Receivership Property, shall be the debts and

obligations of the Receivership Estate only, and not of the Receiver in a personal capacity.

24. The Receiver shall enjoy and have the judicial immunity usually applicable to receivers in law and equity. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver are protected and privileged with the same judicial immunity as the Receiver has under this Order.

25. Nothing herein contained shall be construed as interfering with or invalidating any lawful lien or claim by any person or entity.

26. It is further Ordered that all actions in equity or at law against the Receiver, Dragul, GDARES and GDAREM, or the Receivership Estate are hereby enjoined (and any actions already pending are hereby stayed), pending further action by this Court. The Receiver is instructed to file a request for an Order to Show Cause if any business, entity, or person commences or continues the prosecution of any action in any other court seeking relief in equity or at law against the Receiver, Dragul, GDARES and GDAREM or the Receivership Estate without first seeking relief from this stay of proceedings.

27. The Receiver shall continue in possession of the Receivership Property until the completion of the disposition of this litigation which may anticipate the wind-up of the affairs of Dragul, GDARES and GDAREM.

28. Dragul, GDARES and GDAREM, and their Representatives, or anyone else in possession of records related to the Receivership Property, shall respond in a timely fashion to requests and inquiries from the Receiver concerning

such records, record keeping protocols, filing systems, information sources, algorithms and processes used to store, compile, organize, or manipulate data, and similar matters. With respect to any information or records stored in computer-readable form or located on computers Dragul, GDARES and GDAREM, and their Representatives, the person in possession of such information or records shall provide the Receiver full access to all media on which such records are located and all computers and the necessary application, system, and other software necessary to review, understand, print, and otherwise deal with such computerized records and all passwords and security codes necessary to access such computerized records, regardless of whether such records are separate or commingled with other information, except that information subject to the attorney-client privilege held by Dragul in his personal capacity shall remain privileged. Any such claimed privileged information, or information that may reasonably be considered to be privileged information, obtained by Receiver or commingled with other information shall be disgorged by the Receiver and notice given to Dragul regarding the privileged information and its disposition by the Receiver. In the event that the Receiver questions or disputes that any such information is privileged, the dispute shall be submitted to the Court, together with the disputed information for in camera review.

29. The Receiver may at any time, on proper and sufficient notice to all parties who have appeared in this action, apply to this Court for further

instructions whenever such instructions shall be deemed to be necessary to enable the Receiver to perform the duties of his office properly.

30. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of (a) any substance deemed a "hazardous substance", "pollutant," "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as "Hazardous Substances"), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken and to be taken by the Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

31. The Receiver shall take appropriate action as necessary with respect to the January 20, 2015 "CDPHE Stipulation and Order," as defined and with background provided in the Motion Appointing Receiver.

32. Pursuant to C.R.C.P. 66(d)(3), the Receiver shall provide written notice of this action and entry of this Order to any persons in possession of Receivership Property or otherwise affected by this Order, including all known Creditors of Dragul, GDARES and GDAREM, subsidiaries and any their respective Representatives.

33. After the initial report required pursuant to this Order, the Receiver shall make periodic reports of the condition of the Receivership Estate on intervals to be agreed to by the Receiver and the Commissioner as is reasonably necessary to provide timely reporting of the operations of the Receivership Estate to all interested parties, without imposing undue burden and expense on the Receivership Estate. The Receiver shall not be required to, but as reasonably necessary, may follow generally accepted accounting principles or use auditors or accountants in the preparation of his reports to the Court.

34. Court approval of any motion filed by the Receiver shall be given as a matter of course, unless any party objects to the request for Court approval within ten (10) days after service by the Receiver or written notice of such request. Service of motions by facsimile and electronic transmission is acceptable.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for all purposes. The Receiver is hereby authorized, empowered and

directed to apply to this Court, with notice to the Commissioner for issuance of such other Orders as may be necessary and appropriate in order to carry out the mandate of this Court.

IT IS FURTHER ORDERED that this Order shall be effective immediately and will remain in effect until terminated or modified by further Order of this Court.

DATED this _____ day of August, 2018.

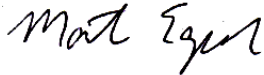
BY THE COURT:

MARTIN F. EGELHOFF
Denver District Court Judge

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 CO v. Defendant(s) GARY DRAGUL et al.	DATE FILED: November 13, 2018 10:37 AM CASE NUMBER: 2018CV33011 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424 Courtroom:
Order: (Proposed) Order Granting Receiver's Motion to Establish Claims Administration Procedure and to Set Claims Bar Date	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 11/13/2018



MARTIN FOSTER EGELHOFF
District Court Judge

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	▲ COURT USE ONLY ▲
Plaintiff: Gerald Rome, Securities Commissioner for the State of Colorado v. Defendant: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	
	Case Number: 2018CV33011 Division/Courtroom: 424
ORDER GRANTING RECEIVER'S MOTION TO ESTABLISH CLAIMS ADMINISTRATION PROCEDURE AND TO SET CLAIMS BAR DATE	

This matter is before the Court on the Receiver's Motion to Establish Claims Administration Procedure and to Set Claims Bar Date (the "Motion") for the Receivership Estate of Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (the "Estate"). The Court has reviewed the Motion and the file. Good cause exists to establish a claims procedure and claims bar date. It is therefore

ORDERED that the Receiver's Motion is GRANTED and the claim form and notice attached to the Motion are APPROVED;

IT IS FURTHER ORDERED that all parties asserting claims against the Estate shall submit claims to the Receiver on or before **February 1, 2019**; the Receiver shall promptly provide the Notice to all known creditors and parties in interest as set forth in the Motion, and shall file a certificate of service reflecting the same;

IT IS FURTHER ORDERED that for any unknown claimant not receiving Notice of the claims bar date within time sufficient to file a claim by February 1, 2019, the Receiver shall email or send by U.S. first-class mail the Notice and Claim Form promptly upon discovering any further claimant and shall file an additional certificate of service. Such claimant shall then have a period

of forty-five (45) days from the Receiver's mailing within which to submit a claim to the Receiver in accordance with the procedures approved herein. Finally,

IT IS FURTHER ORDERED that any claimant – as a condition of obtaining an allowed claim against the Estate – shall dismiss (without prejudice) any claim or cause of action pending against Dragul, the Dragul Entities, and any related entities that are part of the Receivership Estate. Failure to do so shall result in a waiver of any right to participate in the Receivership claims administration process

Dated: _____, 2018

BY THE COURT

Attachment to Order - 2018CV3001

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	
<p>Plaintiff: Gerald Rome, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
CLAIM FORM	

The undersigned Claimant hereby asserts a claim against the Receivership Estate of Gary J. Dragul ("Dragul"); GDA Real Estate Services, LLC; GDA Real Estate Management, LLC; and related entities (collectively, "Dragul and the GDA Entities" or the "Estate").

1. Amount of Claim as it existed on August 30, 2018.

Claim is asserted against:	GDA Real Estate Services, LLC; GDA Real Estate Management, LLC; Gary J. Dragul, and related companies within the definition of the "Receivership Estate"
Actual damages:	\$382,149.13
Consequential and other damages, if any:	N/A
Interest, if any:	\$2,866.19 (9/1/18 - 2/1/18 @ 18%)
Attorneys' fees and costs, if any:	N/A
Other:	N/A
TOTAL:	\$385,015.32

2. The foregoing claim arose on **09/01/2018**, and is based upon the following events:

Legal services rendered. See attached narrative correspondence and supporting exhibits.

DOCUMENTS SUPPORTING THE CLAIM MUST BE ATTACHED TO THIS CLAIM FORM.

3. This claim is:

Unsecured

Ex. 4 to Receiver's Motion to Dismiss CG Firm Counterclaims

4. If the claim is secured, please identify the location of all collateral:

5. If the claim includes interest, please specify each of the reasons for such interest and the rate thereof (e.g. contract, statute, etc.):

The firm has a retainer agreement dated September 1, 2012 that provides for 18% interest on amounts past due. The firm has undercalculated interest due by utilizing a September 1, 2018 interest trigger on the entire AR owed.

6. The nature and value of any offset or counterclaim (i.e., money or property that you owe Dragul, the GDA Entities, or the Estate, or any claims that Dragul, the GDA Entities, or the Estate may have against you):

N/A

7. If you are represented by an attorney, please provide details:

Name of Attorney: N/A

Attorney's Address:

Street Address:

City: State:

Zip Code:

Attorney's Phone Number:

Attorney's Facsimile Number:

Attorney's Email:

CLAIMANT HEREBY CERTIFIES THAT IT HAS DISMISSED ANY OTHER PENDING SUITS OR PROCEEDINGS IT HAS COMMENCED AGAINST DRAGUL, THE DRAGUL ENTITIES, OR THE RECEIVERSHIP ESTATE AND THAT IT WILL NOT FILE (OR RE-FILE) ANY SUIT OR PROCEEDING IN ANOTHER FORUM WITHOUT THE RECEIVER'S PERMISSION OR LEAVE OF THIS COURT.

8. I hereby certify and attest, under the penalty of perjury, that the information contained in the foregoing Claim Form is true and correct:

Claimant Name: The Conundrum Group LLP Attorneys at Law

Claimant Address:

Street Address: 229 1/2 F Street

City: Salida State: Colorado

Zip Code: 81201

Ex. 4 to Receiver's Motion to Dismiss CG Firm Counterclaims

Claimant Phone Number: (303) 377-7890

Claimant Facsimile Number: N/A

Claimant Email: megan@conundrumlaw.com

The Conundrum Group LLP Attorneys at Law

Dated: 1/30/2019

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	
Plaintiff: Gerald Rome, Securities Commissioner for the State of Colorado v. Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 2018CV33011 Division/Courtroom: 424
CLAIM FORM	

The undersigned Claimant hereby asserts a claim against the Receivership Estate of Gary J. Dragul ("Dragul"); GDA Real Estate Services, LLC; GDA Real Estate Management, LLC; and related entities (collectively, "Dragul and the GDA Entities" or the "Estate").

1. Amount of Claim as it existed on August 30, 2018.

Claim is asserted against:	GDA Real Estate Services, LLC; GDA Real Estate Management, LLC; Gary J. Dragul, and related companies within the definition of the "Receivership Estate"
Actual damages:	\$735,588.61
Consequential and other damages, if any:	N/A
Interest, if any:	\$2,866.19 (9/1/18 - 2/1/18 @ 18%)
Attorneys' fees and costs, if any:	N/A
Other:	N/A
TOTAL:	\$735,588.61

2. The foregoing claim arose on **09/01/2018**, and is based upon the following events:

Professional Services Demand

DOCUMENTS SUPPORTING THE CLAIM MUST BE ATTACHED TO THIS CLAIM FORM.

3. This claim is:

Unsecured

4. If the claim is secured, please identify the location of all collateral:

5. If the claim includes interest, please specify each of the reasons for such interest and the rate thereof (e.g. contract, statute, etc.):

6. The nature and value of any offset or counterclaim (i.e., money or property that you owe Dragul, the GDA Entities, or the Estate, or any claims that Dragul, the GDA Entities, or the Estate may have against you):

7. If you are represented by an attorney, please provide details:

Name of Attorney:

Attorney's Address:

Street Address:

City: State:

Zip Code:

Attorney's Phone Number:

Attorney's Facsimile Number:

Attorney's Email:

CLAIMANT HEREBY CERTIFIES THAT IT HAS DISMISSED ANY OTHER PENDING SUITS OR PROCEEDINGS IT HAS COMMENCED AGAINST DRAGUL, THE DRAGUL ENTITIES, OR THE RECEIVERSHIP ESTATE AND THAT IT WILL NOT FILE (OR RE-FILE) ANY SUIT OR PROCEEDING IN ANOTHER FORUM WITHOUT THE RECEIVER'S PERMISSION OR LEAVE OF THIS COURT.

8. I hereby certify and attest, under the penalty of perjury, that the information contained in the foregoing Claim Form is true and correct:

Claimant Name: The Conundrum Group LLP Attorneys at Law

Claimant Address:

Street Address: 229 1/2 F Street

City: Salida State: Colorado

Zip Code: 81201

Claimant Phone Number: (303) 377-7789

Claimant Facsimile Number: N/A

Claimant Email: ben@conundrumlaw.com

The Conundrum Group LLP Attorneys at Law

Dated: 3/13/2019