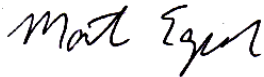


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al. v. Defendant(s) GARY DRAGUL et al.	<p style="text-align: right;">DATE FILED: April 13, 2020 10:59 AM CASE NUMBER: 2018CV33011</p> <p style="text-align: center;">△ COURT USE ONLY △</p> <p>Case Number: 2018CV33011 Division: 424 Courtroom:</p>
Order: RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENTS WITH BANK OF AMERICA AND CHASE BANK w/ Attach	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 4/13/2020



MARTIN FOSTER EGELHOFF
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: David S. Cheval, Acting 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>Attorneys for Receiver:</p> <p>Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1900 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENTS WITH BANK OF AMERICA AND CHASE BANK</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order approving settlement agreements with Bank of

America, N.A. (“BOA”) and JP Morgan Chase Bank, N.A. (“Chase”). Copies of the settlement agreements are submitted as **Exhibits 1** and **2** (the “Settlement Agreements”).

I. Background

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.

2. 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.

3. Under the Receivership Order, the Receiver has the authority to prosecute causes of action against third-parties, including claims held by creditors. Receivership Order ¶¶ 13(o) & (s).

4. The Receiver identified claims, including claims under COLO. REV. STAT. § 38-8-101-113, against BOA and Chase. On August 30, 2019, the Receiver filed a complaint in Denver District Court against BOA and others seeking to recover what the Receiver alleged were fraudulent transfers it received from Dragul and the GDA entities, Case No. 2019CV33375. That case was removed to the United States District Court in Colorado and is pending as *Sender v. Bank of Am., et al.*, Case No. 1:19-cv-

02875-WJM-NYW. Before filing the case, the Receiver was able to resolve potential claims against Chase.

5. The proposed Settlement Agreements resolve the disputes between the Receiver and BOA and Chase regarding certain transfers they received from Dragul and the GDA entities before and after the Receiver was appointed, and with respect to Chase, with regard to potential claims the Receiver identified concerning accounts Chase held for GDARES and Rose LLC.

	Party	Potential Claim	Proposed Settlement
1.	BOA	\$66,560.00	\$40,000.00
2.	Chase	\$36,386.28	\$22,750.00
	Total	\$102,946.28	\$62,750.00

II. The Settlement Agreements are in the best interests of the Estate and its creditors.

6. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver's settlement agreement. In analogous bankruptcy contexts, courts consider whether "the settlement 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).

7. Considering these factors, the Court should approve the Settlement Agreements. Although the Receiver believes his claims to recover the transfers to BOA and Chase are strong, BOA and Chase have raised various defenses to those claims. The Receiver also investigated claims the Estate might have against Chase with respect to transactions in accounts Chase held for GDARES and a Dragul special purpose entity, Rose, LLC, relating to what appeared to be a \$275,000 set-off between those two accounts after the Receiver was appointed. After reviewing transactions relating to this “set-off,” the Receiver concluded they were merely book entry transactions and did not involve setting off funds of the Estate. The proposed settlement with Chase nevertheless includes \$6,500 to settle any potential claims relating to the set-off.

8. The proposed agreements resolve the potential litigation claims against BOA and Chase without further expense or litigation risk, will result in the dismissal of the pending action against BOA, eliminate potentially significant litigation costs for the Estate, and result in the prompt payment of funds to the Estate.

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, 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 asks the Court to enter an Order approving the Settlement Agreements.

Dated: March 31, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.

By:  /s/ Michael T. Gilbert

Patrick D. Vellone
Michael T. Gilbert
Rachel A. Sternlieb
1600 Stout Street, Suite 1100
Denver, Colorado 80202
(303) 534-4499
E-mail: pvellone@allen-vellone.com
E-mail: mgilbert@allen-vellone.com
E-mail: rsternlieb@allen-vellone.com

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO APPROVE TWO SETTLEMENT AGREEMENTS** via CCE to:

Robert W. Finke
Janna K. Fischer
Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, Colorado 80203
Robert.Finke@coag.gov
Janna.Fischer@coag.gov

Paul Vorndran
Chris Mills
Jones & Keller, P.C.
1999 Broadway, Suite 3150
Denver, Colorado 80202
pvorndran@joneskeller.com
cmills@joneskeller.com

Counsel for David S. Cheval, Acting Securities Commissioner ***Counsel for Defendant Gary Dragul***

A copy was also served by electronic mail to:

John Bernstein, Esq. John.Bernstein@KutakRock.com <i>Counsel for JP Morgan Chase Bank, N.A.</i>	Erin Edwards, Esq. Erin.edwards@akerman.com <i>Counsel for Bank of America, N.A.</i>
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CERTIFICATION OF E-SERVICE ON KNOWN CREDITORS

In accordance with this Court's February 1, 2019 Order clarifying notice procedures for this case, I also certify that a copy of the foregoing is being served by electronic mail 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/ Lisa A. Vos

Allen Vellone Wolf Helfrich & Factor P.C.