

DISTRICT COURT, DENVER COUNTY,
STATE OF COLORADO

Court Address:
1437 Bannock Street
Denver, CO 80202

Plaintiffs: HARVEY SENDER, AS
RECEIVER FOR GARY DRAGUL;
GDA REAL ESTATE SERVICES,
LLC; AND GDA REAL ESTATE
MANAGEMENT, LLC

vs.

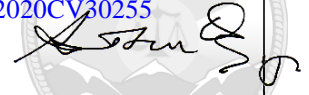
Defendants: GARY DRAGUL;
BENJAMIN KAHN; THE CONUNDRUM
GROUP, LLP; SUSAN MARKUSCH;
ALAN C. FOX; ACF PROPERTY
MANAGEMENT, INC.; MARLIN S.
HERSHEY; PERFORMANCE
HOLDINGS, INC.; OLSON REAL
ESTATE SERVICES, LLC; JUNIPER
CONSULTING GROUP, LLC; JOHN
AND JANE DOES 1-10; and XYZ
CORPORATIONS 1-10

DENIED BY COURT

10/28/2020

DATE FILED: October 28, 2020 3:26 PM

CASE NUMBER: 2020CV30255



ROBERT LEWIS MCGAHEY JR

District Court Judge

▲ COURT USE ONLY ▲

Case Number: 20CV30255

Courtroom: 414

**ORDER GRANTING DEFENDANTS MARLIN S. HERSHEY'S AND
PERFORMANCE HOLDINGS, INC.'S MOTION TO DISMISS PURSUANT TO
C.R.C.P. 12(b)(1) and (5)**

THIS MATTER comes before the Court on Defendant Marlin S. Hershey's and Performance Holdings, Inc.'s Motion to Dismiss Pursuant to C.R.C.P. 12(b)(1) and (5) (the "Motion") pursuant to which Defendants Marlin S. Hershey and Performance Holdings, Inc. seek to dismiss the Receiver's claims against them for violations of the Colorado Securities Act, negligence, negligent misrepresentation, civil theft, violations of the Colorado Organized Crime Control Act, aiding and abetting violations of the COCCA, fraudulent transfer, and unjust enrichment. The Court having reviewed the Motion and the Court being advised in the premises does hereby

ORDER that the Motion is granted on the basis that the Receiver does not have standing to pursue claims of creditors of the receivership estate, and all of the claims that the Receiver alleges against Marlin S. Hershey and Performance Holdings, Inc. are such claims; and

FURTHER that, pursuant to C.R.S. § 13-17-201, Marlin S. Hershey and Performance Holdings, Inc. shall be awarded the attorney's fees and costs that they incurred in moving to dismiss the Receiver's claims alleged against them. The fees and costs shall be submitted to the Court in accordance with C.R.C.P. 121, § 1-22.

SO ORDERED this _____ day of August, 2020.

BY THE COURT:

Denver District Court Judge