

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>Court Address: City and County Building 1437 Bannock Street Denver, CO 80202</p>	<p>DATE FILED: December 9, 2020 3:08 PM CASE NUMBER: 2018CV33011</p>
<p>Plaintiff:</p> <p>TUNG CHAN, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendant:</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC.</p>	<p>^ COURT USE ONLY ^</p> <p>Case Number: 18CV33011</p> <p>Courtroom: 424</p>
<p align="center">ORDER RE: RECEIVER'S FOURTH APPLICATION FOR PROFESSIONAL FEES AND EXPENSES</p>	

The Court has reviewed the Receiver's Fourth Application for Professional Fees and Expenses, Gary Dragul's Objection, and the Receiver's Reply thereto. The Court has also considered the voluminous attachments to the Application, Objection and the Reply, as well as applicable authorities and the Court's file. The Court now enters the following findings and orders.

The Court initially notes that the only objection filed in response to the Receiver's Application is that filed by Dragul. Importantly, no creditor has filed any objection. Also, importantly, Dragul filed no objection to the Receiver's first three Applications for fees for professional services and costs associated with administering the receivership estate.

With respect to Dragul's Objection, the Receiver first asserts as a threshold matter that Dragul lacks standing to raise an objection to the Application. In order for Dragul to have standing he must have sustained an injury in fact to a

legally protected interest. *See Ainscough v. Owens*, 90 P.3d 851 (Colo. 2004). Here, the Receiver represents that the Receivership Estate is insolvent, given allowable investor claims alone of nearly \$32 million while the Estate consists of slightly more than \$900,000.00. The Receiver also argues, persuasively, that Dragul has no stake in the outcome of the Fee Application inasmuch he (as opposed to creditors) cannot show a reasonable possibility that the Estate will sustain a surplus after satisfying all of its debts. *See Cult Awareness Network, Inc. v. Martino*, 151 F.3d 605 (7th Cir. 1998)(bankruptcy creditor only has standing to object to actions of a trustee, including applications for compensation, if the debtor can show a reasonable possibility of a surplus after satisfying all debts). The Court agrees, and finds that Dragul lacks the requisite standing to object to the Receiver's Application.

The Court has nevertheless considered the Receiver's Fourth Fee Application being mindful of the issues raised by Dragul in considering the merits of the Receiver's fee request. In particular, the Court has considered Dragul's assertions that the Receiver either refused or failed to properly consider offers to purchase Estate assets that would have maximized returns for investors and/or mismanaged the Estate such as to effectively dissipate assets.

As to Dragul's first assertion, a close examination of the documentation submitted by Dragul purportedly substantiating his claim, and the documentation submitted by the Receiver in response, demonstrates that the supposed "offers" to purchase Estate assets were largely illusory; such "offers" were largely proposals or outlines or offers that might be submitted in the future (but were not); and/or offers that were not adequately vetted or which contained conditions that could not be performed or which drew objections from the Securities Commissioner. The documentation further demonstrates that offers that were not simply illusory or speculative were considered by the Receiver but failed to come to fruition; either based upon the parties' due diligence or because such purported offers were later withdrawn. The Court finds no evidence in the documentation that supports the assertion that the Receiver failed to properly consider any *bona fide* offer to purchase Estate assets.

The Court further finds that Dragul's second assertion, that the Receiver mismanaged the Estate's real estate assets (i.e. Happy Canyon, Prospect Square, and Clearwater Collection), is clearly and thoroughly rebutted by the

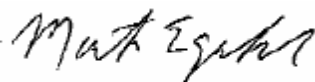
Receiver in its Reply. (See pp. 11 – 13). It is apparent that the Receivership Estate, as inherited by the Receiver, was *inter alia*, depleted of reserves, heavily encumbered, subjected to multiple foreclosures, and substantially overvalued. Nor did Dragal raise objections to the Receiver’s various actions at the time it sought court approval in its various actions with respect to the disposition of such assets.

In short, the Court finds no factual support or legal merit for Dragul’s central premise¹ that the Receiver should be denied its request for fees and costs because it has been dilatory or acted in a manner as to deprive the Estate of assets or value that otherwise existed or were obtainable. To the contrary, the documentation appended to the pleadings fully supports a finding that the Receiver has vigorously and appropriately pursued all available avenues to consolidate and administer the Estate in a way that best maximizes its value. Moreover, the Court finds that the Receiver’s Fourth Application is supported with adequate supporting documentation in support of the time, services, and costs generated by the various professionals in administering the Estate.

The Receiver’s Fourth Application for Professional Fees is therefore **granted**.

SO ORDERED, this 9th day of December, 2020

BY THE COURT:



Martin F. Egelhoff
District Court Judge

¹ The Court has considered the additional assertions raised in the Objection (including Dragul’s complaints about the Receiver’s modification of its fee structure for *future* contingency fees) which the Court finds to either lack merit or relevance as to the instant Application.