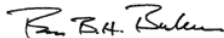


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
DATE FILED: September 7, 2021 4:34 PM	
Plaintiff(s) HARVEY SENDER AS RECEIVER FOR GARY DRAGUL v. Defendant(s) GARY J DRAGUL et al.	
△ COURT USE ONLY △	
Case Number: 2020CV30255 Division: 414      Courtroom:	
<b>Order: Motion for Entry of Default Against Defendant Susan Markusch and Olson Real Estate Services, LLC</b>	

The motion/proposed order attached hereto: MOOT.

THIS MATTER is before the court on the Plaintiff's MOTION FOR ENTRY OF DEFAULT AGAINST DEFENDANTS SUSAN MARKUSCH AND OLSON REAL ESTATE SERVICES LLC, filed June 21, 2021. The court, having reviewed the Motion, and being otherwise fully advised the premises, hereby DENIES as MOOT the relief sought in the motion. Defendants Susan Markusch and Olson Real Estate Services LLC filed an answer on July 8, 2021, prior to the court's entry of Clerk's Default.

Issue Date: 9/7/2021



ROSS B BUCHANAN  
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY  STATE OF COLORADO  Denver District Court  1437 Bannock St.  Denver, CO 80202</p>	
<p><b>Plaintiff:</b> HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC  v.  <b>Defendants:</b> GARY J. DRAGUL, an individual; BENJAMIN KAHN, an individual; THE CONUNDRUM GROUP, LLP, a Colorado Limited Liability Company; SUSAN MARKUSCH, an individual; MARLIN S. HERSHEY, an individual; and PERFORMANCE HOLDINGS, INC., a Florida Corporation; OLSON REAL ESTATE SERVICES, LLC, a Colorado Limited Liability Company; JOHN AND JANE DOES 1 – 10; and XYZ CORPORATIONS 1 – 10.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Attorneys for Plaintiff:</b>  Patrick D. Vellone, #15284  Rachel A. Sternlieb, #51404  Michael T. Gilbert, #15009  ALLEN VELLONE WOLF HELFRICH &amp; 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;"><b>MOTION FOR ENTRY OF DEFAULT  AGAINST DEFENDANT SUSAN MARKUSCH AND OLSON REAL  ESTATE SERVICES, LLC</b></p>	

Harvey Sender, the duly-appointed receiver (the “Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), pursuant to C.R.C.P.

55(a), hereby asks the Clerk to enter default against Defendant Susan Markusch (“Markusch”) and Olson Real Estate Services, LLC (“Olson”).

**I. Markusch and Olson are in default.**

1. On January 21, 2020, the Receiver filed his Complaint in this action against Markusch and others.

2. On February 4, 2020, Markusch was personally served with the summons, complaint, and the delay reduction order entered in this case. A copy of the Affidavit of Service is attached as **Exhibit A**.

3. On March 13, 2019, Markusch moved to dismiss the Complaint.

4. On June 1, 2020, the Receiver filed his First Amended Complaint (“FAC”) naming Olson as a defendant. On June 10, 2020, Olson’s then counsel accepted services of the FAC. A copy of the Waiver and Acceptance of Service is attached as **Exhibit B**.

5. On July 31, 2021, Markusch and Olson moved to dismiss the FAC. On October 28, 2020, the Court denied their motion. On December 22, 2021, the Court granted Markusch and Olson’s joinder in the Joint Motion of Defendants Marlin S. Hershey, Performance Holdings, Inc.,<sup>1</sup> ACF Property Management, Inc., Alan C. Fox,<sup>2</sup> and Gary Dragul for additional time to answer or otherwise respond to the FAC. That extension granted Markusch and Olson until 21 days following the Court’s

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<sup>1</sup> Hershey and Performance Holdings are the “Hershey Defendants.”

<sup>2</sup> Fox and ACF Property Management are the “Fox Defendants.”

determination of the Motion for Certification filed by Dragul, and the Hershey and Fox Defendants (the “Certification Motion”). On December 31, 2021, the Fox Defendants were dismissed with prejudice after settling with the Receiver.

6. On March 18, 2021, the Court granted the Certification Motion. On May 25, 2021, the Court of Appeals entered its Order denying Dragul and the Hershey Defendants’ Petition for Interlocutory Review.

7. Pursuant to C.R.C.P. 12(a)(1)(A), responses to the FAC from the defendants who sought interlocutory review – and therefore from Markusch and Olson – were due June 8, 2021.

8. On May 27, 2021, Dragul filed a Motion to Toll his deadline to respond to the FAC. On June 8, the Hershey Defendants moved for an extension of time to respond to the FAC through June 18th, and they filed their answer and jury demand on June 14th.

9. Markusch and Olson did not move to extend their time to respond to the FAC nor contact the Receiver to request an extension; their deadline to respond to the FAC therefore expired June 8, 2021.

10. C.R.C.P. 55(a) provides that, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.” C.R.C.P. 55(a).

11. Because Markusch and Olson were properly served and have failed to timely file a pleading responding to the FAC, default should enter.

WHEREFORE, the Receiver asks the Clerk to enter default against Defendants Susan Markusch and Olson Real Estate Services, LLC on the FAC, and for such other relief as the Court deems proper.

Dated: June 21, 2021.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

*Rachel A. Sternlieb*

By: s/ Rachel A. Sternlieb

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2021, a true and correct copy of **MOTION FOR ENTRY OF DEFAULT AGAINST DEFENDANT SUSAN MARKUSCH AND OLSON REAL ESTATE SERVICES, LLC** was filed and served via the Colorado Courts E-Filing system to the following:

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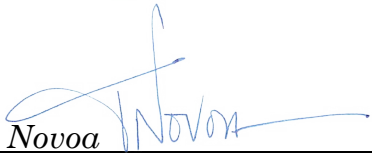
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*In accordance with C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.*