

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	DATE FILED: December 3, 2021 7:48 AM CASE NUMBER: 2018CV33011
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF CO v. Defendant(s) GARY DRAGUL et al.	<p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424 Courtroom:
Order: Receiver's Sixth Report w/attached	

The motion/proposed order attached hereto: APPROVED.

Issue Date: 12/3/2021



SHELLEY ILENE GILMAN
 District Court Judge

District Court, Denver County, State of Colorado Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No.: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p>Plaintiff: Tung Chan, 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><u>Attorneys for Receiver:</u> 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 pvellone@allen-vellone.com mgilbert@allen-vellone.com rsternlieb@allen-vellone.com</p>	
RECEIVER'S SIXTH REPORT	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDA RES”), GDA Real Estate Management, LLC (“GDA REM”), and related entities (collectively, “Dragul and the GDA Entities”), submits his sixth report concerning the status and condition of the Receivership Estate.

I. Procedural History

1. On April 12, 2018, Dragul was indicted by a Colorado State Grand Jury on nine counts of securities fraud.

2. On August 15, 2018, Gerald Rome, the then Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

3. On August 29, 2018, the Commissioner and Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to Colo. Rev. Stat. § 11-51-602(1) and C.R.C.P. 66.

4. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”) appointing Harvey Sender as receiver for the assets of Dragul and the GDA Entities, and their interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

5. On March 1, 2019, Dragul was indicted by a Colorado State Grand Jury on five additional counts of securities fraud. After a number of continuances, Dragul’s criminal trial on the first indictment is scheduled to commence January 3, 2022; trial is anticipated to take up to three weeks.

6. On April 27, 2020, Tung Chang was substituted as the Securities Commissioner.

7. As required by paragraph 14 of the Receivership Order, the Receiver previously submitted his preliminary report concerning the status of the Estate on November 28, 2018, and his Second, Third, Fourth, and Fifth Reports on May 15, 2019, November 14, 2019, May 11, 2020, and March 9, 2021, respectively. A summary of Dragul’s investment scheme is set forth in the Receiver’s Third Report, which is available along with all material pleadings in this case (including all Receiver Reports) at <http://dragulreceivership.com>.

II. Pending Litigation

8. The Receiver’s Fifth Report submitted March 9, 2021, summarizes the status of the Estate and the Receiver’s efforts to recover property of the Estate. As set forth in the Fifth Report, the only asset of the Receivership Estate remaining to be administered is the Estate’s litigation claims in the Insider Case, *Sender v. Dragul, et al.*, Case No. 2020CV30255, Denver District Court. The Insider Case was filed

January 21, 2020. Although it has been pending for approximately 22 months, that case is still not at issue and discovery has not commenced.

9. Defendants in the Insider Case were Dragul insiders and co-conspirators involved in furthering Dragul's Ponzi scheme and profited from it. Among other things, the Complaint identified the following payments made to the remaining Insider Defendants, which the Receiver seeks to recover under several legal theories:

Defendant	Total Commissions Received
Gary Dragul	\$19,148,047.10
Susan Markusch	\$310,196.67
Kahn Defendants	\$1,701,441.92
Hershey Defendants	\$3,175,655.54

10. Defendants in the Insider Case have vigorously defended. Initially all defendants except for Ben Kahn and his law firm, the Conundrum Group (the "Kahn Defendants"), filed motions to dismiss the Complaint. On June 1, 2020, in response to those motions, the Receiver filed a First Amended Complaint. The court in the Insider Case denied all motions to dismiss on October 28, 2020.

11. On November 12, 2020, the moving defendants asked the court in the Insider Case to certify its dismissal orders for immediate interlocutory appeal to the Colorado Court of Appeals, and Dragul asked the Court to reconsider its denial of his motion to dismiss. The court granted the motion for interlocutory appeal on March 18, 2021, and denied Dragul's motion for reconsideration as moot.

12. On May 25, 2021, after additional briefing, the Court of Appeals denied defendants' request for interlocutory review. Two days later, on May 27, 2021, Dragul filed yet another motion for reconsideration of the court's order denying his motion to dismiss, and also filed a motion to toll his response to the First Amended Complaint until 14 days after the court ruled on his second motion for reconsideration. In his motion to toll, Dragul represented that if his motion to dismiss were not granted, he would move to stay the Insider Case pending resolution of his criminal proceedings arguing he would invoke the Fifth Amendment and refuse to testify in the Insider Case because doing so might incriminate him in his criminal proceedings.

13. The Receiver objected to Dragul's second motion for reconsideration and his motion to toll; those motions were fully-briefed as of June 22, 2021. The court in the Insider Case has not yet ruled on those motions. In addition, the Receiver's motion to dismiss the Kahn Defendants' counterclaims against him has been pending since July 2, 2020, and has still not been ruled upon by the court in the Insider Case.

14. On September 9, 2021, the Receiver and the Kahn Defendants attended a mediation in an effort to resolve the Receiver's claims against the Kahn Defendants in the Insider Case. The mediation was not successful.

III. Creditor Claims against the Estate.

15. The deadline for submitting claims against the Estate was March 18, 2019. Approximately 261 investors filed claims totaling approximately \$58 million. Claims submitted by investors (including Hagshama) relating to the five commercial properties transferred to Isabel Marina have been resolved. Based on the Receiver's present analysis, it appears allowable investor claims are not likely to exceed \$32 million. In addition, Hagshama filed claims for over \$100 million, third-party vendors filed claims of approximately \$4.8 million, and secured lenders filed claims for approximately \$105 million. Again, based on the Receiver's present analysis, Hagshama's allowable claim appears not to exceed \$25 million. Also, the vast majority of claims from secured lenders have been either satisfied or greatly reduced by the Estate's sales of the commercial and residential properties as discussed in prior Receiver reports.

16. A number of claims have been filed after the bar date. Some claimants have represented they did not receive notice of the Receivership or the claims bar date. During the Receiver's claims review, he will consider allowing late-filed claims on an individual basis. A complete claims analysis has not yet been completed; the Receiver will thoroughly review claims when the Estate has sufficient assets to consider making distributions.

IV. Estate Assets

17. In addition to the Estate's claims in the Insider Case, on June 4, 2019, the Receiver and the Securities Commissioner filed a Joint Motion for an Order Requiring Dragul to Turnover and Account for Property of the Estate (the "Turnover Motion"). The Turnover Motion was resolved in a settlement agreement in which

Dragul agreed to turnover various assets to the Estate. The settlement agreement was approved by the Court on December 17, 2019. Pursuant to that settlement agreement, Dragul stipulated to the entry of judgment against him for \$120,000. In August 2021, the Receiver initiated efforts to collect on that judgment, including issuing Rule 69 discovery requests and garnishing an entity (GreenLight One, LLC) that appeared to owe Dragul money and which is purportedly owned by Dragul's long-time employee and co-defendant in the Insider Case, Susan Markusch. Effective September 2, 2021, Dragul and the Receiver entered into an agreement pursuant to which Dragul has agreed to pay the Estate the full principal amount of the \$120,000 judgment, \$17,000 as an initial payment (which he paid on or about September 11, 2021), and \$4,291.67 per month until paid in full. Dragul timely made his October and November payments.

18. As of October 31, 2021, the balance in the Receivership account was \$1,296,417.57, and there are outstanding administrative expenses of \$65,637.57 as detailed in the Receiver's Sixth Application for Professional Fees and Expenses being filed contemporaneously with this report. A detailed list of all Estate receipts and disbursements and its balance sheet as of October 31, 2021, is **Exhibit 1**.

V. Administrative Expenses

19. Effective February 28, 2021, the Estate had paid the following professional fees and expenses as detailed in the Receiver's first five fee applications: **First Application**: submitted December 6, 2018 (for the period August 30, 2018, through November 30, 2018); **Second Application**: submitted April 19, 2019 (for the period December 1, 2018, through March 31, 2019); **Third Application**: submitted November 14, 2019 (for the period April 1, 2019, through October 31, 2019); **Fourth Application**, submitted May 11, 2019 (for the period November 1, 2019, through March 31, 2020); and **Fifth Application**: submitted March 9, 2021 (for the period April 1, 2020, through February 28, 2021):

PROFESSIONAL FEES AND EXPENSES PAID		
AUGUST 30, 2018 – FEBRUARY 28, 2021		
Provider	Description	Amount Paid
Harvey Sender	Receiver	\$522,208.36
Allen Vellone Wolf Helfrich & Factor P.C.	Counsel for the Receiver	\$1,773,519.47
RubinBrown LLP	Accountants (forensic accounting, expert witness, and tax preparation)	\$876,040.36
Waldrep LLP	North Carolina local counsel for the Receiver	\$10,611.85
Frost Brown Todd, LLC	Ohio local counsel for the Receiver	\$71,190.56
Revesco Property Services	Property manager (commercial and residential)	\$325,355.32
Kelly Reinhart	Accountant (former GDA accountant; tax preparation)	\$41,200.00
Total Professional Fees and Expenses		\$3,620,125.92

20. The Receiver is submitting his Sixth Fee application contemporaneously with this report and is seeking approval of the following fees and expenses from February 28, 2021, through October 31, 2021:

PROFESSIONAL FEES AND EXPENSES INCURRED			
MARCH 1, 2021 – OCTOBER 31, 2021			
EX.	PROVIDER	DESCRIPTION	AMT. SOUGHT
1	Harvey Sender	Receiver	\$12,840.00
	Allen & Vellone	Counsel for the Receiver	
2		Hourly Fees - Main Receivership Case	\$31,166.05
3		Costs	\$7,373.02
		Total	\$38,539.07
4	RubinBrown LLP		\$14,258.50
Total			\$65,637.57

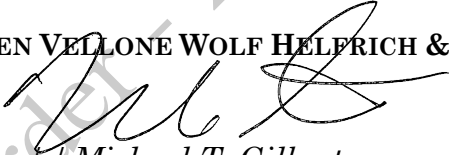
VI. Conclusion

21. The Estate's sales activities are complete, and all property management services have been terminated. The Receiver will continue to pursue the claims against the remaining defendants in the Insider Case and anticipates the Estate will remain open until that case is resolved and does not plan on making distributions until that occurs.

22. The Receiver will file additional periodic reports as appropriate. Information and substantive filings concerning the Estate are publicly available on the Receivership website: <http://dragulreceivership.com>.

Dated: November 11, 2021.

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 1900
Denver, Colorado 80202
Tel: (303) 534-4499
pvellone@allen-vellone.com
mgilbert@allen-vellone.com
rsternlieb@allen-vellone.com

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2021, a true and correct copy of the foregoing **Receiver's Sixth Report** was filed and served via the Colorado Courts E-Filing system on all counsel of record and to the following:

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

***Tung Chan, Securities
Commissioner for the State of
Colorado***

Bart H. Williams
(admitted *pro hac vice*)
Jennifer L. Roche
(admitted *pro hac vice*)
Shawn S. Ledingham Jr.,
(admitted *pro hac vice*)
Proskauer Rose LLP
2029 Century Park East, 24th Floor
Los Angeles, California 90067
bwilliams@proskauer.com
jroche@proskauer.com
sledingham@proskauer.com

***Counsel for Brownstein Hyatt
Farber Schreck, LLP***

Paul L. Vorndran
Christopher S. Mills
Jones Keller, P.C.
1999 Broadway Street
Suite 3150
Denver, CO 80202
pvorndran@joneskeller.com
pmills@joneskeller.com

Counsel for Defendants, Gary Dragul

and

Michael C. Van (admitted *pro hac vice*)
Shumway Van
8985 S. Eastern Ave. Ste. 100
Las Vegas, NV 89123
Michael@shumwayvan.com

Counsel for Defendants, Gary Dragul

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.

By: /s/ Terri M. Novoa 
Allen Vellone Wolf Helfrich & Factor, P.C.