

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	DATE FILED: October 25, 2022 7:49 AM CASE NUMBER: 2018CV33011
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al. 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 Seventh Report w/attached	

The motion/proposed order attached hereto: APPROVED.

Issue Date: 10/25/2022



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	
Plaintiff: Tung Chan, Securities Commissioner for the State of Colorado v. Defendants: Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC	▲ COURT USE ONLY ▲
<u>Attorneys for Receiver:</u> Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Averil K. Andrews, # 56148 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	Case No.: 2018CV33011 Division/Courtroom: 424
RECEIVER'S SEVENTH 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 seventh 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.

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, Fifth, and Sixth Reports on May 15, 2019, November 14, 2019, May 11, 2020, March 9, 2021, and November 11, 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. Dragul’s Criminal Trial

8. After multiple continuances, Dragul’s criminal trial on his first indictment is scheduled for trial from November 7-17, 2022. Trial on Dragul’s second indictment is not yet scheduled.

III. Remaining Receivership Assets

A. The Insider Case

9. The Receiver's Sixth Report submitted on November 11, 2021, summarizes the status of the Estate and the Receiver's efforts to recover property of the Estate. There are two primary assets of the Receivership Estate remaining to be administered. The first 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. See the Receiver's Fifth and Sixth Reports for the history of and a summary of the claims in the Insider Case.

10. Since the Receiver's Sixth Report, on June 21, 2022, the Court in the Insider Case denied Dragul's second motion for reconsideration of Dragul's motions to dismiss, and also denied his request to stay the Insider Case indefinitely until his criminal indictments are finally resolved. The Insider Case is now at issue and set for a four-week jury trial beginning May 8, 2023.

11. On July 6, 2022, the Receivership Court approved a settlement agreement between the Receiver and the Kahn Defendants in the Insider Case, pursuant to which the Kahn Defendants paid the Receivership Estate \$375,000, the Kahn Defendants dismissed their counterclaim against the Estate for \$738,000 in legal fees, and the parties exchanged mutual releases.

12. The remaining defendants in the Insider Case are Gary Dragul, Susan Markusch, and Marlin Hershey and his company Performance Holdings, Inc. The Receiver is seeking damages of approximately \$13 million against Dragul and Markusch jointly and severally, and approximately \$1 million against Hershey and Performance Holdings, Inc. On March 18, 2022, the Bankruptcy Court in Denver, Colorado, entered a judgment against Susan Markusch for \$268,269.11 for fraudulent transfers she received from Cornerstar Wine & Liquor, LLC, an entity purportedly owned and controlled by Dragul's wife Shelly. In April 2022, Hershey was indicted by a federal grand jury in North Carolina for securities fraud and the SEC has sought \$7.5 million in restitution. Hershey's trial is scheduled to commence September 12, 2022. The Receiver's efforts to settle his claims against these defendants in the Insider Case have not been successful.

B. Clearwater Bankruptcy Claims

13. On April 19, 2022, Clearwater Plainfield 15, LLC, and Clearwater Collection 15, LLC, filed for bankruptcy in Colorado under Sub-Chapter V of Chapter 11 of the bankruptcy code. On March 3, 2020, the Receiver had abandoned the Receivership Estate's interest in these entities after efforts to sell the underlying Clearwater shopping center in Clearwater Florida proved unsuccessful.

14. After the Receiver abandoned the Estate's interest in the Clearwater entities, the lender on the properties – then Rialto Mortgage Finance, LLC – had its own receiver appointed for the shopping center by a Florida state court. Filings in the Colorado bankruptcy case indicate there is an offer to purchase the shopping center for \$22.5 million, although to date no contract has been presented to the bankruptcy court. The now secured lender on the property (RSS WFCM 2015-LC22-FL CC15, LLC) has filed a secured claim against the Clearwater entities for \$16,927,519.75. On August 22, 2022, the Receiver filed claims in the Clearwater bankruptcy cases totaling approximately \$3.7 million. At this time, the Receiver cannot predict what, if any, distribution may be made on these claims, or when that might occur.

C. Other Assets

15. 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. 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 paid as of court approval of the settlement agreement, the remaining in payments of \$4,291.67 per month. To date, Dragul has paid \$72,800.04; \$47,199.96 remains to be paid over the next 11 months.

16. As of August 31, 2022, the balance in the Receivership account was \$1,648,760.70 and there are outstanding administrative expenses of \$176,727.43 as detailed in the Receiver's Seventh 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 August 31, 2022, is **Exhibit 1**.

IV. Creditor Claims against the Estate

17. 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. Additionally, some investors have filed independent claims in the Clearwater bankruptcy cases, which may offset or eliminate some claims those investors made against the Receivership Estate.

18. 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 is considering making distributions.

V. Administrative Expenses

19. Effective October 31, 2021, the Estate had paid the following professional fees and expenses as detailed in the Receiver's first six 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); **Fifth Application**: submitted March 9, 2021 (for the period April 1, 2020, through February 28, 2021); **Sixth**

Application: submitted November 11, 2021 (for the period March 1, 2021, through October 31, 2021):

PROFESSIONAL FEES AND EXPENSES PAID AUGUST 30, 2018 – OCTOBER 31, 2021		
Provider	Description	Amount Paid
Harvey Sender	Receiver	\$535,048.36
Allen Vellone Wolf Helfrich & Factor P.C.	Counsel for the Receiver	\$1,812,058.54
RubinBrown LLP	Accountants (forensic accounting, expert witness, and tax preparation)	\$890,298.86
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		\$3,685,763.48

20. The Receiver is submitting his Seventh Fee application contemporaneously with this report and is seeking approval of the following fees and expenses from November 1, 2021, through August 31, 2022:

PROFESSIONAL FEES AND EXPENSES INCURRED			
NOVEMBER 1, 2021 – AUGUST 31, 2022			
EX.	PROVIDER	DESCRIPTION	AMT. SOUGHT
1	Harvey Sender	Receiver	\$5,880.00
	Allen & Vellone	Counsel for the Receiver	
2		Hourly Fees - Main Receivership Case	\$15,525.00
		Contingent Fee Insider Case	\$142,500.00
3		Costs	\$2,159.78
		Total	\$161,952.80
4	RubinBrown LLP		\$11,796.63
Total			<u>\$177,861.41</u>


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 its claims in the Clearwater bankruptcy cases and anticipates the Estate will remain open until those issues are 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: September 30, 2022.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: /s/ Michael T. Gilbert 

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ATTORNEYS FOR THE RECEIVER

Attachment to Order 2015 CV 330

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2022, a true and correct copy of the foregoing **Receiver's Seventh Report** was filed and served via the Colorado Courts E-Filing system on all counsel of record and to the following:

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Counsel for 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/ Yvonne M. Davis

Allen Vellone Wolf Helfrich & Factor P.C.

Yvonne M. Davis