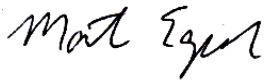


REVIEWED, NOT CALENDARED
By DavisY at 2:14:16 PM, 1/18/2024

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	DATE FILED: January 18, 2024 1:39 PM CASE NUMBER: 2018CV33011
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al. v. Defendant(s) GARY DRAGUL et al.	△ COURT USE ONLY △ Case Number: 2018CV33011 Division: 424 Courtroom:
Order:Receiver's Eighth Report with attach	

The motion/proposed order attached hereto: APPROVED.

Issue Date: 1/18/2024



MARTIN FOSTER EGELHOFF
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 EIGHTH 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 eighth 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, Sixth, and Seventh Reports on May 15, 2019, November 14, 2019, May 11, 2020, March 9, 2021, November 11, 2021, and September 30, 2022, 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. Remaining Receivership Assets

A. The Insider Case

8. The Receiver’s Seventh Report submitted September 30, 2022, summarized the status of the Estate and the Receiver’s efforts to recover property of the Estate. The two remaining assets at that time were 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.

9. Just before trial was set to commence, the Receiver, Gary Dragul, Susan Markusch, and Olson Real Estate Services, LLC entered into a settlement agreement pursuant to which Dragul has agreed to pay the Receivership Estate \$850,000 by October 25, 2024. Dragul is not obligated to make interim payments.

10. The Dragul settlement payment will be "secured" by a stipulated, \$999,999.99 "pocket judgment" that will accrue statutory 8% post-judgment interest upon its entry. The judgment shall be on the Receiver's first claim for relief for securities fraud in the First Amended Complaint and shall be non-dischargeable under Bankruptcy Code sections 523(a)(2)(A) and 523(a)(4). The judgment shall not be filed or entered unless Dragul fails timely to make the \$850,000 payment after a 30-day cure period. This settlement agreement was approved by the Receivership Court on November 7, 2023.

11. The Receiver was unable to reach a settlement with Dragul's co-defendant and co-conspirator Marlin S. Hershey, and his company Performance Holdings, Inc. (jointly, the "Hershey Defendants"). On October 30, 2023, the Receiver proceeded to a six-day jury trial against the Hershey Defendants. On December 15, 2023, the court entered judgment against Mr. Hershey personally for \$14,770,358.49 plus post-judgment interest until paid in full. The court entered judgment against Performance Holdings for \$9,534,538.00. Mr. Hershey has indicated in an *ex parte* communication with the court that he intends to file an appeal.

12. Mr. Hershey was previously indicted for securities fraud in North Carolina and ordered to pay \$300,000 in restitution; the Receiver understands that he awaits formal sentencing. The collectability of the judgment entered against Mr. Hershey and Performance Holdings is unknown.

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 equity 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 equity 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. The shopping center was sold by the Florida receiver for \$22.5 million; after paying the secured lender and various administrative expenses, approximately \$5 million remains in the Clearwater bankruptcy estate.

15. The Receiver filed claims in the Clearwater bankruptcy case for approximately \$10 million based on investor losses and transfers from the GDA estate to the Clearwater entities. The trustee in the Clearwater case objected to the Receiver's claims contending, among other things, that the Receiver had abandoned the Receivership Estate's interest in Clearwater and therefore lacked standing. The Receiver and the Clearwater bankruptcy trustee have reached an agreement in principle to resolve the Receiver's claims in exchange for the Clearwater estate paying the Receivership Estate \$500,000. Part of that agreement ensures that all Clearwater investors who filed claims in the Receivership case – whether or not they also filed claims in the Clearwater bankruptcy case – will receive distributions from the Clearwater bankruptcy estate. That agreement will be subject to approval by the bankruptcy and the Receivership courts, and the Receiver anticipates filing motions for approval by the end of 2023.

C. Other Assets

16. 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. As of the date of this report, Dragul has paid the \$120,000 in full.

17. As of December 13, 2023, the balance in the Receivership account was \$1,510,143.30 and there are outstanding administrative expenses of \$306,708.99 as detailed in the Receiver's Eighth 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 December 13, 2023, is attached as **Exhibit 1**.

III. Dragul's Criminal Pleas

18. On June 3, 2023, Dragul pled guilty to one count of securities fraud on his first criminal indictment, and on one count of securities fraud on his second indictment.

19. The first indictment is case no. 2018CR1092 where Dragul pled guilty to Count Nine, Securities Fraud, in violation of §§ 11-51-501(1)(c) and 11-51-603(1) C.R.S. (Class 3 Felony). Dragul was sentenced to ten years of Economic Crime Probation, with supervision through the Economic Crime Unit (ECU), and the requirement for strict compliance. ECU Probation involves intensive supervision by an experience probation officer who holds a MBA, MS, CFE (Certified Fraud Examiner), CFI (Certified Forensic Interviewer), and CECFE (Certified Economic Crime Forensic Examiner). Dragul will have to submit regular monthly budgets and may not open any new lines of credit without prior authorization from the ECU probation officer. If Dragul is in substantial compliance with the terms and conditions of probation and has paid all restitution and court costs in full, then the People will have no objection to a motion for early termination after five (5) years of successfully completed probation.

20. As a punitive sanction, Dragul will serve sixty days in the Arapahoe County Jail, which will run consecutive to 2019CR610 (120 days total), in addition to a period of eight months of in-home detention, which will run concurrent to 2019CR610. Dragul must also complete 100 hours of useful public service, and Dragul stipulated to pay \$1 million in restitution, which he paid contemporaneously with his sentencing and which has been distributed by the State of Colorado to the defrauded note victims in case no. 2018CR1092. Those collateral source recoveries will be credited against those investors' claims in the Receivership Estate.

21. The second indictment is case no. 2019CR610 where Dragul pled guilty to Count Five, Securities Fraud, in violation of §§ 11-51-501(1)(c) and 11-51-603(1) C.R.S. (Class 3 Felony). Dragul was sentenced to ten years of Economic Crime Probation on Count Five, with supervision through the Economic Crime Unit (ECU), and the requirement for strict compliance. If Dragul is in substantial compliance with

the terms and conditions of probation and has paid all restitution and court costs in full, then the People will have no objection to a motion for early termination after five years of successfully completed probation.

22. Dragul also agreed to serve sixty days in the Arapahoe County Jail, which will run consecutive to 2018CR1092 (120 days total), in addition to a period of eight months of in-home detention, which will run concurrent to 2018CR1092, and he will be required to complete 100 hours of useful public service.

23. Dragul stipulated to causation for the purposes of restitution in the 2019CR610 case, and agreed to pay restitution for any dismissed counts. As discussed above in connection with Dragul's settlement of the Insider Case, as part of a global resolution, Dragul has agreed to pay \$850,000 to the Receivership Estate within one year. If Dragul pays the \$850,000 required under the settlement agreement, this will constitute his restitution payment for the second indictment. If Dragul fails to pay the \$850,000, then his criminal restitution amount shall remain open, and the prosecution may seek any amount of restitution, including but not limited to pre-judgment and post-judgment interest, without restriction. If Dragul fails to pay the total amount of \$850,000, he shall be given a dollar-for-dollar credit towards criminal restitution for any monies he personally pays to the Receiver pursuant to the Insider Case settlement agreement, and any monies he pays would also reduce the judgment that would enter against him.

IV. Creditor Claims against the Estate

24. 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 \$25 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 \$8.2 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, as discussed above, it appears likely that Clearwater investor claims will be paid independently from distributions in the

Clearwater bankruptcy cases, which may offset or eliminate some claims those investors made against the Receivership Estate.

25. 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.

V. Administrative Expenses

26. Effective November 30, 2023, the Estate had paid the following professional fees and expenses as detailed in the Receiver's first seven 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); **Seventh Application**: submitted September 30, 2022:

PROFESSIONAL FEES AND EXPENSES PAID AUGUST 30, 2018 – AUGUST 31, 2022		
Provider	Description	Amount Paid
Harvey Sender	Receiver	\$540,928.36
Allen Vellone Wolf Helfrich & Factor P.C. ¹	Counsel for the Receiver	\$1,827,583.54
RubinBrown LLP	Accountants (forensic accounting, expert witness, and tax preparation)	\$902,095.49
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

¹ Allen & Vellone has also been paid a contingent fee of \$142,500 for recoveries obtained in the Insider Case as set forth in the Receiver's Seventh Report and Seventh Fee Application.

PROFESSIONAL FEES AND EXPENSES PAID		
AUGUST 30, 2018 – AUGUST 31, 2022		
Provider	Description	Amount Paid
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		\$3,718,965.11

27. The Receiver is submitting his Eighth Fee application contemporaneously with this report and is seeking approval of the following fees and expenses from September 1, 2022, through November 30, 2023:

PROFESSIONAL FEES AND EXPENSES INCURRED			
SEPTEMBER 1, 2022 – NOVEMBER 30, 2023			
	PROVIDER	DESCRIPTION	AMT. SOUGHT
	Harvey Sender	Receiver	\$66,720.00
	Allen & Vellone	Counsel for the Receiver	
		Hourly Fees - Main Receivership Case	\$74,668.00
		Costs	\$30,774.34
		Total	\$101,193.34
	RubinBrown LLP		\$138,795.65
	Total		<u>\$306,708.99</u>

VI. Conclusion

28. The Estate's sales activities are complete, and all property management services have been terminated. The Receiver's claims in the Insider Case have either settled or been reduced to judgment. The Receiver anticipates approval of the Clearwater settlement and receipt of those funds early in 2024, and Dragul's \$850,000 payment in October 2024. The Receiver anticipates filing his proposed distribution plan in the first quarter of 2024, and will consider making interim distributions in connection with the plan as approved.

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2023, a true and correct copy of the foregoing **Receiver's Eighth 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***

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 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.

/s/ Yvonne Davis

Allen Vellone Wolf Helfrich & Factor P.C.

Yvonne M. Davis