

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	<p>DATE FILED: February 16, 2024 11:36 AM FILED ID: B36FB6A04D110 CASE NUMBER: 2018CV33011</p>
<p>Plaintiff: TUNG CHAN, Securities Exchange 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>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Averil K. Andrews, # 56148 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: aandrews@allen-vellone.com</p>	<p>Case Number: 2018CV33011 Division/Courtroom: 424</p>
<p>RECEIVER’S MOTION TO APPROVE PAYMENT OF RETAINER</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), hereby asks the Court to approve the estate’s payment of a retainer to the law firm of Smith Debnam Narron Drake Saintsing & Meyers, LLP, whom the Receiver has retained to collect a \$14+ million judgment against Marlin Hershey and Performance Holdings, Inc.

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC.

2. On August 30, 2018, the Court entered its Order Appointing Receiver (“Receivership Order”), which appointed Harvey Sender Receiver for Dragul (limited to the definition of the “Receivership Property” or “Receivership Estate” as defined in the Receivership Order), GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC.

3. The Receivership Order gives the Receiver the authority to “hire and pay general counsel, accounting, and other professionals as may be reasonably necessary to the proper discharge of the Receiver’s duties, and to hire, pay and discharge the personnel necessary to fulfill the obligations of the Receiver hereunder, including the retention of . . . other third parties to assist the Receiver in the performance of its duties hereunder, all within the Receiver’s discretion[.]” Receivership Order at p. 9, ¶ 13(l).

1. On December 15, 2023, in *Sender v. Dragul, et al.*, Case No. 2022 CV 30255, Denver District Court, the Receiver obtained a \$14,770,358.49 Judgment (“Judgment”) against Marlin Hershey, and a judgment of \$9,534,538.00 against Hershey’s company, Performance Holdings, Inc., with interest accruing on the judgments at 8% per annum until paid. Although the judgment debtors have appealed, they have not posted a supersedeas bond to stay collection on the judgments.


2. The Receiver believes the judgment debtors reside and have assets in North Carolina. To execute on the Judgments, the Receiver has employed Smith Debnam as local counsel as local counsel to domesticate the Judgments in North Carolina and levy on debtors’ assets. A Notice of Employment of Smith Debnam is being filed concurrently with this motion.

4. As part of its engagement, Smith Debnam requires a \$3,000.00 retainer and a \$500.00 cost-deposit. Therefore, the Receiver hereby asks the Court to approve payment of the retainer and cost-deposit so that local counsel can proceed with post-judgment execution efforts.

5. Pursuant to paragraph 34 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served.

Dated: February 16, 2024.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.

By: s/ Averil K. Andrews 
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ATTORNEYS FOR THE RECEIVER, HARVEY
SENDER

CERTIFICATE OF SERVICE

The undersigned certifies that on February 16, 2024 a true and correct copy of the foregoing motion was filed and served via the Colorado Courts E-Filing system to the following:

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***Counsel for Tung Chan, Securities
Commissioner***

/s/ Rebecca H. Bradshaw _____

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.