

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	
<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	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No.: 2018CV33011 Division/Courtroom: 424
RECEIVER’S NINTH 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.

1. This Report supplements the Receiver’s Eighth Report filed on December 20, 2023, and the Receiver’s previous reports. All are available on the Receivership website at <http://dragulreceivership.com>.

2. Since December 20, 2023, the following significant events have occurred in connection with the Receivership.

A. The Insider Case

3. The Receiver's Seventh and Eighth Reports submitted September 30, 2022, and December 15, 2023, respectively, 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.

4. 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.

5. The Dragul settlement payment is "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.

6. 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.

7. Mr. Hershey was previously indicted for securities fraud in North Carolina and ordered to pay \$300,000 in restitution; the Receiver understands that

on April 12, 2024, Mr. Hershey was to report to a Federal Correctional Institution in Williamsburg, South Carolina where he is to serve 21 months.

8. On January 31, 2024, Mr. Hershey filed a notice of appeal of the judgment against him. No appeal has been taken of the judgment against Performance Holdings. No bond has been posted nor has a stay issued with respect to the judgment against Mr. Hershey.

9. The Receiver has hired local counsel in North Carolina and domesticated the judgments against Hershey and Performance Holdings. Post-judgment discovery is ongoing in North Carolina in an effort to collect on the judgments.

B. Clearwater Bankruptcy Claims

10. 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.

11. 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.

12. 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 Liquidating Trustee in the Clearwater bankruptcy cases 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 Liquidating Trustee reached an agreement 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 cases – will receive distributions from the Clearwater bankruptcy estates.

13. The agreement was filed for approval in the Bankruptcy Court on March 26, 2024, and in the Receivership Court on March 29, 2024. Chad Hurst individually filed the only objections to the settlement agreement in either the Bankruptcy Court or the Receivership Court.

14. Hurst was an investor in various Dragul entities and has already recouped approximately 84% of his losses, while other investors have recouped far less, some as little as 5%. Dragul has characterized Hurst as a “friend of the house” and provided him with preferential treatment, including preferred returns. Hurst has continued to provide funds to Dragul after the Receiver was appointed to fund his legal fees and apparently other Dragul obligations. In exchange, Dragul gave Hurst a power of attorney and an assignment of managing member responsibilities for the Clearwater entities on April 26, 2022, and Dragul has apparently assigned his purported equity interests in the Clearwater entities to Hurst so that Hurst can recoup even more of his losses (indeed, he seeks to turn a profit) at the expense of Dragul’s other defrauded investors. To date, Hurst has refused to produce any agreements he has with Dragul or to disclose the nature of his financial relationship with and advances to Dragul and or/ Dragul’s family members.

15. At least six other defrauded investors have joined in the Liquidating Trustee’s motion in the Bankruptcy Court to approve the Clearwater settlement agreement with the Clearwater bankruptcy estates: Lone Pine Resources, LP; Marc C. Diamant; Aaron Metz; David Haar; and Cofund V, LLC; and Hagshama Florida 13 Clearwater, LLC. A seventh investor, Ray Nutt, has withdrawn his prior limited objection to the settlement agreement. The Receiver has also filed a joinder in motion to approve the settlement agreement in the bankruptcy court. The Bankruptcy Court has set a four-day evidentiary hearing on the settlement agreement to commence September 24, 2024. Creditors interested in having the Clearwater settlement agreement approved should consult with their counsel.

16. Lone Pine Resources has also joined in the motion to approve the Clearwater settlement agreement in the Receivership Court. The Receivership Court has set a hearing on the motion to approve the settlement agreement in the Receivership Case for November 13, 2024.

17. Approval of the Clearwater settlement agreement will bring substantial additional funds into the Receivership Estate and will increase distributions to non-Clearwater investors according to the Receiver's anticipated Plan of Distribution, which the Receiver will not be in a position to file until the Clearwater settlement issues are resolved.

C. Dragul's former counsel now represents Hurst in the Receivership Case.

18. On January 30, 2024, Dragul's most recent set of attorneys, Christopher Mills and Paul Vorndran of Jones & Keller, P.C., moved to withdraw from representing Dragul in this case. The Court approved their withdrawal on February 14, 2024. No further attorneys have entered an appearance for Mr. Dragul.

19. After being granted leave to withdraw from representing Dragul in this Receivership Case, on April 8, 2024 – less than two months later – Christopher Mills of Jones & Keller, P.C. entered his appearance for Hurst in this case, and on April 16, 2024, filed Hurst's objection in this case to the Clearwater settlement agreement.

D. Mr. Dragul has been permanently enjoined from dealing in securities in Colorado and has violated his June 3, 2023, Plea Agreement.

20. In addition to Dragul's criminal plea agreements pursuant to which he has been placed on Economic Crime Probation for 10 years and sentenced to serve time in the Arapahoe County Jail, on May 7, 2024, he stipulated with the Commissioner to a permanent injunction against him that prohibits him from offering to sell or selling any securities in Colorado, making recommendations or otherwise rendering advice to clients in Colorado regarding securities or managing securities accounts for clients in Colorado, and engaging in business in Colorado as a securities broker-deal, sales representative, investment advisor, or investment advisor representative. The Receivership Court entered the permanent injunction against Dragul on May 8, 2024.

21. In his June 3, 2023, Plea Agreement, Dragul pleaded guilty to a felony charge of securities fraud as set forth in his Second Indictment. Part of the predicate allegations of the Second Indictment related to defrauding Clearwater investors. In the June 3 Plea Agreement, Dragul stipulated to the factual basis for the indictment. As a material condition of his June 3 Plea Agreement, Dragul agreed "to actively

cooperate with Receiver Harvey Sender to facilitate an amicable resolution to any remaining litigation in the Dragul Receivership.” Notwithstanding this agreement, Dragul continues to work with Hurst in the Clearwater bankruptcy cases to convince the bankruptcy court (and the Receivership Court) to reject the Clearwater settlement agreement, which would bring an additional \$500,000 into the Receivership Estate, in an effort to further Hurst’s effort to recover money for *his* sole benefit to the detriment of the Receivership Estate and Dragul’s other defrauded investors.

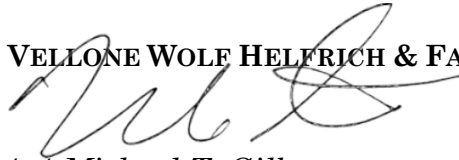
II. Conclusion

22. The Estate’s sales activities are complete, and all property management services have been terminated. The Receiver’s hope that the Clearwater settlement would be approved in early in 2024 has not come to pass because of Hurst’s objections. And the Receiver awaits Dragul’s \$850,000 settlement payment in October 2024. The Receiver will not be in a position to submit his proposed distribution plan until the Clearwater settlement issues are resolved, which doesn’t appear likely to happen before November 2024.

23. 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: May 30, 2024.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: /s/ Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2024, a true and correct copy of the foregoing **Receiver's Ninth 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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Commissioner for the State of
Colorado***

Counsel for Chad Hurst

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/ Lisa A. Vos

Allen Vellone Wolf Helfrich & Factor P.C.