

District Court, Denver County, State of Colorado Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433	DATE FILED April 22, 2025 1:18 PM FILING ID: 2AAF1ADB550F0 CASE NUMBER: 2018CV33011
<b>Plaintiff:</b> Tung Chan, Securities Commissioner for the State of Colorado  v.  <b>Defendants:</b> 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
<b>RECEIVER'S TENTH REPORT</b>	

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 Tenth Report concerning the status and condition of the Receivership Estate.

1. This Report supplements the Receiver's Ninth Report filed May 30, 2024, and the Receiver's previous reports. All are available on the Receivership website at <http://dragulreceivership.com>.

## A. The Insider Case

2. The Receiver's Seventh, Eighth, and Ninth Reports, submitted September 30, 2022, December 15, 2023, and May 30, 2024, 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, and the Receiver's claims in the Clearwater Bankruptcy Cases. 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.

3. **Dragul Breach of Settlement Agreement.** 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 agreed to pay the Receivership Estate \$850,000 by October 25, 2024. Dragul failed to make the payment and failed to cure his default. Accordingly, on December 20, 2024, at the Receiver's request, the Court in the Insider Case entered judgment against Dragul for \$999,999.99.

4. **Forbearance Agreement with Dragul.** On April 18, 2025, after extensive negotiations, Dragul entered into a forbearance agreement with the Receiver pursuant to which Dragul has agreed to pay the estate a total of \$852,000 to satisfy the \$999,999.99 judgment against him. On or before May 28, 2025, Dragul has agreed to make a \$527,000 cash payment to the Estate to be included in the pool for distribution to creditors.

5. Beginning on July 25, 2025, Dragul has agreed to make ten quarterly payments of \$32,500 (which includes a modicum of \$1,240 in interest) to Allen & Vellone pursuant to Allen & Vellone's contingent fee agreement with the Receiver as set forth in the Receiver's May 28, 2020, Notice Concerning Revised Compensation to Allen & Vellone, which provides for a 38% contingent fee to Allen & Vellone on amounts collected in the Insider Case. If any quarterly payment is not made by 30th of the month each quarter when due, then after 5 business days' notice and failure to cure, the full amount of the \$999,999.99 Judgment, less payments made, plus 8%

interest on the then outstanding amount shall be immediately due as a non-dischargeable Judgment.

6. **Hershey Judgment.** 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 Hershey personally for \$14,770,358.49 plus post-judgment interest until paid in full. Judgment entered against Performance Holdings for \$9,534,538.00.

7. On January 31, 2024, Mr. Hershey filed a notice of appeal of the judgment against him. No appeal was taken of the judgment against Performance Holdings. On October 16, 2024, Hershey's appeal was dismissed with prejudice for failure to prosecute and the judgments are now final and non-appealable.

8. Mr. Hershey was previously indicted for securities fraud in North Carolina and ordered to pay \$300,000 in restitution. Currently, Mr. Hershey is incarcerated in the Williamsburg Federal Correctional Institute in South Carolina; his release date has been scheduled for May 26, 2025.

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 to collect on the judgments. The Receiver has hired counsel in North Carolina to pursue collection efforts against the Hershey Defendants, but North Carolina law concerning collection from judgment debtors is favorable to debtors, cumbersome, and time-consuming. Mr. Hershey's incarceration has delayed collection efforts and to date nothing has been recovered, but efforts are ongoing.

## **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 a Settlement Agreement to resolve the Receiver's claims in exchange for the Clearwater estate paying the Receivership Estate \$500,000. Part of that Settlement Agreement ensured 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 Liquidating Trustee filed a motion to approve the Settlement Agreement in the bankruptcy court on March 26, 2024, and the Receiver filed a similar motion in the Receivership Court on March 29, 2024. At least six other defrauded investors joined in the Liquidating Trustee's motion in the bankruptcy court to approve the Clearwater Settlement Agreement: 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, withdrew his prior limited objection to the Settlement Agreement. Lone Pine Resources also joined in the motion to approve the Clearwater Settlement Agreement in the Receivership Court.

14. Chad Hurst individually filed the only objections to the Settlement Agreement in either the Bankruptcy Court or the Receivership Court. 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%. On September 30, 2024, the bankruptcy court awarded Hurst \$304,980.75 in administrative expenses, \$225,000 as a “success fee” for effecting the sale of the Clearwater shopping center even though it was sold by the Florida receiver that marketed and sold the shopping center and not by Hurst or the Debtors.

15. After several delays, a hearing was scheduled for April 18, 2025, in the Receivership Court on the Clearwater Settlement Agreement focused on whether the Receivership Court's Abandonment Orders barred the Receiver's claims in the Clearwater cases and deprived the Receiver of standing. The Receiver had asked the bankruptcy court to abstain from ruling on that issue until the Receivership Court decided the issue which was dependent on the Receivership Court's interpretation of its own orders.

16. Although no objection to the Receiver's motion to abstain was filed, on March 28, 2025, the bankruptcy court denied the motion and entered an order and judgment striking the Receiver's claims in the Clearwater bankruptcy cases and denying the Liquidating Trustee's motion to approve the Settlement Agreement. On April 7, 2025, the Liquidating Trustee filed a motion to approve the distribution of the assets in the Clearwater estates without payment to the Receiver.

17. On April 8, 2025, the Receiver appealed the bankruptcy court's March 28, 2025, Order and Judgment to the United States District Court in Colorado, and on April 9, 2025, filed a motion to stay proceedings in the Clearwater cases pending that appeal. Responses to the Stay Motion are due April 23, 2025, and the motion remains pending. The Receiver's Opening Brief in the appeal is due May 23, 2025.

## **II. Distribution Plan**

18. 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 now the bankruptcy court's March 28, 2025, rulings.

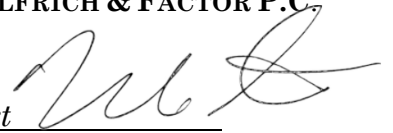
19. More than a year ago, the Receiver prepared a proposed distribution Plan. The Receiver has been waiting to file the Plan until receiving Dragul's \$850,000 and \$500,000 from the Clearwater settlement because those funds materially affect distributions under the Plan. Regardless of the outcome of the Clearwater appeal, if Dragul timely makes his \$527,000 payment under the Forbearance Agreement described above in paragraphs 4 and 5, the Receiver intends to submit his proposed Plan to the Court and to recommend making interim distributions under that Plan.

20. 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: April 22, 2025.

**ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.**

By: /s/ Michael T. Gilbert



Patrick D. Vellone

Michael T. Gilbert

Averil K. Andrews

1600 Stout Street, Suite 1900

Denver, Colorado 80202

Tel: (303) 534-4499

[pvellone@allen-vellone.com](mailto:pvellone@allen-vellone.com)

[mgilbert@allen-vellone.com](mailto:mgilbert@allen-vellone.com)

[aandrews@allen-vellone.com](mailto:aandrews@allen-vellone.com)

ATTORNEYS FOR THE RECEIVER

## CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2025, a true and correct copy of the foregoing **Receiver's Tenth 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

Christopher S. Mills  
Jones Keller, P.C.  
1675 Broadway, 26th Floor  
Denver, CO 80202  
pmills@joneskeller.com

*Counsel for Chad Hurst*

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

## 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/ Salowa Khan

Allen Vellone Wolf Helfrich & Factor P.C.