

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: June 30, 2020 1:48 PM FILING ID: 33F79A15E2073 CASE NUMBER: 2019CV33770
TUNG CHAN, Securities Commissioner for the State of Colorado, Plaintiff, v. MARK RAY; REVA STACHNIW; CUSTOM CONSULTING & PRODUCT SERVICES, LLC; RM FARM & LIVESTOCK, LLC; MR CATTLE PRODUCTION SERVICES, LLC; SUNSHINE ENTERPRISES; UNIVERSAL HERBS, LLC; DBC LIMITED, LLC, Defendants.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorneys for Court-appointed Receiver Gary Schwartz:</i> John A. Chanin, #20749 Katherine A. Roush, #39267 FOSTER GRAHAM MILSTEIN & CALISHER, LLP 360 South Garfield Street, Suite 600 Denver, Colorado 80209 Phone: (303) 333-9810 Fax: (303) 333-9786 Email: jchanin@fostergraham.com ; kroush@fostergraham.com	Case Number: 19CV33770 Division: 209
RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF UNIVERSAL HERBS, LLC AND APPROVAL OF THE MANAGEMENT AGREEMENT	

Gary Schwartz, the duly-appointed receiver “Receiver” for Mark Ray (“Ray”), Reva Stachniw (“Stachniw”), Custom Consulting & Product Services, LLC (“Custom Consulting”), MR Cattle Production Services, LLC (“MR Cattle”), Universal Herbs, LLC (“UH”), DBC Limited, LLC (“DBC”), RM Farm & Livestock, LLC (“RM Farm”), and Sunshine Enterprises (“Sunshine” and collectively with Ray, Stachniw, Custom Consulting, MR Cattle, UH, DBC,

RM Farm, and Sunshine, “Ray and the Ray Entities”), asks the Court to enter an order approving the sale of Universal Herbs, LLC.

I. Background

1. On September 30, 2019, David Cheval, then-Acting Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Ray and the Ray Entities. The plaintiff is now Securities Commissioner Tung Chan.

2. On September 30, 2019, the Commissioner and Ray, Custom Consulting, MR Cattle, UH and DBC filed a Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over Ray, Custom Consulting, MR Cattle, UH and DBC pursuant to Colo. Rev. Stat. § 11-51-602(1) and C.R.C.P. 66.

3. On September 30, 2019, the Court entered a Stipulated Order Appointing Receiver (the “September 30 Order”) appointing Gary Schwartz of Betzer Call Lausten & Schwartz, LLP as receiver for Ray, Custom Consulting, MR Cattle, UH and DBC and their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “Ray Estate”) September 30 Order at ¶ 3.

4. On September 30, 2019, the Securities and Exchange Commission (“SEC”) filed a Complaint against Ray and the Ray Entities and Ron Throgmartin in the United States District Court for the District of Colorado, case no. 19-cv-02789-DDD-NYW (the “Federal Case”).

5. On September 30, 2019 the SEC and Ray, Throgmartin, UH, Custom Consulting, MR Cattle, and DBC filed a stipulated request for the entry of consent orders in the Federal Case.

6. The Court in the Federal Case granted the request for entry of consent orders on October 10, 2019 (the “Ray Consent Judgments”).

7. On October 16, 2019, the SEC and Stachniw, RM Farm and Sunshine filed a second stipulated request for the entry of consent orders in the Federal Case.

8. The Court in the Federal Case granted the request for entry of consent orders on October 18, 2019 (the “Stachniw Consent Judgments”).

9. On October 30, 2019, the Commissioner and Stachniw, RM Farm and Sunshine filed a Second Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over Stachniw, RM Farm, and Sunshine pursuant to Colo. Rev. Stat. § 11-51-602(1) and C.R.C.P. 66.

10. On November 4, 2019, the Court entered a Stipulated Order Appointing Receiver (the “November 4 Order” and collectively with the September 30 Order, the “Receivership Orders”) appointing Gary Schwartz of Betzer Call Lausten & Schwartz, LLP as receiver for Stachniw, RM Farm, and Sunshine and their identified properties, assets, interests and management rights in related affiliated and subsidiary businesses (the “Stachniw Estate”) and added the Stachniw Estate to the Ray Estate (collectively, the Stachniw Estate and Ray Estate are referred to herein as the “Receivership Estate” or “Estate”). November 4 Order at ¶¶ 3, 4.

11. The Ray Consent Judgments and the Stachniw Consent Judgments both stay the Federal Case during the pendency of the above-captioned litigation.

12. On February 20, 2020, Ray pled guilty to a one-count federal Information charging conspiracy to commit wire fraud and bank fraud in connection with the Ponzi scheme alleged in the Receivership Action, U.S. District Court for the C.D. of Illinois, Case No. 20-cr-

40007. The Information alleges the active participation in the Ponzi scheme of two unnamed, co-conspirators, presumably Stachniw and Throgmartin.

13. The Receivership Orders grant the Receiver the authority to sell or otherwise dispose of any portion of the Estate and to obtain Court approval for any sale for greater than \$20,000 (September 30 Receivership Order at 4, ¶ 5(j)).

II. Sale of Universal Herbs is in the Best Interest of the Estate and Its Creditors

14. Universal Herbs, LLC is a licensed marijuana company with two licensed retail locations and a separate licensed marijuana production facility (“UH”). Prior to the appointment of the Receiver, it was owned and controlled by Mark Ray. It is a portion of the Receivership Estate that the Receiver is authorized to sell.

15. On May 21, 2020, the Receiver, on behalf of UH, entered into an Asset Purchase Agreement (“APA”) with Titan Health LLC (“Purchaser”). The signed APA is attached here as **Exhibit A** and is contingent upon approval by all necessary state and local agencies, as well as the Court.

16. Per the APA, the purchase price for UH’s assets is \$4,000,000. The transfer of UH’s assets and the payment of the purchase price is handled in a bifurcated fashion, with the immediate purchase of one retail location and the marijuana cultivation facility (“Phase 1”) and the later purchase of the second retail location after the landlord of the second retail location agrees to assign the lease to Purchaser or Purchaser finds a new location (“Phase 2”). The asset transfer and payment terms are as follows:

- a. A payment of \$750,000 before or at closing;

- b. Upon the completion of Phase 1, including approval of all assets and licenses to the purchaser, the execution of a secured owner carry-back note of \$2.250 million bearing an interest rate of 14% and a minimum monthly payment of \$75,000;
- c. Upon completion of Phase 2, the execution of a second secured owner carry-back note of \$1 million, an interest rate of 14%, and a minimum monthly payment of \$25,000 per month.
- d. UH shall have until March 1, 2021 to complete Phase 2.

17. On May 21, 2020, UH also entered into a Marijuana Establishment Management Agreement (“Management Agreement”) with Lifestream Management, LLC (“Lifestream”), an affiliate of Titan Health. Under the Management Agreement, Lifestream will manage and operate UH under the Receiver’s ultimate control and direction pending closing of the APA. The Management Agreement is attached here as **Exhibit B**.

18. At the time the Receiver was appointed, the financial records of UH were incomplete, inadequate and inaccurate. The Receiver has identified that currently, UH has over \$1.9 million in known liabilities, including money owed to vendors and unpaid sales, excise, and other taxes owed to the State of Colorado and the City of Denver.

19. The Receiver has substantial experience working with and valuing marijuana companies such as UH. In addition, the Receiver has discussed UH and the current market conditions in the marijuana industry with various brokers and business experts. Based on his experience and research, and in his reasonable business judgment, the Receiver believes the foregoing asset sale is in the best interests of the Estate and its creditors. Given current market conditions, the purchase price is reasonable, and the sale will remove a significant operational

and administrative burden on the Receiver and the Receivership Estate. It will also allow the Receiver to pay taxes owed to the State and the City and County of Denver.

20. Further, the Receiver requests Court approval regarding the use of the sale proceeds. Specifically, the Receiver proposes using the sale proceeds to pay (1) priority obligations to state and local taxing authorities, the non-payment of which could prohibit the sale from approval by state and local authorities; (2) business vendors and suppliers for services performed since the Receiver took over operations of UH on September 30, 2019¹; (3) a \$10,000 settlement payment to resolve the EEO complaint filed by former UH employee Uriah Dydell. The balance of the proceeds shall be held in the Receiver's bank account subject to further orders of the Court.

21. Pursuant to Paragraph 20 of the September 30, 2019 Receivership Order, the Receiver is required to serve this request for approval on the Commissioner, his counsel and any other party filing an entry of appearance in this proceeding. 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.

22. As reflected in the certificate of service below, this Motion is being served on all parties who have appeared in this case and on all currently known creditors of the Estate.

WHEREFORE, The Receiver requests that the Court grant this Motion and approve the proposed asset sale of Universal Herbs, LLC in accountancy with the APA, approve the use of the sale proceeds set forth above, and approve the Management Agreement and the appointment

¹ The Receiver shall also pay some receivables accrued prior to his appointment, the payment of which is determined on a case-by-case basis.

of Lifestream Management, LLC as the manager of UH in accordance with the terms of the Management Agreement.

DATED this 30th day of June, 2020.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP

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