

<b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b> 1437 Bannock Street Denver, CO 80202	DATE FILED: August 7, 2020 1:54 PM FILING ID: F1D3F7862C956 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;"><b>▲ COURT USE ONLY ▲</b></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: <a href="mailto:jchanin@fostergraham.com">jchanin@fostergraham.com</a> ; <a href="mailto:kroush@fostergraham.com">kroush@fostergraham.com</a>	Case Number: 19CV33770  Division: 209
<b>RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF CATTLE INTERESTS</b>	

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 certain cattle interests.

## **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 Certain Cattle is in the Best Interest of the Estate and Its Creditors**

14. The Receivership Estate owns percentage interests in various cattle and cattle embryos all currently housed with nonparty Express Ranches in Oklahoma. Altogether, when all the percentage cattle interests are added together, the Receivership owns the equivalent of approximately 52 head of cattle and 69 cattle embryos (the “Cattle Interests”). The Cattle Interests are a portion of the Receivership Estate that the Receiver is authorized to sell.

15. The Receiver and Express Ranches have reached an agreement whereby Express Ranches has agreed to purchase all of the Cattle Interests from the Receivership Estate for a total of \$205,943.58.

16. More specifically, Express Ranches has agreed to pay (1) \$20,440.50 for the Estate’s percentage interests in the cattle embryos, (2) \$126,046 for the Estate’s percentage interests in fertile female cattle, and (3) \$44,273.25 for the Estate’s percentage interest in bulls, including older bulls and bull calves.

17. The Receiver asked an expert in the cattle industry who also is familiar with Express Ranches’ cattle inventory and the particular cattle in the Cattle Interests, to review the proposed sale terms and price. The expert, Dr. Blake Bloomberg, has a Ph.D in Animal Science from Oklahoma State University and has extensive experience evaluating cattle. For example, he

has taught Live Animal and Competitive Evaluation classes for many years and has drafted manuals on livestock judging. After a careful review of the inventory and in light of the current market situation, Dr. Bloomberg determined that the sales price for the Cattle Interests is of fair market price.

18. Further, the proposed sale of the entire inventory of Cattle Interests to Express Ranches avoids the added expense of marketing the individual percentage interests and any associated transaction costs for each individual sale of the cattle interests. The proposed sale also avoids the possibility of flooding the marketplace – and depressing the prices – by placing all the individual percentage interests for sale at the same time. Further, in some cases, the Estate owns only small percentages of a cow (around 12% in some cases), and there is less likelihood that there is even a market for such small ownership interests.

19. In light of the foregoing, the Receiver believes that the sale of the Cattle Interests is in the best interests of the Estate.

20. Pursuant to Paragraph 20 of the September 30, 2019 Receivership Order, the Receiver is required to serve this request for approval on the Commissioner, her 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.

21. 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.

22. WHEREFORE, The Receiver requests that the Court grant this Motion and approve the proposed sale of the Cattle Interests to Express Ranches for \$205,943.58.

DATED this 7th day of August, 2020.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP

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