

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: October 28, 2020 5:11 PM FILING ID: D7CB414159F58 CASE NUMBER: 2019CV33770
<p>Plaintiff: TUNG CHAN, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendants: 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</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<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</p>	<p>Case Number: 19CV33770</p> <p>Division/Courtroom: 209</p>
<p style="text-align: center;">RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH REVA STACHNIW AND MYRON STACHNIW</p>	

Gary Schwartz, the duly-appointed receiver “Receiver” for all of the assets of Mark Ray (“Ray”), 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”), Sunshine Enterprises (“Sunshine”) and the real property, equipment, supplies or inventory located at 12700 E. Lone Chimney Road, Glencoe,

OK 74032 that are in the name of or under the control of Reva Stachniw (“Glencoe Ranch”) (collectively “Ray and the Ray Entities” or the “Estate”), asks the Court to enter an order approving a settlement agreement he has reached with Defendant Reva Stachniw and Myron Stachniw.

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. As detailed in the Complaint, this case involves a cattle-trading Ponzi scheme perpetrated by Ray and the entities he controlled. Since at least 2014, the entities raised tens of millions of dollars from investors. Ray promised all of these investors high rates of return, usually over short periods of times.

4. The Ponzi scheme involved the offer and sale of unregistered securities in the form of investment contracts and promissory notes that Ray advertised to investors, some of whom were unsophisticated, primarily through word of mouth.

5. 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.

6. 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”).

7. 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.

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

9. 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.

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

11. 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 RM Farm, Sunshine, and :the real property, equipment, supplies or inventory located at 12700 E. Lone Chimney Road, Glencoe, OK 74032 that are in the name of or under the control of” Stachniw (the “Stanchiw Assets”) pursuant to Colo. Rev. Stat. § 11-51-602(1) and C.R.C.P. 66.

12. 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 the Stachniw Assets, 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.

13. The Second Receivership Order did not include Stachniw’s personal assets in the receivership estate.

14. 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 Federal Case and this 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.

15. To carry out his duties under the Receivership Orders, the Receiver has retained counsel and forensic accounting experts. The forensic accounting experts have performed historic accounting to trace the assets invested in the Ponzi scheme by the defrauded investors.

16. During his and his accountants’ investigation, the Receiver learned that on many occasions funds from the entity Defendants’ bank accounts and directly from investors were deposited into Stachniw’s personal checking account, and then some of those funds were transferred to one of two investment accounts held by Stachniw, often all on the same day.

17. Specifically, the Receiver’s investigation found that between November 2017 and December 2018, Stachniw transferred approximately \$8.1 million of funds that were deposited

into her personal checking account from Ponzi scheme related sources directly into the two investment accounts in her name.

18. On December 24, 2018, \$8.1 million was then transferred from the two investment accounts into two Midwest Bank NFS trust investment accounts: One in Reva Stachniw's name ending in -0466 (the "Reva J. Stachniw Revocable Trust") and one in the name of her husband, Myron Stachniw ("M. Stachniw"), ending in -0467 (the "Myron B. Stachniw Revocable Trust"). Together, The Reva J, Stachniw Revocable Trust and the Myron B. Stachniw Revocable Trust are referred to as the "Accounts."

19. The Receiver's investigation also has revealed that from April 2019 to present, Stachniw and M. Stachniw have both withdrawn approximately \$468,000 from their respective Accounts and transferred it back to Stachniw's personal checking account, presumably for their personal use. As of August 31, 2020, the most recent statement available, the combined balance of the Accounts is \$8,610,640.43.

20. Because of the Receiver's belief that this money largely consists of investor funds that were transferred out of entity accounts during the pendency of the Ponzi scheme, on August 21, 2020, the Plaintiff and the Receiver jointly filed two motions, seeking to (1) add the assets in the Reva J. Stachniw Revocable Trust to the Estate and (2) add M. Stachniw as a relief defendant and add the assets in the Myron B. Stachniw Revocable Trust to the Estate.

21. The Stachniws have taken the position that the Accounts contain some legitimate funds that are not related to the Ponzi scheme and therefore those assets should not be transferred to the Estate. The Stachniws provided the Receiver with some documentation supporting their argument that the Accounts also contained legitimate funds of the Stachniws. These funds

include M. Stachniw's income from his medical practice, inherited money, and proceeds from legitimate cattle sales unrelated to the Ponzi scheme.

22. On or about September 24, 2020, the Stachniws and the Receiver reached a settlement agreement regarding the assets in the Accounts.

23. The settlement agreement is attached as Exhibit A.

II. The Settlement Agreement is in the Best Interests of the Estate and its Creditors.

24. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver's settlement agreement. In analogous bankruptcy contexts courts consider whether "the settlement is fair and equitable and in the best interests of the estate." In considering whether to approve a settlement, bankruptcy courts consider four primary factors: "the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views." *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that deference should be given to the business judgment of the Receiver. *See, e.g., In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

25. Considering these factors, the Court should approve the Settlement Agreement with the Stachniws. Under the Settlement Agreement, the Estate will immediately receive approximately \$6.8 million in assets, and the Stachniws waive and abandon any claims that such funds belong to them. These assets will ultimately be available for pro rata distribution to the

victims of the Ponzi scheme and the creditors of the Estate without the long delays inherent in litigation.

26. Review of the documents the Stachniws provided indicate that at least some portion of the money in the Accounts were possibly legitimate funds unrelated to the Ponzi scheme, and therefore would not be recoverable through litigation. The potential litigation to trace the source of all the assets in the Accounts and to account for the comingling of legitimate funds with Ponzi scheme related funds would be time-consuming, expensive, and would not have a guarantee that the Receiver could bring all the assets in the Accounts into the Estate.

27. Additionally, the Receiver has agreed to abandon any claw-back claims regarding the money the Stachniws pulled out of the Accounts between April 2019 and the present. The likelihood of collecting any of this money is very low, as the forensic accounting revealed that much of it has been used, and any action to recover the money would certainly involve costly litigation and tracing of funds.

28. In light of all the foregoing, the Settlement Agreement is in the best interest of the Estate and its creditors. It brings a substantial amount of funds into the Estate without further expense, delay, and litigation risk.

29. Pursuant to Paragraph 20 of the September 30, 2019 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. As reflected by 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 respectfully requests the entry of an Order approving the Settlement Agreement.

Dated: October 28, 2020.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP.

By: /s/ John A. Chanin
John A. Chanin, #20749
Katherine A. Roush, #39267

ATTORNEYS FOR THE COURT-APPOINTED RECEIVER,
GARY SCHWARTZ

TUNG CHAN, Securities Commissioner for the State of Colorado, Plaintiff v. MARK RAY;
REVA STACHNIW; CUSTOMCONSULTING & PRODUCTION SERVICES, LLC; RM
FARM & LIVESTOCK, LLC; MR CATTLE PRODUCTION SERVICES, LLC; SUNSHINE
ENTERPRISES; UNIVERSAL HERBS, LLC; DBC LIMITED, LLC, Defendants; DISTRICT
COURT, CITY AND COUNTY OF DENVER, COLORADO; Case Number: 19CV33770
Division: 209

SETTLEMENT AGREEMENT

RE: MOTION TO ADD ASSETS TO RECEIVERSHIP ESTATE

WHEREAS the court-appointed Receiver Gary Schwartz (“Receiver”) by and through Foster Graham Milstein & Calisher, LLP, together with Plaintiff Tung Chan, Securities Commissioner for the State of Colorado, by and through the Colorado Attorney General, having filed a Joint Motion to Add Assets to the Receivership Estate in the above-styled action seeking the contents of a Midwest Bank NFS Trust Account in the name of Reva Stachniw ending in -0466 and the contents of a Midwest Bank NFS Trust Account in the name of Myron Stachniw ending in -0467 (collectively “the Midwest Bank Trust Accounts”); and

WHEREAS Reva Stachniw and Myron Stachniw (collectively “the Stachniws”) contested the Motion, but the parties agreed to a compromise to resolve the dispute;

NOW THEREFORE, the Receiver and the Stachniws agree as follows:

- (1) The Stachniws will retain possession, custody and control of \$1.7 million of the assets in the Midwest Bank Trust Accounts, and all rights and entitlement to those funds will remain with the Stachniws and ownership of the same will not be contested by the Plaintiffs. The Stachniws have full discretion over which of the assets in the Midwest Bank Trust Accounts they choose to retain;
- (2) The assets in the Midwest Bank Trust Accounts in excess of the value of \$1.7 million (the “Funds”) will be transferred to a brokerage account in the name of the Receiver, where the Funds will be held subject to further Order of the Court. The transfer of the Funds will occur no later than one week after Court approval of this settlement;
- (3) The Stachniws agree that the Funds are the property of the Receivership Estate and waive and abandon any claim that they have ownership over the Funds;
- (4) Notwithstanding the foregoing, the Stachniws shall retain the right to make a claim against the Receivership Estate in the manner contemplated by any claim procedure approved by the Court;

- (5) Plaintiffs waive and abandon any right to claim that the Stachniws are liable to refund to the Receivership Estate any funds they have consumed from the Midwest Bank Trust Accounts since the commencement of the investigation by the Securities Exchange Commission in Atlanta, Georgia (estimated by Plaintiffs to be in the approximate amount of \$1 million);
- (6) It is understood by the parties that this Agreement applies only to funds and investments in the Midwest Trust Accounts and not to any real property, including the Stachniws' residence and the Henderson Farm that Reva Stachniw inherited. The Stachniws will retain possession, custody and control of that real property, and all rights and entitlement to those properties will remain with the Stachniws and ownership of the same will not be contested by the Plaintiffs;
- (7) Nothing in this Agreement shall be construed as an admission or consent by the Stachniws to any of the representations made in Plaintiffs' Motion; and,
- (8) The Receiver will cause the Joint Motion to Add Assets to the Receivership Estate and the Joint Motion to Amend the Complaint to Add Myron Stachniw as a Relief Defendant to be withdrawn at such time that this Agreement is executed by all parties hereto.
- (9) This Agreement is subject to Court approval, which the Receiver will seek upon the full execution of this Agreement by all parties hereto.

AGREED TO:

BY: Reva Joyce Stachniw
REVA STACHNIW
Defendant

Date: 27 Oct 2020

BY: [Signature]
MYRON STACHNIW
Defendant

Date: 10/27/2020

BY: Gary M. Schwartz
GARY SCHWARTZ
Receiver

Date: 10/28/2020