

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: November 4, 2020 5:20 PM FILING ID: D4CF4068CA13F 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
APPLICATION FOR PROFESSIONAL FEES	

Gary Schwartz (“Receiver”), Court-appointed Receiver for the Receivership Assets of Defendants Mark Ray (“Ray”), Reva Stachniw (“Stachniw”), Custom Consulting & Product Services, LLC (“CCPS”), RM Farm & Livestock, LLC (“RM”), MR Cattle Production Services, LLC (“MR Cattle”), Sunshine Enterprises (“Sunshine”), Universal Herbs, LLC (“Universal”), DBC Limited, LLC (“DBC”) (collectively, the “Receivership Defendants”), submits this First Application for Fees

and Expenses, which covers the period from September 30, 2019 (the date the Receiver was appointed) through September 30, 2019.

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 Securities Commissioner is now 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 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 “Stachniw Assets”) 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 the Stachniw Assets, RM Farm, Sunshine, and RM Farm’s and Sunshine’s respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses, and (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. The Receivership Orders give the Receiver the authority to “hire as an expense of the Estate, the personnel necessary to perform a historical accounting of the Estate for such time

period as may be determined by the Receiver and to maintain a complete and accurate accounting of the income and expenses of the Estate . . . and to pay the reasonable value for the services rendered[.]” Receivership Orders at ¶ 5(n)(iii).

13. The Receivership Orders give the Receiver the authority to “hire as an expense of the Estate such employees, accountants, consultants, attorneys and other professionals, as his counsel, as is necessary for the proper administration of the Estate.” *Id.* ¶ 5(n)(iv) and other professionals as may be reasonably necessary to the proper discharge of the Receiver’s duties, and to hire, pay and discharge the personnel necessary to fulfill the obligations of the Receiver hereunder, including the retention of . . . other third parties to assist the Receiver in the performance of its duties hereunder, all within the Receiver’s discretion[.]” Receivership Order at p. 9, ¶ 13(1).

14. The Receivership Orders further state that

The Receiver shall make an application of the Court for payment of reasonable and necessary fees, costs and expenses incurred as Receiver, including but not limited to, disbursement of professional fees to himself, his counsel, or accountant, and shall be entitled to payment of said fees and expenses as hereinafter provided. Copies of the application to the Court shall be provided to counsel for the parties and to the Commissioner. Such parties shall have ten (10) calendar days following the filing of such application to file any objections with the Court. Objections will not be general in nature but are to be specific, stating all amounts, in detail, if any, which is not objected to by the objector. If no objections are filed with the Court within ten (10) calendar days, the Receiver may thereupon draw funds from his trust account sufficient to pay such fees, disbursements and expenses without further order of the Court. If any objections are filed the Receiver may draw funds from his trust account sufficient to pay the amount not objected to, and the Court will conduct a hearing on any objections within twenty (20) days from the filing of the objection. At such hearing, the compensation of the Receiver or other professional as well as allowable disbursements and expenses will be determined by the Court.

Id. ¶ 5(n)(iv).

15. This Application covers the period from September 30, 2019 (the date the Receiver was first appointed), through September 30, 2020. This is the Receiver’s first fee application. This Application requests the following fees and expenses:

Provider	Amount Sought:	Description:
Betzer, Lausten Call & Schwartz, LLP and Gary Schwartz, Receiver	\$ 375,867.16	Receiver and Accounting Fees
Foster Graham Milstein & Calisher, LLP	\$ 331,003.35	Legal Fees

16. A detailed itemization of the fees requested are included in Exhibits 1 and 2 hereto.

Betzer, Lausten Call & Schwartz, LLP’s Fees

17. Betzer, Lausten Call and Schwartz, LLP (“BCLS”) was hired by the Receiver to perform the historical accounting of the Estate contemplated by the Receivership Orders. BCLS’s invoices are attached as Exhibit 1 to this Application.

18. This task is significant. To date, BCLS has identified and entered transactions for over thirty different bank accounts associated with the Defendants from 2012 to 2019. BCLS has tracked over \$930 million in funds flow through these accounts in over 40,000 transactions.

19. In addition to performing a historic accounting for the Estate, BCLS has also identified and entered transactions for dozens of investor accounts, as these accounts either received or sent money in connection with the Ponzi scheme in some manner or fashion. This is a difficult task and necessarily iterative. For example, to date, BCLS has received information for over thirty accounts belonging to investors comprising tens of thousands of additional pages of

documentation, much of which is unrelated to the Mark Ray enterprise, and which has required BCLS to target the review to transactions identifiable as related to the Mark ray enterprise.

20. In addition to the historic accounting, BCLS has also aided the Receiver and Receiver's counsel with analysis related to specific transactions, as discussed in more detail below. This has included quantifying funds drawn from the Mark Ray enterprise into investment accounts held by Reva and Myron Stachniw and quantifying transactions through various Chase accounts. As the historic accounting nears completion, the Receiver anticipates BCLS will conduct more analysis in order to trace funds through the Mark Ray Enterprise.

The Receiver's Fees

21. Mr. Schwartz was appointed as the Receiver for the Estate on September 30, 2019. The itemization of his fees is included in the BCLS invoices attached as Exhibit 1. The Receivership Order required Mr. Schwartz to take immediate control and possession of the Receivership Defendants, including specifically Universal Herbs.

22. As Receiver, Mr. Schwartz supervised, consulted, collaborated on and analyzed huge amounts of data related to inflows and outflows of funds from investors, financial partners, victims and other parties. He has worked closely with his legal counsel and accounting staff (BCLS) on identifying existing records and putting together lists of additional information necessary to help complete the analysis of the alleged scheme.

23. He has also worked with legal counsel and counsel for various parties to collect and analyze relevant documents and information relative to the alleged scheme. He has maintained on-going communication with various state and federal regulatory agencies and law enforcement agencies on his work.

24. The Receiver, his accounting staff, and his counsel have continued efforts to collect recover funds believed to be owed to the Receivership estate. The forensic analysis has identified over \$8.5 million in investor funds which were transferred and converted as part of the alleged scheme. The recovery of a significant portion of these funds was just finalized and will soon be transferred to the Receivership estate.

25. The Receiver has also been actively seeking to recover, take possession of and/or sell assets belonging to the Receivership estate. These assets include, but are not limited to, cattle interests and related assets and real property. These recovery and liquidation activities have taken a concerted effort of the Receiver, his counsel and others.

26. The Receiver has also expended significant amounts of time managing UH. UH is a marijuana business located in Denver Colorado which includes a grow facility and 2 retail locations. At the time of the Receivership, UH was under contract with a buyer. Since Mr. Schwartz's appointment as Receiver, he has maintained constant contact with the buyer, and has negotiated numerous extensions and amendments to the Purchase and Sale Agreement ("PSA") and worked with a litany of local and state regulatory agencies related to the sale.

27. At the time of his appointment as Receiver, Mr. Schwartz was responsible for review, analysis and preparation of financial records of UH. He soon discovered that the available and historical accounting and financial records were incomplete, inaccurate and/or unreliable. The previous "management company" hired by Mark Ray had failed to maintain adequate records. In addition, UH had millions of dollars in unpaid liabilities and local, city, state and federal taxes. The Receiver and his staff have spent countless hours trying to recreate the financial records and to determine the extent of the monies owed by UH to various current and previous vendors,

employees, and other creditors. Banking and financial issues have been an on-going challenge and have required constant attention.

28. At the time of the Receiver's appointment, UH was also involved in at least seven (7) lawsuits. The Receiver and his counsel have attempted to assess and manage this litigation and potential litigation. Several claims have been settled. Other litigation is on-going. New claims and lawsuits have been made or filed by the Receiver based upon new information.

29. UH has at least seven (7) active licenses, which many of which were in various stage of noncompliance or expiration. Working with Regulatory Counsel, the Receiver continues to address and correct previous, on-going and new regulatory issues related to UH.

30. As part of the submission of the Change of Ownership documents necessary for the approval of the sale to the new buyer, several administrative and contractual issues have been identified related to the landlords and the three real properties leased by UH. At this point, the Receiver believes that all issues related to the Change of Ownership applications for the UH assets and licenses have been satisfactorily addressed, as the parties are awaiting final approval from the City of Denver and the State of Colorado for the Change in Ownership.

Foster Graham Milstein & Calisher's Fees

31. Foster Graham Milstein & Calisher, LLP ("the Firm") was hired as legal counsel by the Receiver, and attorneys at the Firm have been working diligently in that capacity since September 30, 2019. The Firm's invoices are attached here as Exhibit 2. In particular, Firm partner John Chanin has extensive experience representing receivers appointed to investigate and wind down a Ponzi scheme.

32. The work of the Firm, BCLS, and the Receiver in this case was made much more difficult by the complete lack of accurate records and documentation both of the Ponzi scheme transactions involving purported cattle and cannabis, and of the legitimate operations of UH and its two dispensaries and grow location. The Firm had to subpoena and review thousands of pages of documents and witness statements, subpoena records for dozens of bank accounts spread across the country, locate assets, and identify hundreds of potential creditors and investors. Ultimately, the Firm created an iterative Creditors' Matrix, from which the Firm sends notices concerning this receivership and the claims administration process.

33. In a similar vein, the forensic accounting necessary to locate potential assets and administer the claims process has been difficult and time consuming due to the dozens of different bank accounts used by the Ponzi scheme, the massive dollar volume and sheer number of transactions, and by the fact that Ponzi scheme facilitated transfers directly between investors such that those transfers did not flow through a bank account associated with the Ponzi scheme. The Firm has worked actively with the Receiver and BCLS in this process, issuing subpoenas for records, identifying additional bank accounts, following-up on leads, and requesting custom analyses and reports that resulted in the identification of more than \$10 million in potential assets for the Estate.

34. As counsel to the Receiver, the Firm has performed numerous tasks, including without limitation:

- a. Identifying and staying all active litigation against the Defendants or involving the Estate around the country, and representing the Receiver on any new or threatened claims against the assets of the Estate;

- b. Providing legal advice and counsel to the Receiver, often on a daily basis, on a broad array of topics, such as employment issues, regulatory issues, tax issues, real estate and lease issues, litigation and settlement options, and the scope of the Receiver's powers and duties under the Receivership Orders;
- c. Representing the Receiver in the pending sale of UH, including drafting and reviewing the transactional documents, and negotiating and reviewing the lease assignments necessary to close the sale;
- d. Representing the Receiver in the negotiation of state and local taxes owed by UH;
- e. Locating, managing, and selling fractional interests in a herd of registered cattle held by Express Ranches in Oklahoma;
- f. Locating and managing a herd of registered cattle in which the Estate has a 50% interest at the Glencoe Ranch in Oklahoma;
- g. Negotiating and closing the sale of the Glencoe Ranch and three unimproved parcels of real estate;
- h. Communicating regularly with investors and counsel concerning the Receivership and the investigation;
- i. Issuing dozens of subpoenas to investors and banks across the country, and engaging in extensive follow-up negotiations on same;
- j. Reviewing and analyzing hundreds of thousands of pages received in response to the subpoenas;
- k. Investigating the underlying facts of the Ponzi scheme, including conducting dozens of witness interviews;

- l. Investigating and analyzing potential claims the Estate may have against third parties, including financial institutions, for fraudulent transfer and for aiding and abetting the Ponzi scheme;
- m. Tracing more than \$8 million of Ponzi-scheme related funds that ended up in two accounts controlled by Reva Stachniw, and negotiating an agreement to bring the bulk of those assets into the Estate;
- n. Establishing and administering a process for investors and creditors to submit claims to the Receiver for review and ultimately for pro rata distribution, subject to Court approval;
- o. Coordinating with the Colorado Securities Commissioner, the trial attorney for the SEC, and the federal criminal prosecutor and case agent;
- p. Performing legal research and analysis on a myriad of issues.

35. The Firm bills on an hourly basis ranging from \$325 to \$495 for attorney time, and \$150 for paralegal time. The Firm is not seeking finance charges for late-paid invoices (totaling \$17,775.19). While the attached invoices include \$12,956.64 of that amount, the Firm is not seeking reimbursement for any of its finance charges. In addition, the Firm has not billed for a second paralegal's time, resulting in a significant discount to the Estate. These rates are at or below the market rate typically charged by attorneys with the same experience and background as the attorneys representing the Receiver.

36. Pursuant to Paragraph 5(n)(iv), the Receiver is providing a copy of this Application and exhibits to counsel for the parties to this case. Court approval of the application shall be given as a matter of course unless a party objects within ten days after service.

DATED this 4th Day of November, 2020.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP

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

*Attorneys for Court-appointed Receiver Gary
Schwartz*

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2020, a true and correct copy of the foregoing **APPLICATION FOR PROFESSIONAL FEES** was electronically filed and served on all parties of record via the Colorado Court E-Filing System.

/s/ Lucas Wiggins
Lucas Wiggins