

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
Plaintiff(s) DAVID S CHEVAL ACTING SECURITIES COMMISS et al. v. Defendant(s) MARK RAY et al.	DATE FILED: May 26, 2021 10:13 AM CASE NUMBER: 2019CV33770 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2019CV33770 Division: 209 Courtroom:
ORDER RE: SECOND APPLICATION FOR PROFESSIONAL FEES	

The motion/proposed order attached hereto: GRANTED.

This matter is before the Court on the Receiver's Second Application for Professional Fees filed May 12, 2021 ("Fee Application"). Pursuant to the Court's November 4, 2019 Order appointing the Receiver, any objections to the Fee Application were due within 10 calendar days. Order at ¶ 5(n)(iv). The Court has not received any objection. Accordingly, the Fee Application is GRANTED.

Issue Date: 5/26/2021



ALEX C MYERS
District Court Judge

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	
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
SECOND 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 Second Application for Fees and Expenses, which covers the period from October 1, 2020 through March 31, 2021.

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 October 1, 2020 through April 30, 2021. This is the Receiver’s second fee application. This Application requests the following fees and expenses:

Provider	Amount Sought:	Description:
Betzer, Lausten Call & Schwartz, LLP and Gary Schwartz, Receiver	\$ 72,523.16	Receiver and Accounting Fees
Foster Graham Milstein & Calisher, LLP	\$ 149,562.89	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. In addition to the activities outlined in the Receiver's previous reports, all of which remain ongoing, The Receiver and his staff have continued to diligently work on a forensic accounting on the entire Estate, to establish what monies came into and went out of the Estate and the various entities. That work is largely complete, but for continued analysis to evaluate possible claw-back litigation against individuals and entities.

18. The focus of the forensic accounting team over the past six months has been multi-faceted. The forensic accounting team has incorporated large amount of information from investors' bank statements, reviewed and summarized the data entry in the form of detailed and summary reports of all banking activity for each party, and has begun the process to compare the banking activity entered to the claims made.

19. As described in the last report to the Court, the Receiver and his legal team issued a number of subpoenas targeted at investors' banks with the goal of obtaining detailed documentation for transactions related to the Mark Ray enterprise. As a result of these subpoenas, the forensic accounting team received thousands of pages of documentation. Identifying the relevant transactions from this documentation has proven challenging. Because no formal accounting was maintained by Mark Ray, and a multitude of transactions related to the Mark Ray enterprise were conducted investor-to-investor, the forensic accounting team has had to analyze many investor accounts to identify those transactions most likely related to the Mark Ray enterprise.

20. To date, the forensic accounting team has entered over five thousand transactions from investor accounts that represent over \$500 million in both inflows and outflows. In context,

the forensic accounting team entered almost forty thousand transactions from the Mark Ray enterprise bank accounts that represent over \$900 million of both inflows and outflows. In total, in absolute dollars, the forensic accounting team has entered over \$2.97 billion in funds flowing among and between the Mark Ray enterprise and the investors. To attempt to avoid double-counting transactions in the analyses, the forensic accounting team has created a complex matching algorithm to help flag transactions where the team believes they have information from both sides of a transaction. Of the approximately \$500 million in and out of the investor accounts, the forensic accounting team has matched approximately \$300 million of the investor account inflows and \$400 million of the outflows. This leaves approximately \$200 million and \$100 million respectively that was not contained in the entry of the Mark Ray enterprise accounts and largely represents investor-to-investor funds flow. These amounts have been associated to individual investors.

21. As described in the Receiver's previous reports, this process is necessarily iterative; the forensic accounting team continues to incorporate new information as it is received. A significant part of their analysis has been to understand the relationship of the parties to one another. They have worked with counsel for the Receiver to identify those parties who should be connected and considered together. For example, certain investors' transactions may have reflected their personal names when they contributed money to the Mark Ray enterprise but may have received funds from the Mark Ray enterprise under a different name, sometimes that of a business or a bank. By associating these different names together, the Receiver and the forensic accounting team can more accurately assess each individual investor's overall standing. By repeatedly summarizing and analyzing this information together with counsel, the forensic accounting team

continues to refine their understanding and presentation of the net funds flow to and from each investor.

22. The forensic accounting team has created reports that summarize the funds flow for all parties involved with the Mark Ray enterprise, broken out by different groupings and have also created a report for each individual investor. This report summarizes all the funds flow by the various names associated with that investor and reflects every detailed transaction associated with that investor. These reports will allow the Receiver to conduct a detailed analysis to claims submitted by the investors.

23. The Receiver's and the forensic accounting team's primary focus has now shifted to analyzing claims submitted. Using the information the forensic accounting team has collected, they are conducting a detailed analysis of each claim submitted. Ultimately, they expect to be able to provide to counsel and the Receiver a detailed reconciliation that identifies the transactions on a claim that are supported by banking information, those transactions a claimant may have failed to consider, and those transactions that may require additional review. This process will be necessarily iterative because the information submitted by the claimants varies in its nature and level of detail provided. The team fully expects that the information collected will require supplementation because it is likely the investor-to-investor information we have been supplied to date is incomplete.

24. The forensic accounting team has also assisted counsel with providing information in reply to a variety of ad hoc requests regarding certain specific parties, which helps counsel in regard to a variety of other legal activities related to the estate.

25. The Receiver keeps and maintains a full creditor matrix that he updates regularly. The Receiver continues to identify and communicate with potential creditors of the Estate as they

are identified and to collect information of their claims against the Estate. In January 2021, Receiver set up a website to better inform potential creditors of the Estate about developments in the Receivership case. The Receivership website is www.rayreceivership.com.

26. In October 2020, the Receiver sought and obtained Court approval for a claims process, which established a bar date on February 1, 2021. On January 20, 2021, the Receiver extended the claims bar date to March 15, 2021 to ensure every potential creditor had a chance to submit a claim.

27. As of the Bar Date, the Estate received 98 claims, totaling \$64,128,430.21. These claims includes claims from vendors of the Estate, investors in the cattle scheme, and banks.

28. The Receiver is in the process of evaluating each claim and supporting documentation.

29. At the time of his appointment as Receiver, Mr. Schwartz was responsible for review, analysis and preparation of financial records of UH. The Receiver continues to work with his staff to clean up the UH financials for various financial reporting requirements.

30. 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. The Receiver continue to deal with potential litigation matters that had been previously stayed, including those related to the EEOC.

31. UH had 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.

32. 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 had been identified related to the landlords and the three real properties leased by UH. The Receiver believes that all issues related to the Change of Ownership applications for the UH assets and licenses were satisfactorily addressed, as the parties ultimately received final approval from the City of Denver and the State of Colorado for the Change in Ownership.

33. The sale of UH closed on January 25, 2021. There have been numerous post-closing issues that the Receiver continues to deal with, many related to the various taxing authorities and the balances owed for various tax obligations, primarily federal tax obligations.

Foster Graham Milstein & Calisher's Fees

34. 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.

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

- a. 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;

- b. Representing the Receiver in the sale of UH, including drafting and reviewing the transactional documents, and negotiating and reviewing the lease assignments necessary to close the sale;
- c. Representing the Receiver in the negotiation of state and local taxes owed by UH;
- d. Locating, managing and negotiating a sale of a herd of registered cattle in which the Estate has a 50% interest at the Glencoe Ranch in Oklahoma;
- e. Negotiating and closing the sale of the Glencoe Ranch and three unimproved parcels of real estate;
- f. Communicating regularly with investors and counsel concerning the Receivership and the investigation;
- g. Issuing dozens of subpoenas to investors and banks across the country, and engaging in extensive follow-up negotiations on same;
- h. Reviewing and analyzing hundreds of thousands of pages received in response to the subpoenas;
- i. Investigating the underlying facts of the Ponzi scheme, including conducting dozens of witness interviews;
- j. 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, including moving to compel subpoenas;
- k. Filing fraudulent transfer claims against third parties;
- l. 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;

- m. 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;
- n. Coordinating with the Colorado Securities Commissioner, the trial attorney for the SEC, and the federal criminal prosecutor and case agent;
- o. Performing legal research and analysis on a myriad of issues.

36. The Firm bills on an hourly basis ranging from \$325 to \$495 for attorney time, and \$150 for paralegal time. Out of the total of \$149,562.89 requested, \$7,262.89 is reimbursement for expenses, including the cost for creating the website www.rayreceiver.com, filing fees, and postage fees. The Firm has written off all finance charges and is not seeking reimbursement for finance charges. The Firm also 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.

37. 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 12th Day of May, 2021.

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

