

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202		DATE FILED: September 14, 2021 3:03 PM FILING ID: 263A854577198 CASE NUMBER: 2019CV33770
Plaintiff: TUNG CHAN, Securities Commissioner for the State of Colorado v. 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		▲ COURT USE ONLY ▲
<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		
RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH MICHAEL SCHULKINS		

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 Michael Schulkins (“Schulkins”).

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 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.

7. 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.

8. Under the Receivership Orders, the Receiver has the authority to prosecute causes of action against third-parties, including claims held by creditors. Receivership Orders ¶¶ 5(v).

9. The Receiver identified potential claims the Estate may have against Schulkins, including claims under Colorado’s Uniform Fraudulent Transfer Act, COLO. REV. STAT. § 38-8-101 *et seq.*

10. The proposed Settlement Agreement resolves the dispute between the Receiver and Schulkins regarding certain transfers he received from Ray and the Ray Entities before the Receiver was appointed.

	Party	Potential Claim	Proposed Settlement
1.	Schulkins	\$27,500	\$20,000.00
	Total	\$27,500	\$20,000.00

II. The Settlement Agreement is in the best interests of the Estate and its creditors.

11. 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).

12. Considering these factors, the Court should approve the Settlement Agreement. Although the Receiver believes his claims to recover the transfers to Schulkins are strong, Schulkins has raised various defenses to those claims.

13. The proposed agreement resolves the potential litigation claims against Schulkins without further expense or litigation risk, will eliminate potentially significant litigation costs for the Estate, and will result in the prompt payment of funds to the Estate.

14. Pursuant to paragraph 20 of the September 30 Order and paragraph 19 of the November 4 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 posted to the Receiver's website.

WHEREFORE, the Receiver asks the Court to enter an Order approving the Settlement Agreement.

Dated: September 14, 2021.

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

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2021 a true and correct copy of the foregoing **RECEIVER'S MOTION APPROVE SETTLEMENT** was electronically filed and served on all parties of record via the Colorado Court E-Filing System.

I further certify that on September 14, 2021 a true and correct copy on the foregoing **RECEIVER'S MOTION TO APPROVE SETTLEMENT** is being posted to the Receiver's website at www.rayreceivership.com.

/s/ Lucas Wiggins
Lucas Wiggins

Settlement Agreement and Mutual Release

DATE FILED: September 14, 2021 3:03 PM

FILING ID: 263A854577198

CASE NUMBER: 2019CV33770

I. Parties

1. This Settlement Agreement and Mutual Release (“Agreement”) is entered into on September 2, 2021, by and between Michael Schulkins (“Schulkins”) and Gary Schwartz (the “Receiver”), in his capacity as Receiver for Mark Ray (individually), Custom Consulting & Product Services, LLC, MR Cattle Production Services, LLC, Universal Herbs, LLC, DBC Limited, LLC, RM Farm & Livestock, LLC, Sunshine Enterprises, as well as all real property, equipment, and inventory at 12700 East Lone Chimney Road, Glencoe, OK 74032 (the “Estate”). Ray, Custom Consulting & Product Services, LLC, MR Cattle Production Services, LLC, Universal Herbs, LLC, DBC Limited, LLC, RM Farm & Livestock, LLC, Sunshine Enterprises are referred to as the “Ray Entities,” and Schulkins and the Receiver are each a “Party,” and jointly the “Parties.”

II. Recitals

A. On September 30, 2019 and November 4, 2019 The Court in *Chan v. Ray et al*, case no. 19CV33770, Denver County District Court (the “Receivership Action”), entered Stipulated Orders Appointing Receiver (“Receivership Orders”) which appointed the Receiver.

B. Under the Receivership Order, the Receiver is authorized, among other things, to take immediate possession and control of all of the assets of the Estate, to investigate any pursue all claims and causes of action on behalf of the Estate, including claims on behalf of creditors premised on fraudulent transfer or similar theories.

C. The Receiver asserts that, based on his investigation, numerous investors lost some or all of their principal investments with the Ray Entities, and the Receiver has identified claims he believes the Estate has against Schulkins to recover transfers Schulkins received from the Ray Entities (the “Claims”).

D. Schulkins disputes the claims the Receiver has identified against Schulkins.

E. The Parties, after having conferred with counsel and made such inquiries as they deem reasonably necessary and having had the opportunity to review such documents as they deem necessary and appropriate, now desire to settle all Claims (as defined in this Agreement) that the Estate may have against Schulkins and that Schulkins may have against the Estate in order to avoid the inconvenience and uncertainty of litigation.

III. Covenants

For good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Receivership Court Approval. This Agreement is subject to approval by the Receivership Court, and the Receiver shall file a motion requesting approval of the Agreement by the Receivership Court within 15 days after the Agreement is executed by Schulkins. The Receiver shall use reasonable and good-faith efforts to obtain approval of this Agreement by the

Receivership Court as soon as possible. If this Agreement is challenged by anyone as not being fair, adequate, or reasonable, the Receiver shall take reasonable steps to defend this Agreement and to affirm the Receiver's view that the terms of the Agreement are fair and equitable to the Estate and all parties in interest. The Agreement shall be deemed null and void if not approved by an order entered by the Receivership Court.

2. Effective Date. Absent objection by any party in interest, the Effective Date of this Agreement shall be either the earlier of ten (10) calendar days after service of the motion requesting approval of the settlement or the first business day after an order entered by the Receivership Court approving it. If an objection is timely filed to the motion seeking Court approval, absent an appeal, the Effective Date of this Agreement shall be the fiftieth day after Court approval. If an appeal of the Receivership Court order approving this Agreement is filed, the Effective Date of the Agreement shall be the first business day after the approval order is no longer subject to appeal and no appeal is pending.

3. Settlement Payment. Within 21 days after the Effective Date, Schulkins shall pay the Estate \$20,000.00 (the "Settlement Payment"). The Settlement Payment shall be made payable to "Gary Schwartz, Receiver" and delivered to counsel for the Receiver. Wire instructions shall be sent via separate email to counsel for Schulkins on or immediately after the Effective Date.

4. Representations and Warranties. Schulkins represents and warrants that all the of documents and information he has provided the Receiver in connection with the Claims, the Receivership Action, and the Estate are true and correct.

F. Cooperation. Schulkins understands that the Receivership Action is continuing. He agrees to timely and fully cooperate as may be reasonably necessary to (1) to investigate any pursue all claims and causes of action on behalf of the Estate, including claims on behalf of creditors premised on fraudulent transfer or similar theories, and (2) resolve claims affecting the Estate.

5. Mutual Releases.

a) Except for the obligations under this Agreement, upon the Receiver's receipt of the Settlement Payment, the Receiver, on behalf of the Estate and the Ray Entities, and his and their predecessors, heirs, successors, assigns, representatives, attorneys and all persons acting through and under them, releases and forever discharges American Health Professionals LLC, The Benefits Team LLC, Health Insurance Alternatives LLC, Liberty Health Professionals LLC, Paragon Media Corp. LLC, Paragon MC Holdings LLC (DE), Patriot Management Group LLC, MSS Management Group LLC, and Schulkins and his representatives, agents, attorneys, successors, and assigns from any and all claims, actions, causes of action, manner of actions, debts, suits, controversies, charges, rights, notes, covenants, liabilities, accounts, contracts, agreements, promises, obligations, damages, losses, credits, recoupments, offsets, attorneys' fees, costs and expenses, and demands relating to the Claims, whether known or unknown, matured or unmatured, accrued or unaccrued, direct or indirect, suspected or unsuspected, fixed or contingent, in law or equity.

b) Upon the Effective Date, Schulkins, for himself, his predecessors, heirs, successors, assigns, agents, representatives, attorneys and all persons acting through and under

him, releases and forever discharges the Receiver and the Estate, all creditors of the Estate, all persons who received transfers from Ray or the Ray Entities (including, but not limited to, immediate and subsequent transferees) and their respective predecessors, successors, heirs, assigns, agents, representatives, attorneys, and all persons acting by, through or under them, whether or not the identity of such persons is known to Powers, from any and all Claims related to the Estate and Ray and the Ray Entities, except for the obligations under this Agreement.

6. Compromise of Disputed Claims. It is expressly understood and agreed that the agreements contained herein, and the consideration transferred hereunder, are to compromise doubtful and disputed claims and that no releases or other consideration given shall be construed or considered an admission of liability. To the contrary, this Agreement is entered into to avoid the expense, burden, and annoyance of litigation and any further dispute or claims. Schulkins expressly denies any liability to the Receiver, the Estate, and the Ray Entities.

7. Specific Performance. The Receivership Court shall, upon application of any Party, require specific performance by any other Party of any obligation hereunder. The Parties consent to the jurisdiction and venue of the Receivership Court.

8. Waiver of Jury Trial. The Parties irrevocably and unconditionally waive to the fullest extent permitted by applicable law any right they may have to trial by jury of any claim or cause of action, or in any legal proceeding, directly or indirectly based upon or arising out of this Agreement.

9. Authorization. The Parties represent and warrant that no promise or inducement has been offered except as expressly set forth herein; that the person signing this Agreement on behalf of each Party is both authorized and legally competent to execute this Agreement and accepts full responsibility therefor; and, that it has not assigned, transferred or hypothecated any claim or interest identified herein.

10. Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their legal representatives, successors and assigns, whether by operation of law or otherwise.

11. Controlling Law. This Agreement is made and entered into in the State of Colorado, and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Colorado, without reference to Colorado's law on conflicts of law.

12. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, the Parties agree to negotiate in good faith a substitute term of equivalent value or effect to the greatest extent possible.

13. Fair Interpretation. This Agreement is the product of negotiations between the Parties and shall be given fair interpretation. The Parties acknowledge this Agreement shall be deemed to have been mutually prepared so that the rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement.

14. Parties Advised by Counsel. The Parties acknowledge they have been represented by counsel or have had the opportunity to consult with counsel with respect to this Agreement and all matters covered by and relating to it.

15. No Waiver of Breaches of Agreement. The failure by a Party to insist on strict compliance with any of the covenants or restrictions in this Agreement shall not be construed as a waiver, nor shall any course of action deprive a Party of the right to require strict compliance with this Agreement.


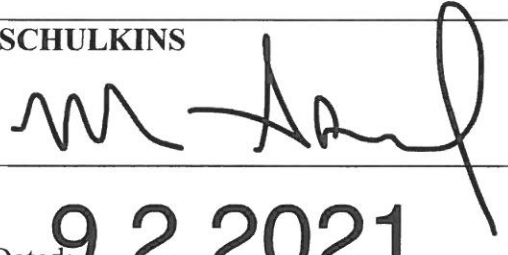
16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof and supersedes all prior and contemporaneous representations, contracts, or agreements of any nature. Any modification of any provision of this Agreement shall not be valid unless in writing and executed by the Parties.

17. Costs and Attorneys' Fees. Each Party shall bear its own costs and attorneys' fees incurred prior to the Effective Date. In connection with any litigation, mediation, arbitration, or other proceeding brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party and the other Party shall pay the prevailing Party's costs and reasonable attorneys' fees, through and including any appeal or post-judgment proceeding. If the award of costs and reasonable attorneys' fees is entered against the Receiver, such award shall be paid as an administrative expense of the Estate.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the document. Signatures delivered by facsimile and email as electronic files shall be deemed effective as originals.

19. Headings and Titles. The headings and titles in this Agreement are for convenience only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision herein.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement.

RECEIVER  RECEIVER Gary Schwartz Dated: <u>9/13/2021</u>	SCHULKINS  Dated: <u>9.2.2021</u>
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