

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
<b>Plaintiff(s)</b> DAVID S CHEVAL ACTING SECURITIES COMMISSION et al. v. <b>Defendant(s)</b> MARK RAY et al.	DATE FILED: November 10, 2021 12:50 PM CASE NUMBER: 2019CV33770  <p style="text-align: center;"><b>△ COURT USE ONLY △</b></p> Case Number: 2019CV33770 Division: 209      Courtroom:
<b>ORDER RE: RECEIVER'S REPORT</b>	

The motion/proposed order attached hereto: REVIEWED.

Issue Date: 11/10/2021



ALEX C MYERS  
District Court Judge

<p><b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b>  1437 Bannock Street  Denver, CO 80202</p>	
<p>TUNG CHAN, Securities Commissioner for the State of Colorado,   Plaintiff,   v.   MARK RAY; REVA STACHNIW; CUSTOM CONSULTING &amp; PRODUCT SERVICES, LLC; RM FARM &amp; LIVESTOCK, LLC; MR CATTLE PRODUCTION SERVICES, LLC; SUNSHINE ENTERPRISES; UNIVERSAL HERBS, LLC; DBC LIMITED, LLC,   Defendants.</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><i>Attorneys for Court-appointed Receiver Gary Schwartz:</i>  John A. Chanin, #20749  Katherine A. Roush, #39267  FOSTER GRAHAM MILSTEIN &amp; 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></p>	<p>Case Number: 19CV33770   Division: 209</p>
<p><b>RECEIVER'S REPORT</b></p>	

Gary Schwartz, the duly-appointed receiver (“Receiver”) for Mark Ray (“Ray”), Reva Stachniw (“Stachniw”), Custom Consulting & Product Services (“Custom Consulting”), MR Cattle Production Services (“MR Cattle”), Universal Herbs (“UH”), DBC Limited (“DBC”), RM Farm & Livestock (“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”), submits this quarterly report (“Report”) concerning the status and condition of the Receivership Estate.

## I. Procedural History

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 Ronald 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. This Report is submitted as required by paragraphs 9 in the Receivership Orders.

## II. Receiver’s Activities

13. In addition to the activities outlined in the Receiver’s previous reports, 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 regarding claw-back litigation against individuals and entities and analysis of investor claims.

14. The focus of the forensic accounting team continues to be multi-faceted. The forensic accounting team has incorporated information from investors’ bank statements, reviewed and summarized the data entry in the form of detailed and summary reports of all banking activity, and has completed significant progress in comparing banking activity entered to claims made.

15. As described in the previous reports 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. Although largely complete, this process has been necessarily iterative, as additional information is discovered, including some previously unknown transactions and accounts.

16. To date, the forensic accounting team has entered over six 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 **\$3 billion** in funds flowing among and between the Mark Ray enterprise and the investors (to be clear, this figure represents the amount of entry completed and includes, in many cases, both sides of transactions). 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 and incorporated in the claims and claw-back analyses.

17. 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. Several investors had family members that were also investors in the scheme; in some cases, these are most appropriately analyzed as a grouped investment and in other cases they have been analyzed separately. The forensic accounting team has worked with counsel and claimants to understand how investments were structured to analyze investor groupings most appropriately. By associating 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.

18. The forensic accounting team has created reports of the funds flow for parties involved with the Mark Ray enterprise summarized by different characteristics and have 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 allow the Receiver and counsel to conduct detailed analysis of claims submitted by the investors and the responses to claw-back litigation.

19. Counsel for the Receiver has used these reports to identify those investors who profited from the scheme, and as discussed below, the Receiver is in the process of sending claw back demands to those individuals, and in some instances, filing suit seeking to claw back those fictitious profits on behalf of the Estate.

20. The team continues to work with counsel and claimants' counsel to review the documentation supporting each claim, which, in many cases, has resulted in requests for additional supporting information. Each claim submitted is compared to the existing banking information; this reconciliation has then been used to communicate variances to the claimants and their counsel. This process has been necessarily iterative because the information submitted by the claimants varies in its nature, quality, and level of detail provided. The forensic accounting team continues to review and incorporate information provided by claimants as appropriate.

21. 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.

22. 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 creditors of the Estate about developments in the Receivership case. The Receivership website is [www.rayreceivership.com](http://www.rayreceivership.com).

23. 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.

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

25. The Receiver is in the process of evaluating each claim and supporting documentation, and the Receiver's and the forensic accounting team's primary focus has now shifted to analyzing claims submitted. Using the information they have collected, the forensic accounting team is 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 supplied to date is incomplete.

### **III. Assets of the Receivership Estate**

#### **A. Estate Cash**

26. As of October 31, 2021, the balance in the Receivership checking account was \$85,919.31, while the balance in the Investment Account totaled \$4,701,017.36. The Investment Account is holding funds received from the civil settlement with Reva and Myron Stachniw.

27. Any previously held cash from Universal Herbs, a marijuana dispensary and growing operation that was one of the primary assets of the Estate, was deposited into the Mark Ray checking account and was used the immediate payment of liabilities, including but not limited to rents and local, state and federal tax obligations.

#### **B. Universal Herbs' Sale**

28. Pursuant to the previously executed Asset Purchase Agreement ("APA"), which was originally executed prior to the Receivership between UH and Titan Health LLC ("Titan"), and the various amendments to said agreements, the change of ownership of UH to Titan was approved by the MED on January 25, 2021. At the closing, Titan remitted the required \$150,000. Titan had previously remitted \$600,000 to UH at the time of the execution of the APA. The APA was approved by the Court on 8/3/2020. Pursuant to the terms of the Asset Purchase Agreement ("APA"), UH as seller is carrying back a secured promissory note in the amount of \$3.250 million. Through the date of this Report, Titan has made payments totaling \$333,332.00; however, it is in default of the APA as a result of its failure to make required payments at closing and timely payments under the carry-back note.

29. As of the time of closing, virtually all state and local tax obligations had been paid. The IRS has filed a claim in the Mark Ray estate against UH in the amount of \$322,940.49, which represents Pre-Receivership Form 941 payroll taxes from 2018 and 2019 totaling \$19,111 and Pre-Receivership corporate tax owing for the tax period ending December 31, 2016 totaling \$313,855.94. The Receiver and his counsel have been in contact with the IRS about this Corporate tax claim. As of the date of this Report, the Receiver has paid the IRS and various state and local taxing authorities \$344,516.96.

30. In addition, the Receiver has paid all payroll taxes post-receivership.

### C. Pending Litigation against Ray and the Ray Entities

31. Before the Receiver was appointed, various lawsuits were pending against Ray and the Ray Entities. The following table summarizes the current status of that litigation.

PENDING LITIGATION AGAINST RAY AND RAY ENTITIES					
Case Caption	Court	Case Number	Date Suit Commenced	Nature of Suit	Status
<i>Henderson State Bank v. Universal Herbs, LLC</i>	United States District Court for the District of Nebraska	19-cv-03070	7/10/2019	Fraud	Case stayed pursuant to Order dated January 8, 2020
<i>Beacon Technologies, Inc. and Secure Shield Enforcement Solutions v. Universal Herbs, LLC, Mark Ray, Elite Security Services, LLC and E2T2, LLC</i>	Denver District Court	2019CV 32882	8/14/2019	Breach of contract, theft,	Stayed and administratively closed pursuant to Receivership Orders as of 10/17/2019

### D. Litigation Claims

32. The Receiver continues to bring claims and to investigate potential claims against third parties who may have facilitated or participated in the scheme.

33. The Receiver has brought a fraudulent transfer case against Ronald Throgmartin who is a defendant in the companion federal case brought by the SEC, seeking to avoid approximately \$2.4 million in fraudulent transfers made from the Estate to Throgmartin. The case was filed in the District Court of the Second Judicial District, Denver County, Colorado, Case No. 21cv31124, and later removed to the United States District Court for the District of Colorado, Case No., 21-cv-01314-RBJ-NRN. This litigation is ongoing.

34. On August 30, the Receiver sued JP Morgan Chase Bank (“Chase”), in District Court of the Second Judicial District, Denver County, Colorado, Case No. 21CV32726, asserting various tort claims and fraudulent transfer claims against the bank. Specifically, the Receiver brought claims for aiding and abetting securities fraud, aiding and abetting common law fraud, aiding and abetting civil theft, aiding and abetting breach of fiduciary duty, negligence, negligent supervision, unjust enrichment, and fraudulent transfer under C.R.S. §§ 38-8-105 and 106. The complaint was filed as suppressed due to Chase’s marking many of the documents relied on in the complaint as “confidential.” Chase later removed the case to United States District Court for the District of Colorado, Case No., 21-cv-02449-RM-KLM. This litigation is ongoing.

35. On October 1, 2021, the Receiver filed complaints asserting fraudulent transfer claims against Jordan Betensky and Darryl Raub, in District Court of the Second Judicial District, Denver County, Colorado, Case Nos. 21CV33098 and 21CV33099, respectively. These cases are ongoing.

36. On October 22, 2021, the Receiver filed a complaint asserting fraudulent transfer claims against Randall Huls, in District Court of the Second Judicial District, Denver County, Colorado, Case No. 2021CV33372.

37. On September 20, 2021, the Receiver filed a motion to compel against BellCo Credit Union, seeking documents related to BellCo’s monitoring of accounts held by Mark Ray and his Entities. That Motion is fully briefed.

38. The Receiver has entered into a settlement agreement with investor Michael Schulkins and is in the process of discussing possible settlements with various other investors in the Ponzi scheme.

39. The Receiver continues to identify and investigate additional potential litigation claims against various parties and anticipates filing additional claims against other parties. To that end, the Receiver has sent over a dozen demands to those investors who received fictitious profits from the scheme, demanding those investors return the fictitious profits.

40. The Receiver has also entered into tolling agreements with over a dozen investors against whom the Receiver believes he can assert fraudulent transfer claims. These parties and the Receiver are in the process of reviewing additional documentation regarding these parties’ involvement and investment in the Ponzi scheme.

41. These potential claims may allow the Receiver to recover assets transferred before and after the Receivership Orders were entered. At this time, the Receiver cannot provide any reasonable estimate of the value, if any, of these claims.

#### **IV. Summary of the Estate’s Liabilities**

42. The full extent of the Estate’s liabilities is presently unknown. However, Receiver summarized UH’s known liabilities above, and continues to identify investors and creditors of the Estate.



43. In addition, the Estate has incurred obligations to counsel and experts to assist in recovering the Estate's assets as follows:

Obligee	Amount of Obligation:	Basis of Obligation:
Betzer, Lausten Call & Schwartz, LLP	\$ 123,240.60	Receiver's fees UH Expenses Paid by Receiver Accounting Fees
Foster Graham Milstein & Calisher, LLP	\$ 181,679.88	Legal Fees

The Receiver's fees noted above includes monies paid to various consultants assisting with the administration and operation of UH. In addition, the Receiver has paid certain expenses and obligations of UH through the extension of a loan to the Estate. These represent critical expenses that were time sensitive. This loan will be repaid as funds become available.

44. The Receiver continues to investigate the assets and liabilities of the Estate and will file additional periodic reports as contemplated by the Receivership Orders.

45. Pursuant to paragraphs 9 in the Receivership Orders, the Receiver hereafter will file bi-annual reports, with his next report due at the end of April 2022, and every six (6) months thereafter.

DATED this 8th day of November.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP

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

*Attorneys for Court-appointed Receiver Gary Schwartz*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2021, a true and correct copy of the foregoing **RECEIVER'S REPORT** was electronically filed and served on all parties of record via the Colorado Court E-Filing System.

I further certify that on November 8, 2021 a true and correct copy on the foregoing **RECEIVER'S REPORT** is being posted to the website [www.rayreceivership.com](http://www.rayreceivership.com).

*/s/ Lucas Wiggins* \_\_\_\_\_

Lucas Wiggins

Attachment to Order - 2019 CV 33770