

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: January 27, 2022 1:31 PM FILING ID: 4C33E651E0E4F 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>RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT</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 a financial institution (“Bank A”).

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, and was executed through Ray’s use of various bank accounts in several different banks, including Bank A.

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 Bank A, stemming from Ray’s use of bank accounts he opened at Bank A to perpetrate his Ponzi scheme.

10. The proposed Settlement Agreement resolves the dispute between the Receiver and Bank A regarding these potential claims. The proposed settlement amount is \$150,000.

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. Although the Receiver believes his claims against Bank A are strong, Bank A has raised various defenses to those claims. Litigation would be both complex and expensive as Bank A is certain to mount a vigorous defense as to both liability and damages. Thus, in consideration of these factors as well as the likelihood of success in any litigation, the Court should approve the settlement agreement.

13. The proposed agreement resolves the potential litigation claims against Bank A 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: January 27, 2022.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP.

By: /s/ John A. Chanin

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ATTORNEYS FOR THE COURT-APPOINTED RECEIVER,
GARY SCHWARTZ

