

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 4, 2022 10:53 AM CASE NUMBER: 2019CV33770
		△ COURT USE ONLY △
		Case Number: 2019CV33770 Division: 209 Courtroom:
ORDER RE: RECEIVER'S REPORT		

The motion/proposed order attached hereto: REVIEWED.

Issue Date: 5/4/2022



ALEX C MYERS
District Court Judge

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p>	
<p>TUNG CHAN, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>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>Defendants.</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: 209</p>
<p>RECEIVER'S REPORT</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 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, have updated the reports as these investors have provided the Receiver with more information regarding various transactions.

20. Counsel for the Receiver has extensively used these reports in clawing back fictitious profits from investors who benefitted from the Ponzi scheme, as discussed in more detail below.

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 regarding 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.

III. Claims Process

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 forensic accounting 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.

26. The Receiver and his counsel is in the process of evaluating each claim and supporting documentation, and the Receiver's, counsel'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.

27. The Receiver anticipates that he will be able to file detailed a claim distribution plan later this year.

IV. Assets of the Receivership Estate

A. Estate Cash

28. As of April 28, 2022, the balance in the Receivership checking account was \$1,195,303.15, while the balance in the Investment Account totaled \$4,450,869.47. The Investment Account is holding funds received from the civil settlement with Reva and Myron Stachniw less taxes and other expenses related to the Universal Herbs sale, including taxes and legal fees, and real estate related expenses.

B. Universal Herbs' Sale

29. As discussed in previous Reports, the asset sale of Universal Herbs to Titan Health LLC ("Titan") was approved by the MED on January 25, 2021. The sale had previously been approved by the Court on August 8, 2020. At the closing, Titan remitted \$150,000 to the Estate. Titan had previously remitted \$600,000 to the Estate at the time of the execution of the asset purchase agreement (APA). Pursuant to the terms of the APA, the Receiver on behalf of Universal Herbs as seller is carrying back a secured promissory note in the amount of \$3.250 million ("Note").

30. Currently, Titan is in Irrevocable Default (as that term is defined in the APA and Note) under the APA and Note. Pursuant to the Note and APA, the Receiver has accelerated all Titan's obligations under the Note. The Receiver understands that Titan is currently in the process of negotiating a sale of its assets, which will enable Titan to pay off the outstanding debt in full within the next 90 days. Titan recently represented that the alleged sale will be consummated on or about April 30, 2022, at which time the Estate will receive a payment of \$200,000. Titan also represented that the balance of the Note will be paid in full within 90 days. Despite this representation from Titan, the Receiver has instructed legal counsel to proceed with the collection of on the promissory note as a result of the defaults.

31. As of the date of this Report, based upon on-going discussions and negotiations with the IRS, all tax obligations, including pre-receivership principal amounts for payroll and sales tax obligations for Universal Herbs, have been paid with the exception of a reported \$354,161.63 claim by the IRS for income taxes from 2016¹. The Receiver is disputing the penalties and interest owing on these obligations and is trying to come to a negotiated settlement on those amounts. The Receiver has been in frequent communication with the IRS and its agents related to these issues. The IRS is extremely understaffed, and their responsiveness in challenging and frustrating. The accounting records for available the 2016 income tax obligation are incomplete and believed to be inaccurate. The Receiver continues to work towards a resolution on this matter.

32. In addition, the Receiver has paid all other payroll and sales tax obligation post-receivership.

C. Pending Litigation against Ray and the Ray Entities

33. Before the Receiver was appointed, a half-dozen various lawsuits were pending against Ray and the Ray Entities. Those lawsuits have all been dismissed but for the following:

PENDING LITIGATION AGAINST RAY AND RAY ENTITIES					
Case Caption	Court	Case Number	Date Suit Commenced	Nature of Suit	Status
<i>Beacon Technologies, Inc. and Integrated 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

¹ The amount referenced is derived from an email communication from an IRS Agent dated February 24, 2022. This is the most current balance available.

D. Litigation Claims brought by Estate

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

35. 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.

36. On August 30, 2021, 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 (the “Chase Lawsuit”).

37. The Chase Lawsuit is ongoing, but discovery is stayed. On January 27, 2022, the U.S. Department of Justice, Criminal Division, moved to intervene in the case and stay discovery for six months. The Court granted the motion on February 1, 2022.

38. In October 2021, the Receiver filed complaints asserting fraudulent transfer claims against Jordan Betensky, Darryl Raub, and Randall Huls in District Court of the Second Judicial District, Denver County, Colorado, Case Nos. 21CV33098, 21CV33099 and 2021CV33372, respectively.

39. The Receiver subsequently reached settlements with all three defendants in the cases identified above in paragraph 38 and those cases have been dismissed.

40. 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. The Court held a hearing on the motion on December 2, 2021 and granted the motion with some modifications.

41. On January 11, 2022, the Receiver filed a complaint seeking the recovery of fraudulent transfers against Eric McGregor. Mr. McGregor failed to appear and the court entered a clerk’s default against him. On April 25, 2022, the Receiver moved for entry of default judgment against Mr. McGregor in the amount of \$1.5 million. That motion is pending.

E. Settlements

42. The Receiver has additionally entered into settlement agreements with 13 individuals (including Messrs Raub, Huls and Betensky as discussed above), all of whom were investors in the Ponzi scheme and all of whom the Receiver's forensic analysis indicated had received fictitious profits from the Ponzi scheme.

43. The Receiver, through his counsel, reached these settlements after sending these individuals demand letters, entering into tolling agreements, and, in many cases, extensive negotiation with each of these investors/investors' counsel. Many of these settlements also involved review and analysis of additional information regarding each investor's transactions with the Mark Ray and the Ponzi scheme that the investors provided the Receiver. In each case, the goal was to accurately identify the amount of alleged fictitious profits each investor received from the Ponzi scheme.

44. The individuals with whom the Receiver has settled, as well as the corresponding settlement amounts, are listed below. The three individuals against whom the Receiver filed suit and later settled with (as discussed in paragraph 38 and 39 above) are also included in this summary:

- a. Michael Schulkins, \$20,000
- b. Clint Blackburn, \$31,363
- c. Roger Stewart, \$37,852
- d. Robert Brody, \$47,500
- e. Randall Huls, \$65,000
- f. Jack Finch, \$384,812
- g. John Landry, \$287,737
- h. Ryan Jepsen/Dutch Charley: \$300,000
- i. Jirl Buck, \$65,000
- j. Ben Elliott, \$38,987
- k. Frank Carbone, \$81,866
- l. Jordan Betensky, \$80,000
- m. Darrell Raub, \$40,000
- n. Blake Spellings, \$29,645

45. In addition, the Receiver has reached a settlement with "Bank A" for \$150,000.

46. Altogether, the Receiver, though his counsel, has recovered \$1,659,782 in settlements for the Estate.

47. The Receiver continues to identify and investigate additional potential litigation claims against various parties. At this time, the Receiver cannot provide any reasonable estimate of the value, if any, of these claims.

V. Summary of the Estate's Liabilities

48. 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.

49. 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	\$ 65,091.91	Receiver's fees Accounting Fees
Foster Graham Milstein & Calisher, LLP	\$ 113,369.93	Legal Fees

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

51. 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 October 2022, and every six (6) months thereafter.

DATED this 2nd day of May, 2022.

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 May 2, 2022, 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 May 2, 2022 a true and correct copy on the foregoing **RECEIVER'S REPORT** is being posted to the website www.rayreceivership.com.

/s/ Lucas Wiggins _____

Lucas Wiggins

Attachment to Order - 2019 CV 33770