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| 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: November 1, 2022 CASE NUMBER: 2019CV33770 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2019CV33770 Division: 209 Courtroom: |
| ORDER RE: RECEIVER'S REPORT | |

The motion/proposed order attached hereto: REVIEWED.

Issue Date: 11/1/2022



ALEX C MYERS
 District Court Judge

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| <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, 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> | <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 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 forensic accounting team have shifted their focus to detailed analyses of individual investors' claims.

14. The forensic accounting team has largely completed an extensive and complicated forensic accounting of the entire estate in order to determine as much as possible the total inflows and outflows among and between the Mark Ray enterprise and the investors. In so doing, the forensic accounting team reviewed and incorporated information from thousands of pages of the Ray Entities' and investors' bank statements and reviewed and summarized the data entry in the form of detailed and summary reports of all banking activity of the Estate. This process was challenging and iterative, because no formal accounting was maintained by Mark Ray and because a multitude of transactions related to the Mark Ray enterprise were conducted investor-to-investor.

15. To date, the forensic accounting team has entered over six thousand transactions from investor accounts that represent more than \$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 more than \$900 million of both inflows and outflows. In total, in absolute dollars, the forensic accounting team has entered more than **\$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.

16. The forensic accounting team has also largely completed a comparison of reconstructed banking activity to claims made by investors. The forensic accounting team has created reports for each investor reflecting the detailed funds flow related to the Mark Ray enterprise. These reports reflect the funds flow associated with that investor, including the various names associated with that investor and include every detailed transaction associated with that investor. These reports allow the Receiver and counsel to conduct detailed analysis of claims submitted by the investors.

17. 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.

18. 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.

19. 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.

20. 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

21. 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.

22. As of the Bar Date, the Receiver received 93 claims, totaling \$56,408,601.00. These claims include claims from vendors of the Estate, investors in the Ponzi scheme, and banks.

23. 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 accounting reconstruction; this reconciliation has then been used to communicate variances to the claimants and their counsel. The forensic accounting team has been 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 is necessarily iterative because the information submitted by the claimants varies in its nature and level of detail provided, and because it is likely the investor-to-investor information supplied to date is incomplete.

24. The Receiver, counsel and the forensic accounting team have completed a preliminary review of all claims submitted to the Estate, and have notified nearly all claimants, of the Receiver's preliminary decision on their claim. To the extent an investor disagrees with the Receiver's preliminary analysis, the Receiver has requested these claimants provide additional information in support of their claim. If such information is received from the investor, the Receiver and the forensic accounting team will consider this new information in their analysis of the claim.

25. The Receiver anticipates that he will be able to file a detailed proposed Plan of Distribution later this year.

IV. Assets of the Receivership Estate

A. Estate Cash

26. As of October 25, 2022, the balance in the Receivership checking account was \$225,977.46, while the balance in the Investment Account totaled \$3,934,298.42. The Investment Account is holding funds received from the civil settlement with Reva and Myron Stachniw, as well as funds received from the civil settlement with Ron Throgmartin.

B. Universal Herbs

27. 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 two secured promissory notes in the total amount of \$3.250 million (“Notes”).

28. From January 2021 through November 2021, Titan made payments on the Notes totaling approximately \$837,560. Titan has failed to make any payments on the Notes since that time.

29. After failing to cure following the Receiver’s notice, Titan fell into Irrevocable Default under the APA and Notes and the Receiver has accelerated all Titan’s obligations under the Notes.

30. Despite efforts at negotiation, the Receiver was forced to file suit against Titan Health in May 2022, in Denver District Court (Case No. 2022CV031451), asserting claims for breach of contract and asking the Court to return all the Universal Herbs assets to the Receivership Estate. Currently, the Receiver has filed a motion for summary judgment in that case and it appears that Titan will default.

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 local and state obligations and how the amount of the IRS claims was determined. The Receiver 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 obligations post-receivership, as well as operating expenses for the Universal Herbs operations.

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:

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.

PENDING LITIGATION AGAINST RAY AND RAY ENTITIES

| Case Caption | Court | Case Number | Date Suit Commenced | Nature of Suit | Status |
|--|-----------------------|--------------------|----------------------------|----------------------------|---|
| <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. Current Litigation Claims brought by Estate

34. As detailed in previous reports, the Receiver has brought numerous claims against third parties who may have facilitated in, participated in, or benefitted from the scheme.

35. In July 2022, the Receiver settled 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 settlement is discussed further below.

36. Also in July 2022, Ronald Throgmartin and Reva Stachniw were found guilty on all counts of conspiracy to commit wire fraud and wire fraud, in Case No. 1:21-CR-00148-PAB, for their role in the Ponzi scheme giving rise to this Receivership.

37. 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”).

38. The Chase Lawsuit is ongoing, but discovery is stayed. On January 27, 2022, the U.S. Department of Justice, Criminal Division (“DOJ”), moved to intervene in the case and stay discovery for six months. The Court granted the motion on February 1, 2022. The DOJ moved to extend the stay for another six months on July 18, 2022, and the Court granted the motion on August 8, 2022. Discovery in the case remains stayed through March 31, 2023.

39. On May 16, 2022, the court entered a default judgment for \$1,538,398.00 against Eric McGregor in case no. 2022cv30072, which the Receiver had brought against Mr. McGregor to recover fraudulent transfers Mr. McGregor had received from the Ponzi scheme. The Receiver is currently undertaking collection efforts on that judgment.

E. Settlements

40. As detailed on previous reports, the Receiver had previously entered into settlement agreements with 13 individuals, 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. Since the date of the Receiver's last report, the Receiver has entered into settlements with two additional individuals, Blake Spellings, and Ronald Throgmartin.

41. The individuals with whom the Receiver has settled, as well as the corresponding settlement amounts, are listed below:

- 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
- o. Ronald Throgmartin, at least \$307,291.66, plus 100% of all Diego Pellicer stock owned by Mr. Throgmartin.

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

43. Altogether, the Receiver, though his counsel, has recovered \$1,967,073.66 in settlements for the Estate. Of this amount, approximately \$540,000 is slated to be paid to the Estate in the future due to the structure of the settlement agreements the Estate reached with investors, and the remainder has already been paid to the Estate.

44. 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

45. 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.

46. 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 | \$ 124,611.39 | Receiver's fees Accounting Fees |
| Foster Graham Milstein & Calisher, LLP | \$ 74,362.77 | Legal Fees |

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

48. 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, 2023, and every six (6) months thereafter.

DATED this 31st day of October, 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 October 31, 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 October 31, 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