

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	DATE FILED: December 20, 2022 CASE NUMBER: 2019CV33770
Plaintiff(s) DAVID S CHEVAL ACTING SECURITIES COMMISS et al. v. Defendant(s) MARK RAY et al.	<p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2019CV33770 Division: 209 Courtroom:
ORDER RE: FIFTH APPLICATION FOR PROFESSIONAL FEES with attach	

The motion/proposed order attached hereto: APPROVED.

This matter is before the Court on the Receiver's Fifth Application for Professional Fees filed December 7, 2022 ("Fee Application"). Pursuant to the Court's November 4, 2019 Order appointing the Receiver, any objections to the Fee Application were due within 10 calendar days. Order at ¶ 5(n)(iv). The Court has not received any objection. Accordingly, the Fee Application is APPROVED.

Issue Date: 12/20/2022



ALEX C MYERS
 District Court Judge

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	
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 style="text-align: center;">▲ COURT USE ONLY ▲</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	Case Number: 19CV33770 Division: 209
FIFTH APPLICATION FOR PROFESSIONAL FEES	

Gary Schwartz (“Receiver”), Court-appointed Receiver for the Receivership Assets of Defendants Mark Ray (“Ray”), Reva Stachniw (“Stachniw”), Custom Consulting & Product Services, LLC (“CCPS”), RM Farm & Livestock, LLC (“RM”), MR Cattle Production Services, LLC (“MR Cattle”), Sunshine Enterprises (“Sunshine”), Universal Herbs, LLC (“Universal”), DBC Limited, LLC (“DBC”) (collectively, the “Receivership Defendants”), submits this Fifth Application for Fees and Expenses, which covers the period from July 1, 2022 through November 30, 2022.

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 Ron 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. The Receivership Orders give the Receiver the authority to “hire as an expense of the Estate, the personnel necessary to perform a historical accounting of the Estate for such time period as may be determined by the Receiver and to maintain a complete and accurate accounting of the income and expenses of the Estate . . . and to pay the reasonable value for the services rendered[.]” Receivership Orders at ¶ 5(n)(iii).

13. The Receivership Orders give the Receiver the authority to “hire as an expense of the Estate such employees, accountants, consultants, attorneys and other professionals, as his

counsel, as is necessary for the proper administration of the Estate.” *Id.* ¶ 5(n)(iv) and other professionals as may be reasonably necessary to the proper discharge of the Receiver’s duties, and to hire, pay and discharge the personnel necessary to fulfill the obligations of the Receiver hereunder, including the retention of . . . other third parties to assist the Receiver in the performance of its duties hereunder, all within the Receiver’s discretion[.]” Receivership Order at p. 9, ¶ 13(1).

14. The Receivership Orders further state that

The Receiver shall make an application of the Court for payment of reasonable and necessary fees, costs and expenses incurred as Receiver, including but not limited to, disbursement of professional fees to himself, his counsel, or accountant, and shall be entitled to payment of said fees and expenses as hereinafter provided. Copies of the application to the Court shall be provided to counsel for the parties and to the Commissioner. Such parties shall have ten (10) calendar days following the filing of such application to file any objections with the Court. Objections will not be general in nature but are to be specific, stating all amounts, in detail, if any, which is not objected to by the objector. If no objections are filed with the Court within ten (10) calendar days, the Receiver may thereupon draw funds from his trust account sufficient to pay such fees, disbursements and expenses without further order of the Court. If any objections are filed the Receiver may draw funds from his trust account sufficient to pay the amount not objected to, and the Court will conduct a hearing on any objections within twenty (20) days from the filing of the objection. At such hearing, the compensation of the Receiver or other professional as well as allowable disbursements and expenses will be determined by the Court. *Id.* ¶ 5(n)(iv).

15. This Application covers the period from July 1, 2022 through November 30, 2022. This is the Receiver’s fifth fee application. This Application requests the following fees and expenses:

Provider	Amount Sought:	Description:
Betzer, Lausten Call & Schwartz, LLP and Gary Schwartz, Receiver	\$57,960.11	Receiver and Accounting Fees
Foster Graham Milstein & Calisher, LLP	\$ 127,699.62	Legal Fees and costs

16. A detailed itemization of the fees requested are included in Exhibits 1 and 2 hereto.

Betzer, Lausten Call & Schwartz, LLP's Fees

17. The Receiver and his staff (the forensic accounting team) 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, which is now largely complete.

18. 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.

19. 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.

20. 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.

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 has also addressed Titan Health's default of the Asset Purchase Agreement and various promissory notes between Universal Herbs, LLC and Titan. Pursuant to the terms of those agreements and notes, the Receiver has accelerated the payments under the notes and has filed suit against Titan Health, including requesting that a receiver be appointed over the assets Universal Herbs sold to Titan in order to protect those assets as they are Universal Herbs' collateral. The Receiver was appointed as Receiver over these assets and has been working to maintain those assets.

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 and his team have reviewed all the claims filed and have made preliminary decisions on each claim, subject to Court approval.

Foster Graham Milstein & Calisher's Fees

26. Foster Graham Milstein & Calisher, LLP ("the Firm") was hired as legal counsel by the Receiver, and attorneys at the Firm have been working diligently in that capacity since September 30, 2019. The Firm's invoices are attached here as Exhibit 2. In particular, Firm partner John Chanin has extensive experience representing receivers appointed to investigate and wind down a Ponzi scheme.

27. As counsel to the Receiver, in the last six months, the Firm has performed numerous tasks, including without limitation:

- a. Providing legal advice and counsel to the Receiver, often on a daily basis, on a broad array of topics, such as employment issues, regulatory issues, tax issues, real estate and lease issues, litigation and settlement options, and the scope of the Receiver's powers and duties under the Receivership Orders;
- b. Communicating regularly with investors and counsel concerning the Receivership and the investigation;
- c. Reviewing and analyzing nearly 100 claims filed by investors, vendors and other interested persons, including review supporting documentation provided by claimants and comparing provided information with the investor reports created by BCLS, and making preliminary adjudications of claims pending court approval;
- d. Reviewing and analyzing dozens of investor reports detailing each investor's investments in and distributions from the Ponzi scheme;
- e. As detailed in the previous fee application, 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 last fee application, the Receiver has entered into settlements with two additional individuals, for additional recovery for the estate of over \$335,000.

- f. Investigated various methodologies for distribution of estate assets to investors;
- g. Coordinating with the Colorado Securities Commissioner, the trial attorney for the SEC, and the federal criminal prosecutor and case agent;
- h. Performing legal research and analysis on a myriad of issues;
- i. Prosecuting its suit against Titan Health, Inc for defaulting on promissory notes owed to Universal Herbs, LLC, including seeking summary judgment on all claims;
- j. Continued prosecuting the Receiver's claw-back case against JP Morgan Chase, including securing a favorable ruling on Chase's partial motion to dismiss.
- k. Beginning to create a distribution plan for approval by the Court and all interested parties.

28. The Firm bills on an hourly basis ranging from \$325 to \$495 for attorney time, and \$150 for paralegal time. The Firm has written off all finance charges and is not seeking reimbursement for finance charges. The Firm also has largely not billed for a second paralegal's time, resulting in a significant discount to the Estate. These rates are at or below the market rate typically charged by attorneys with the same experience and background as the attorneys representing the Receiver.

29. Pursuant to Paragraph 5(n)(iv), the Receiver is providing a copy of this Application and exhibits to counsel for the parties to this case. Court approval of the application shall be given as a matter of course unless a party objects within ten days after service.

DATED this 7th Day of December, 2022.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP

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

Attorneys for Court-appointed Receiver Gary Schwartz

Attachment to Order - 2019CV333770

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2022, a true and correct copy of the foregoing **FIFTH APPLICATION FOR PROFESSIONAL FEES** was electronically filed and served on all parties of record via the Colorado Court E-Filing System.

/s/ Lucas Wiggins
Lucas Wiggins

Attachment to Order - 2019CV33770