

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.	DATE FILED: June 8, 2023 9:08 AM
v.	CASE NUMBER: 2019CV33770
Defendant(s) MARK RAY et al.	
<b>△ COURT USE ONLY △</b>	
Case Number: 2019CV33770	
Division: 209                      Courtroom:	
<b>Order:SIXTH APPLICATION FOR PROFESSIONAL FEES W/ATTACH</b>	

The motion/proposed order attached hereto: GRANTED.

This matter is before the Court on the Receiver's Fifth Application for Professional Fees filed May 15, 2023 ("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: 6/8/2023

*Sarah B. Wallace*

SARAH BLOCK WALLACE  
District Court Judge

<b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b> 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;"><b>▲ COURT USE ONLY ▲</b></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: <a href="mailto:jchanin@fostergraham.com">jchanin@fostergraham.com</a> ; <a href="mailto:kroush@fostergraham.com">kroush@fostergraham.com</a>	Case Number: 19CV33770  Division: 209
<b>SIXTH APPLICATION FOR PROFESSIONAL FEES</b>	

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 Herbs”), DBC Limited, LLC (“DBC”) (collectively, the “Receivership Defendants”), submits this Sixth Application for Fees and Expenses, which covers the period from December 1, 2022 through April 30, 2023.

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 December 1, 2022 through April 30, 2023. This is the Receiver’s sixth fee application. This Application requests the following fees and expenses:

<b>Provider</b>	<b>Amount Sought:</b>	<b>Description:</b>
Betzer, Lausten Call & Schwartz, LLP and Gary Schwartz, Receiver	\$22,575.18	Receiver and Accounting Fees
Foster Graham Milstein & Calisher, LLP	\$112,978.95	Legal Fees and costs

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

**Betzer, Lausten Call & Schwartz, LLP's Fees**

17. The Receiver and his staff (the forensic accounting team) finalized their work on the forensic accounting of the entire Estate, establishing with reasonable certainty what monies came into and went out of the Estate and the various entities, which is now largely complete.

18. The forensic accounting team also revised schedules and memos for the Receiver's proposed plan of distribution and researched appropriate distribution models.

19. The Receiver has also been maintaining the assets Universal Herbs sold to Titan Health, LLC. When Titan Health defaulted under the Asset Purchase Agreement with Universal Herbs, the Receiver accelerated the payments due under various promissory notes and filed suit against Titan Health. In that lawsuit, the court appointed the Receiver as receiver over those assets and granted the Receiver's request to transfer the assets back to Universal Herbs, where the Estate can again re-sell them.

20. 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.

21. As of the Bar Date, the Estate received 93 claims, totaling \$51,068,647. These claims include claims from vendors of the Estate, investors in the cattle scheme, the IRS, and a bank

22. The Receiver and his team have reviewed all the claims filed and on February 13, 2023, filed a proposed plan for distribution. The Estate received two objections. The Receiver plans on filing an amended plan of distribution in the coming weeks that will reflect agreements with several claimants in lieu of objections.

23. The Receiver also participated in successful mediation with a claimant in this matter.

#### **Foster Graham Milstein & Calisher's Fees**

24. 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.

25. As counsel to the Receiver, in the last five 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, claimants, and counsel concerning the Receivership and the proposed plan of distribution;
- c. Reviewing all information and documentation submitted by claimants and requesting additional information and documentation as needed;
- d. Reviewing all claims and supporting documentation submitted as part of the claims process and making recommendations to the Receiver as to the treatment of each claim;

- e. Working with and providing information to trial attorneys at the U.S. Department of Justice in the investigation and prosecution of the Scheme and the co-conspirators;
- f. Drafting, revising, finalizing and filing the proposed plan of distribution and related schedules and exhibits thereto and distributing same to all claimants;
- g. Prosecuting a lawsuit in U.S. District Court against Bank B for aiding and abetting the Scheme. After obtaining a very favorable ruling denying a motion to dismiss, the Receiver and Counsel engaged in a mediation with Bank B and obtained a \$995,000 settlement; and,
- h. Performing legal research and analysis on a myriad of issues.

26. 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.

27. 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 15th Day of May, 2023.

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*



**CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2023, a true and correct copy of the foregoing **SIXTH 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