

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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U.S. SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
	Plaintiff,)	Civil Action No. 18-CV-5587
)	
	v.)	Judge John Z. Lee
)	
EQUITYBUILD, INC., <i>et al.</i> ,)	Magistrate Judge Young B. Kim
)	
	Defendants.)	
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SEC’S REPLY IN SUPPORT OF RECEIVER FEE APPLICATIONS

In the face of hostility and resistance from the institutional lenders, the Receiver has performed valuable services on behalf of defrauded investors, other creditors, residents of Equitybuild housing, and the Court. He continues to benefit these constituencies by managing residential buildings, attempting to liquidate a large real estate portfolio, and administering an orderly claims process. The Receiver deserves to be compensated for this important work.

At the same time, the institutional lenders have attempted, at every step in the process, to thwart the Receiver from fulfilling his Court-imposed mandates. The lenders want the Court to put their interests first, even though (a) the victimized investors held earlier-in-time mortgages which the investors never released, and (b) many of the properties the Receiver is trying to sell are not encumbered by any institutional debt.

Denying the Receiver’s fee petitions would discourage well-qualified receiver candidates from volunteering to perform an important public service to the Court. And it would encourage gamesmanship, of the sort employed here by the lenders, by those opposed to the efforts of future receivers.

A. The Receiver Has Performed Valuable Services

From the onset, the Receiver has performed valuable services for the benefit of various constituencies.

The Court appointed the Receiver to administer a real business, Equitybuild, that was being used by Jerome and Shaun Cohen to perpetrate a massive Ponzi scheme. Keeping the Cohens at the helm of Equitybuild was simply not an option. Upon his appointment, the Receiver quickly took over Equitybuild's operations, secured and inventoried its real estate portfolio, and implemented an orderly wind-down of Equitybuild's business operations. (*See, e.g.,* Receiver's Second Fee Application, ECF No. 487, at 5-8). The Receiver also began managing and preserving Equitybuild's properties for the benefit of their residents, making sure utility bills were paid, remedying building code violations, and addressing life and safety concerns. (*Id.* at 15). The Receiver also fielded hundreds of inquiries from investors, and established a website to provide investors and other creditors information in an efficient manner. (*Id.* at 14).

After performing his initial work securing Equitybuild's operations and real estate, the Receiver began fulfilling his mandate of returning funds to victimized investors and other creditors. To that end, the Receiver designed, obtained Court approval for, and implemented an orderly claims process. That process is ongoing, and provides a mechanism for resolving the claims of all creditors, including the institutional lenders and the investors who obtained earlier security interests in the subject properties. A key feature of the claims process is that it ensures due process to all parties, who will receive notice of and an opportunity to object to any of the Receiver's initial priority or distribution recommendations.

The Receiver concurrently began the process of liquidating the Equitybuild real estate portfolio. The Receiver's liquidation plan serves two valuable purposes. First, it allows the Receiver to bring money into the Receivership estate, with the goal of returning as much as possible to investors and other creditors. Second, promptly selling certain of the properties, which are cash-flow negative, relieves the Receiver of his obligation to use receivership assets to pay those properties' net expenses. To that end, the Receiver retained real estate brokers, and developed and sought Court approval for a plan to efficiently sell properties in an orderly fashion. (*See, e.g.*, ECF Nos. 230, 525).

The Receiver also took additional steps to bring funds into the receivership estate. For instance, he successfully clawed back money that Jerome Cohen had wired from his bank accounts prior to the Court's asset freeze taking effect. (*See*, ECF No. 107, p. 17). The Receiver also successfully prosecuted a motion to have Jerome Cohen's Naples, Florida residence and personal bank account be included in the receivership estate. (ECF No. 492). And the Receiver continues to evaluate bringing offensive actions, such as fraudulent transfer or aiding and abetting claims, which could bring additional funds into the receivership. (*See*, ECF No. 467, p. 19).

To appreciate the valuable services the Receiver has provided, one can imagine what would have unfolded had the Receiver not been appointed. Equitybuild, and its significant assets, would either be managed by the Ponzi-schemer Cohens or simply left rudderless with no management in place.¹ There would be no one to ensure the comfort, health, and safety of the tenants in Equitybuild's residential buildings. And there would be no orderly mechanism to

¹ Jerome Cohen fled the country, to Israel, shortly after the SEC filed this lawsuit.

liquidate the portfolio, make additional funds available for victims, or otherwise compensate creditors.

The institutional lenders refuse to acknowledge any of the Receiver's beneficial work. Instead, they want the properties abandoned and the receivership dissolved. The lenders want this to occur so they can file state court foreclosure actions. The lenders' desired foreclosures would pit the well-funded lenders against victimized investors, most of whom hold only a fractional security interest in the subject properties such that retaining counsel would be cost-prohibitive. And, because the investors do not know the identities of the other investors who hold fractional interests on the same mortgage, the investors would have difficulty organizing to collectively challenge the institutional lenders. Even though the investors hold earlier-in-time mortgages which they never released, the outcome of such lopsided foreclosure actions would be pre-ordained.

B. The Receivership Should Continue

The lenders demand that the receivership should be dissolved because, as they claim, it is "grossly insolvent." (ECF No. 509, p. 10). But they ignore that many of the properties the Receiver seeks to sell have equity and are not encumbered by institutional lender debt. (*See* ECF No. 467, pp. 7-8; ECF No. 524).² And, just because a property is secured does not mean it is underwater, and the SEC understands that various such properties have positive equity and that funds will be left over after the secured creditors are paid. (*Id.*). Moreover, even for secured properties that may be underwater, sale of the properties will mean significant funds returned to

² The Receiver recently filed a motion for the Court to approve the sale of various properties for, cumulatively, more than \$7 million. (ECF No. 524). None of those properties are secured by institutional lender mortgages. (*Id.*) The Receiver's motion includes sales cumulatively exceeding \$2.4 million for properties that are unencumbered by *any* debt. (*Id.*) The remaining properties are secured only by the mortgages of Equitybuild investors. (*Id.*)

the secured lenders, be they the institutional lenders or the investors who obtained earlier-in-time mortgages. For these properties, the Receiver is performing valuable services by maintaining the properties, marketing them for sale, and administering an orderly claims process whereby the Court will ultimately determine who has priority and is entitled to the proceeds of the sales.

The institutional lenders should not be able to invoke the Receiver's financial condition as grounds for dissolution when the lenders themselves are directly responsible for harming the receivership. By constantly objecting and filing motions in response to virtually every action by the Receiver, the lenders are forcing the Receiver to incur substantial and unnecessary legal fees. At the same time, the lenders are preventing the Receiver from bringing in funds, and unloading cash-flow negative properties, by holding up the sales process. The lenders should not be able to force a problem on the receivership and then cite that problem as grounds for terminating the receivership.

Moreover, despite their objections to the receivership's continuance, the lenders offer no suggestion on who should continue to perform the Receiver's beneficial work. Indeed, the lenders provide no proposal for (a) selling properties in which the lenders do not hold security interests, (b) asserting offensive claims against third-parties, (c) administering the ongoing claims process, or (d) distributing funds to creditors.

C. Denying the Receiver's Fee Petition Would Set Terrible Precedent

Preventing the Receiver from being compensated for his work would have significant ramifications beyond this case. The SEC would have difficulty recruiting well-qualified receivers, who would be unwilling to volunteer for lengthy and resource-intensive assignments with the prospect of not being compensated. It would also encourage those who oppose receiverships to employ the tactics used by the lenders in this case: object at every opportunity,

interfere with the receiver's work, prevent the liquidation of receivership assets, force the receiver to incur significant expenses, and ultimately drive down the recovery for victims of securities fraud.

Simply put, the Court should not reward such conduct here or allow it to become an example for future cases.

D. Conclusion

The Receiver's petitions seek compensation for work that he performed and directed, using his reasonable business judgment, to fulfill his Court-appointed mandates. The SEC has reviewed the Receiver's invoices, they substantially comply with the SEC's billing guidelines, and the SEC approves of their payment. The Court should allow the Receiver to be paid for his efforts, and should allow the receivership to continue for the benefit of the victimized investors and other creditors.

Dated: September 16, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing Reply, via ECF filing, to all counsel of record and Defendant Shaun Cohen, on September 16, 2019. I further certify that I caused the foregoing Response to be served on Defendant Jerome Cohen, via email at jerryc@reagan.com.

/s/ Benjamin Hanauer

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