



Dated: September 24, 2019

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis

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**CERTIFICATE OF SERVICE**

I hereby certify that I provided service of the foregoing via ECF filing, to all counsel of record on September 24, 2019.

I further certify I caused to be served the Defendant Jerome Cohen via e-mail:

Jerome Cohen  
1050 8th Avenue N  
Naples, FL 34102  
jerryc@reagan.com  
*Defendant*

/s/ Michael Rachlis \_\_\_\_\_

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asset management, property management, accounting, and strategic planning. My experience allows me to oversee all aspects of the transactional process including valuation, marketing, due diligence, and negotiations.

6. SVN has strong relationships and experience with all active buyers of multifamily properties in Chicago south side market. SVN also has a leading national platform that it uses to reach potential buyers. SVN fully cooperates with other brokerage firms and it uses its cooperation policies as a strength to maximize marketing exposure nationally and to provide increased access to less active local buyers.

7. The Receiver, Kevin Duff, hired SVN to serve as real estate broker and provide asset management services in connection with the marketing and sale of the EquityBuild Receivership Estate's multifamily properties in Chicagoland. I am the person at SVN who is principally responsible for providing real estate services and asset management services to the Receiver in connection with the Receivership's efforts to manage, market and sell those properties.

8. The Receiver provided me with a copy of the Reply of Liberty EBCP, LLC to the SEC's and the Receiver's Responses to Liberty's Objections to Minute Entry Dated August 19, 2019, and the attached affidavit of Raphael Lowenstein. Both the Reply and the Affidavit contain inaccurate, incomplete, and misleading statements. I offer this declaration to correct and respond to those statements.

9. I have represented and continue to represent the Receiver in connection with his efforts to sell the property at 4520 S. Drexel, Chicago, Illinois. In connection with those efforts, I had occasion to communicate with Mr. Lowenstein on numerous occasions.

10. On page 10 of the Reply, Liberty states, "...the Interested Purchaser made clear to the broker that it did not want to lose the Property because we guessed wrong on the purchase price by \$50k or \$100k." This is false.

11. On Page 10 of the Reply, Liberty states that Mr. Lowenstein "became concerned that the 'blind auction process being used by the Receiver and the Broker was designed to enable the Receiver and/or the Broker to steer the sale of the Property to a preferred buyer rather than a buyer willing to pay the highest price for the Property.'" There is no basis for this statement. We treated all potential bidders fairly and consistently, including Mr. Lowenstein. Mr. Lowenstein received the same information and opportunity to be the highest bidder as the purchaser who submitted the highest bid. The sealed bid process we used to market and sell the property was the process approved by the Court. Had we disclosed the highest bid to Mr. Lowenstein Capital we would, in fact, have been steering the property to him as a preferred buyer. Mr. Lowenstein also never expressed any concern to me about the process being used to steer the property to another buyer. And there would be no basis for such a concern in any event.

12. On Page 10 of the Reply, Liberty states that, "The Interested Purchaser advised the Broker, at that time, that it was willing to pay more if necessary to be the successful bidder." This statement implies that Mr. Lowenstein did not have an equal opportunity to be the highest bidder. We consistently encourage potential bidders to come in with their highest and best price, which is exactly what we did in connection with marketing and selling this property. That is exactly what was communicated to Mr. Lowenstein. It is false that Mr. Lowenstein advised us that he was willing to pay more to be the successful bidder. To the contrary, Mr. Lowenstein submitted a bid in response to the Receiver's request for a highest and best bid and Mr. Lowenstein's bid was not the highest bid received by the Receiver for the property.

13. To be clear, on August 15th, we went back to the two highest bidders and indicated that multiple offers had been received on the property and that we were going back to the two highest bidders and requesting they submit their highest and best offer on the property. Lowenstein Capital submitted their highest and best offer, and they did not indicate that they were willing to go higher.

14. In Paragraph 11 of the Affidavit, it states, “the Broker made clear to us that if the Interested Purchaser were to use a real estate broker other than the Broker it would be problematic and would interfere with the likelihood of success.” This is a categorically false. This was never said nor implied.

15. In Paragraph 13 of the Affidavit, it states, “the Interested Purchaser was willing to pay more if necessary to be the successful bidder. I further advised the Broker that the absence of specific information concerning the amount of competing bids made it difficult to make an intelligent offer. The Broker declined to provide further details.” While details of other bids were not provided to Mr. Lowenstein, that is also true for all bidders. We treat all potential bidders the same and cannot disclose specific details on another buyer’s specific offer. As noted above, Mr. Lowenstein was given the opportunity to be the highest bidder consistent with the bid procedures being used. He did not provide the highest bid for the property.

16. In Paragraph 16 of the Affidavit, it states, “which I believe was the highest offer received by the Broker and Receiver on August 14, 2019, the advertised cut-off day for bids on the Property.” In all my communications with Mr. Lowenstein, I never told him that he had submitted the highest offer.

17. In Paragraph 17 of the Affidavit, it states, “Broker advised me that the bidding process had changed.” I did not make this statement, which itself would be inaccurate. The

bidding process never changed. It is clearly set forth in the published Bid Procedures, where it expressly provides:

Best and Final: Although bidders are encouraged to submit their best offer, at the Seller's sole discretion, a best and final round may be conducted. In that event, the Seller will select the most competitive bids and the corresponding bidders will be invited to participate in the best and final round to be conducted by the Broker. The best and final bidding process will be conducted by telephone and email.

As discussed earlier, that is what transpired here.

18. Also in Paragraph 17 of the Affidavit, it states, "I pressed the Broker for information as to whether the Interested Purchasers' Third Offer was, in fact, the highest bid received by the August 14th cut off and got the impression that it was." To the extent this is a suggestion that I stated that he was the highest bidder, that is false. I did not indicate if their offer was or was not the highest offer. I cannot comment as to how he got the "impression that it was," but I can say that is untrue.

19. In Paragraph 18 of the Affidavit, it states, "I emphasized to the Broker.....willingness to pay more for the Property if necessary" During my conversations with Mr. Lowenstein, this was not stated. During this process, I and those working with me consistently encourage potential bidders to come in with their highest and best price. When given the opportunity to do so, Lowenstein Capital did not submit the highest offer.

20. Liberty's Reply also takes issue with the procedure being used to sell real estate for the Receivership Estate. In my opinion, as I have advised the Receiver, a sealed bid process is best for selling the real estate properties in the Receivership Estate to achieve maximum sale price.



21. The result of the sale of 4520 S. Drexel suggests the sealed bid process was successful. It resulted in a bid that was \$1,050,000 or 21% above Asking Price (Asking Price \$5,100,000 Contract Price \$6,150,000), which also was \$40,000 above the highest and best offer received from Mr. Lowenstein.

22. Liberty's Reply seems to suggest that the Receiver should disclose all offer to all buyers. In my opinion, this would be ineffectual and counterproductive and particularly so with the EquityBuild Estate's real estate portfolio. In fact, in my opinion and based on my decades of experience and the work and experience of SVN, buyers not knowing how many offers have been received and other details about other offers actually increases the likelihood buyers will submit their highest offers. A primary concern with providing information on other bidder's offers is that the information may be used to actually limit the amount of bids, which would not be maximizing the sale price.

23. Bid procedures generally are intended to encourage competitive bidding in order to maximize the value of the assets. It is my understanding, the options available include, (i) auction on the courthouse steps, (ii) private sale which requires three appraisals and (iii) sealed bid auction.

24. An auction on courthouse steps will limit the number of potential bidders, as all prospective bidders have to show up at the courthouse. A sealed bid process does not have this limitation and thus will increase the number of prospective bidders. Increasing the number of prospective bidders works to increase the potential offer prices.

25. As to private sales, the three appraisal requirement can be onerous and not cost effective, especially if one obtains three appraisals for each property in the receivership estate. There may be circumstances that a private sale is effective. But given the number of properties

in the Chicagoland area, private sale of each of the properties is not the best alternative for the Receivership Estate.

26. In my opinion, as I have advised the Receiver, a sealed bid sale process is the best alternative for the EquityBuild Estate's Chicagoland real estate assets. It increases the potential buyer pool. It ensures buyers that their offers will remain confidential and not be shopped (that is, disclosed to other buyers). Additionally, if information were to be provided on other offers this may negatively impact offers (that is, if there is only one other buyer, a bidder may not be as aggressive with the knowledge there are only two interested parties). Also, a four week marketing time frame allows time for potential bidders to review the information, but leads prospective purchasers to remain focused, which creates excitement and increases interest in the properties. SVN also uses its broad network to promote the properties and reach potential buyers who are motivated to buy and make competitive offers.

I, Jeffrey Baasch, declare, under penalty of perjury, that the foregoing is true and correct.

  
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Jeffrey Baasch