

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., EQUITYBUILD
FINANCE, LLC, JEROME H. COHEN, and
SHAUN D. COHEN,

Defendants.

Case No. 18-cv-5587

Judge Manish S. Shah

Magistrate Judge Young B. Kim

**RECEIVER'S SECOND MOTION FOR APPROVAL OF FEE ALLOCATIONS
FOR INTERIM PAYMENT PURSUANT TO RECEIVER'S LIEN**

Kevin B. Duff, as the receiver for the Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen ("Receiver") respectfully submits his second request for approval of the interim payment of fees included in the attached schedules allocating certain fees of the Receiver and his counsel to the liquidated real estate properties of the Receivership Estate pursuant to the first-priority Receiver's lien previously approved by the Court. In support of his motion, Receiver states as follows:

1. On January 3, 2022, the District Court referred the Receiver's Motion for Approval of Allocations of Fees to Properties for Payment Pursuant to Receiver's Lien (Dkt. 1107) to Magistrate Judge Kim (Dkt. 1112). That motion, which sought approval of the Receiver's allocation of fees included in his 1st through 13th fee applications covering the period from August 2018 – September 30, 2021, remains pending.

2. On September 12, 2022, the District Court granted in part the Receiver's Fourteenth, Fifteenth, and Sixteenth Fee Applications (Dkt. 1312)¹ The Court indicated that it will continue to refer first-priority Receiver's lien and allocation-to-properties disputes to Magistrate Judge Kim:

[C]onsistent with Judge Lee's approach—the court declines to approve a blanket payment of the requested fees pursuant to a first-priority lien. Instead, the court will refer the Receiver's request that the fees be paid pursuant to a first-priority lien to Magistrate Judge Kim, who is already addressing that issue with respect to previous fee applications. Accordingly, the court denies without prejudice the request in the Receivers' fee applications that all of the requested fees be paid pursuant to a first-priority lien. That issue continues to be referred to Magistrate Judge Kim. Similarly, the objections to the Receiver's proposed allocations of fees to specific properties is best addressed by Magistrate Judge Kim.

* * *

The Receiver is further authorized to pay any fees and expenses that fall under the two categories outlined in the court's August 17, 2021 order pursuant to a first-priority receiver's lien, and should file a motion with Magistrate Judge Kim detailing which specific fees and expenses he requests to be paid pursuant to the first-priority lien. The Receiver's request to allocate fees to specific properties is referred to Magistrate Judge Kim for consideration alongside the fee allocation motion which is currently pending before him. [Dkt. 1312 at 3, 4]

3. Accordingly, the Receiver submits herewith Exhibit A-D to this fee application, which contain his proposed allocations of fees incurred during the period from October 1, 2021 through June 30, 2022, as set forth in the Receiver's Fourteenth, Fifteenth, and Sixteenth Fee Applications. For ease of use, these reports combine the fees incurred during each month of the three quarters (*i.e.*, a total of nine months). As before, the Receiver is allocating to properties in

¹ Order 1312 also granted the Receiver's 13th fee application. The allocations for the 13th fee application were previously referred to the Magistrate Judge pursuant to January 3, 2022 Order. (Dkt. 1112) *See* Motion for Approval of Allocations of Fees (Dkt. 1107 at n.2) (indicating that at the time of filing the Court had not yet ruled on the Receiver's 12th or 13th fee applications). The Receiver's 12th fee application was granted on March 14, 2022. (Dkt. 1213)

the receivership estate only those fees in the Asset Disposition, Business Operations, or Claims billing categories. And tasks designated as “deferred” have not been allocated against any property even if included in these three billing categories, to be addressed at a later time along with the entries in the categories outside of Asset Disposition, Business Operations, or Claims.

4. **Exhibit A** contains a summary by property of the specific and general allocations to each property during the quarter. **Exhibit B** contains the general allocations which are allocated to the properties pro-rata based on their gross sales prices. **Exhibits C and D** both contain the specific allocations, grouped together in Exhibit C to show the property or properties to which each task has been allocated and a count of those properties, and individually by property in Exhibit D.² The Receiver will make versions of these Exhibits available in Excel format to the Court and to Claimants upon request.

5. These allocations have been made in accordance with the methodology approved by the Court, and the Receiver requests approval of an interim payment of the amounts indicated from the accounts established from the sale of the properties, subject to the holdbacks ordered by the Court. (Dkt. 1312 at 3-4)

6. In support of this motion, the Receiver further incorporates by reference the arguments and legal authority offered in support of his pending Motion for Approval of Allocations of Fees to Properties for Payment Pursuant to Receiver’s Lien. (Dkt. 1107)

² Property-specific allocations for those properties for which the funds held have been distributed pursuant to agreement are not included in Exhibits A or D. (See Orders approving joint distribution motions, Dkts. 1288, 1303) The share of the general allocations of Exhibit B to the remaining properties remain the same as before the settlements (*i.e.*, the fact that some properties have been resolved has not increased the remaining properties’ share of the general allocations). Likewise, Exhibit C shows allocations to the resolved properties, which are necessarily included so that no other property is allocated more than its proper share.

WHEREFORE, the Receiver respectfully requests that this Court approve the interim payment of fees from the segregated property accounts in accordance with the schedules attached hereto as Exhibits A-D hereto.

Dated: September 29, 2022

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis
Michael Rachlis
Jodi Rosen Wine
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950; Fax (312) 733-3952
mrachlis@rdaplawn.net
jwine@rdaplawn.net