UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	**Civil Action No. 18-cv-5587**
v.	)	**Hon. John Z. Lee**
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,	)	**Magistrate Judge Young B. Kim**
Defendants.	)	

RECEIVER'S LIQUIDATION PLAN

Kevin B. Duff, as the receiver ("Receiver") for the Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen as defined in the Order Appointing Receiver (Docket No. 16) (collectively, the "Receivership Defendants"), and pursuant to the powers vested in him by Order of this Court entered on August 17, 2018, now respectfully submits his Liquidation Plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Assets, and states as follows:

The Receiver has used and continues to use reasonable efforts in connection with the marshaling of assets and the planning for the disposition of various assets and property interests of the Receivership Defendants, including monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all profits, interest, or other income attributable thereto, of whatever kind, which the Receivership Defendants owned, possessed, had a beneficial interest in, or controlled directly or indirectly.

In furtherance of such, the Receiver identifies Receivership Assets that fall into the following categories together with a description of the steps taken to liquidate or the plan to liquidate the assets:

1. Real Property in Illinois.

The Receivership Estate includes 79 multi-family residential apartment buildings and 34 single-family homes comprising approximately 1,674 dwelling units located in and around Chicago, Illinois. As identified in the Receiver's First Status Report, the Receiver has retained SVN Chicago Commercial, LLC ("SVN") as an asset manager and real estate broker. (*See* Docket No. 107, pp. 11-12) The Receiver is working closely with SVN to develop a strategy to market and sell properties in an effort to maximize funds in the Receivership Estate. (*Id*.)

a. General Plan for Liquidation

SVN has been assisting the Receiver to determine and implement an orderly and strategic plan of disposition. In connection with that proposed plan, the Receiver has selected the following six properties for public sale in the fourth quarter of 2018 and has filed a motion for Court approval of the process for public sale of real property by sealed bid (*see* Docket No. 130); 5001 S. Drexel, Chicago, IL ("Drexel Property"); 7500-06 S. Eggleston Avenue, Chicago, IL ("Eggleston Property"); 7547-49 S. Essex Avenue, Chicago, IL ("7547 Essex Property"); 7927-49 S. Essex Avenue, Chicago IL ("7927 Essex Property")[1]; 8100 S. Essex, Chicago, IL ("8100 Essex Property); and 6160-6212 S. Martin Luther King Drive, Chicago, IL ("MLK Property").

The Drexel Property is a 33-unit building with high occupancy. It was acquired on November 30, 2017 for a price of $3,200,000. A third-party conventional loan appears to

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[1] 7927-49 S. Essex Avenue includes five contiguous buildings that will be marketed and sold together.

encumber this property. The property does not appear to be encumbered by EquityBuild affiliate debt.

The Eggleston Property is a 24-unit building with high occupancy. It was acquired on October 2, 2017 for a price of $1,375,000. It does not appear to be encumbered by institutional third-party debt or EquityBuild affiliate debt.

The 7547 Essex Property is a 23-unit building with high occupancy. It was acquired on January 8, 2018 for a price of $1,435,000. It does not appear to be encumbered by institutional third-party debt or EquityBuild affiliate debt.

The 7927 Essex Property includes five buildings with 30 total units. The following buildings were acquired on November 9, 2017, each for a price of $330,000: 7927-29 S. Essex, 7937-39 S. Essex, 7943-45 S. Essex, and 7947-49 S. Essex. The building at 7933-35 S. Essex was acquired on December 7, 2017 for $330,000. The 7927 Essex Property buildings do not appear to be encumbered by institutional third-party debt or EquityBuild affiliate debt.

The 8100 Essex Property is a 44-unit building. It was acquired on April 20, 2016 for a price of $2,100,000. It does not appear to be encumbered by institutional third-party debt, but does appear to be encumbered with EquityBuild affiliate debt.

The MLK Property is a 52-unit building. It was acquired November 9, 2016 for a price of $1,750,000. It appears to be encumbered by both a third-party conventional loan, as well as EquityBuild affiliated debt.

SVN has identified three categories of properties with respect to the 73 multifamily residential apartment buildings not yet selected for liquidation: (i) properties which may be appropriate to sell in the near term given both desirable elements of the property and the ability to provide the Receivership Estate with cash that can be used to preserve and maintain the remaining assets of Receivership Estate and allow for their orderly disposition; (ii) properties that require additional evaluation; and (iii) properties with substantial operating costs that require significant capital improvements. The Receiver has been advised and has concluded that an orderly sale of individual or small groupings of assets will attract a greater number of interested and qualified buyers and that an attempt to sell the entire portfolio in a single transaction poses unacceptable timing risks (*e.g.*, a purchaser interested in the whole Estate could potentially tie up the Estate during due diligence and, therefore, limit the Receiver's ability to market or sell any properties during that time) and invites steeply discounted offers.[2]

At least initially – and with respect to the six multifamily residential buildings – the Receiver has determined that a public sale is likely to be most advantageous. Compliance with the requirements imposed on private sale by 28 U.S.C. § 2001 (*e.g.*, obtaining three appraisals per property) could impose significant cost on the Estate and necessitate potentially harmful delays. The Receiver has determined that a reasonable, conservative cost estimate is $1,000 per appraisal. Thus, with 113 properties in the Estate, a sale process requiring compliance with this requirement could cost the Estate more than $330,000.

For those properties presently earmarked for sale, the Receiver intends to pursue the public sale via sealed bid process. Through this process, the Receiver will provide all potential buyers access to documents such as rent rolls, profit and loss statements, surveys, and other due diligence materials currently available. A bid deadline will be imposed, and potential buyers will have an

[2] The Receiver also remains open to the sale of the entire portfolio or large chunks of properties at once, to the extent there are serious and legitimate offers by qualified potential purchasers and meet the criteria established by the Receiver and SVN for purposes of determining whether or not to pursue such negotiations.

appropriate period of time to complete property tours. Criteria the Receiver and SVN will evaluate in assessing offers include, without limitation, the following:

- The proposed purchase price;
- Whether financing will be required and if so, whether the potential buyer has a strong relationship with lender;
- The potential buyer's source of equity;
- The potential buyer's current real estate holdings, including property type and location;
- The proposed strategy for the real estate;
- The reputation of the company's ownership; and
- The potential buyer's due diligence process, including underwriting and requirements for returns and holding periods.

Following careful and thoughtful selection of a final bidder, a purchase and sale agreement will be executed and the buyer will be afforded an additional ten business days to conduct any further due diligence it deems necessary. The sale would then be presented to the Court for final approval.

b. <u>Multi-Family Residential Apartment Buildings</u>

In addition to the six multifamily buildings subject to a motion to approve the process of sale, there are 73 multi-family apartment buildings in the EquityBuild portfolio, which the Receiver and SVN have categorized and identified for potential disposition. The evaluation by the Receiver and SVN is ongoing, and based on that evaluation and the gathering of more information, properties can move from one category to another.

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[redacted]

[redacted]

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[redacted]

[redacted]

2. Funds.

As reflected in the Receiver's First Status Report, the Receiver identified 53 checking accounts at Wells Fargo in the names of EquityBuild and its affiliate entities included as Receivership Defendants, reflecting a total amount transferred to the Receiver's account of $105,870.94. Of these funds, $30,820.87 came from an account in the name of 1632 Shirley LLC, which relates to the Mississippi properties discussed in the First Status Report. The amount transferred to the Receiver also reflects $75,000 that EquityBuild received from an investor; the funds were wired prior to the appointment of the Receiver and cleared after the appointment. The Receiver is working to determine whether either or both of these accounts constitute and/or contain Receivership Assets. To date, the remaining frozen funds in these 53 checking accounts total $5,795.03, and have not yet been transferred to the Receiver's account.

The Receiver also identified two checking accounts at Byline Bank in the names of Receivership Defendants, reflecting a total amount of $21,824.30. To date, the Receiver has not transferred these frozen funds to the Receiver's account.

As described in the First Status Report, the Receiver negotiated an agreement with Shaun Cohen to turn over the balance of his joint account with his spouse to the Receiver. To date, the Receiver transferred the $23,065.43 to the Receiver's account.

3. Other Potential Receivership Assets and Claims.

The Receiver continues to evaluate whether certain non-Illinois properties are or should be considered Receivership Assets, including, without limitation: single-family homes in Naples, Florida, Plano, Texas, and Jackson, Mississippi; and a plot of vacant land in Houston, Texas. The Receiver also continues to evaluate whether other assets are or should be considered Receivership Assets including, without limitation, a life insurance policy held by Shaun Cohen with a cash surrender value of $100,000, settlements for which payment has not yet been received, gifts, charitable donations, investments, and other property given to family members, former employees, and others. The Receiver will provide updates to this plan relative to the disposition of such assets in subsequent status reports filed with the Court.

The Receiver and his attorneys are also in the process of analyzing and identifying potential claims, including but not limited to potential fraudulent transfer claims and claims for aiding and abetting the fraud of the Receivership Defendants. At this time, the investigation and research is preliminary as to these potential assets and claims and as such, the Receiver only reports at this time that potential claims are being investigated.

Conclusion

The Receiver anticipates that his quarterly status reports and motions to approve the sale of real estate are the best means to provide updates on the progress of identify and liquidating Receivership Assets. However, should the Receiver determine that it is appropriate to file a supplemental or amended Liquidation Plan, or should the Court order the Receiver to file a supplemental or amended Liquidation Plan, then the Receiver will file a supplemental or amended plan, as appropriate.

Dated: November 26, 2018

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 Receiver's Liquidation Plan, via ECF filing, to all counsel of record on November 26, 2018.

/s/ Michael Rachlis
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