

**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 SECOND STATUS REPORT
(Fourth Quarter 2018)**

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, respectfully submits this Second Status Report for the quarter ending December 31, 2018.¹

I. SUMMARY OF THE OPERATIONS OF THE RECEIVER

The Receiver, together with his legal counsel, Rachlis Duff Adler Peel & Kaplan LLC (“RDAPK”), accountants BrookWeiner, LLC (“BrookWeiner”) and Whitley Penn LLP (“Whitley

¹ The submission of this status report was delayed by the effects of the federal government shutdown. As a result, this status report will include, in places, some information from activities occurring during the first quarter of 2019.

Penn”), and forensic consultant Prometheum, has undertaken, without limitation, the following activities since the filing of his First Status Report (Docket No. 107, filed October 30, 2018):

a. Identification and Preservation of Assets

Since the filing of his First Status Report, the Receiver has continued using reasonable efforts to determine the nature, location, and value of all 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.

b. Notice of Appointment of Receiver

The Receiver has continued his efforts to notify all necessary and relevant individuals and entities of the appointment and to protect and preserve the assets of the Receivership Estate. To that end, the Receiver has delivered additional notices to, *inter alia*, banks, financial institutions, utility companies, contractors, vendors, attorneys, property managers, and other individuals or entities which have been identified as potentially having possession of the property, business, books, records, or accounts of the Receivership Defendants, or who may have retained, managed, held, insured, or encumbered, or had otherwise been involved with any of the assets of the Receivership Defendants.

c. Control of Receivership Property and Records

The Receiver has continued his efforts to locate and preserve all EquityBuild property and records. As stated in the First Status Report, the majority of EquityBuild’s records were contained on cloud-based and other electronic storage media. The Receiver and his forensic consultant Prometheum have gained access to and preserved data broadly across multiple platforms. To date,

Prometheum has preserved 1.77 TB of data. The Receiver, working with Prometheum, is presently maintaining three select platforms. The monthly cost for two of the three platforms is \$188.00. The yearly cost of the third platform is \$1,700 to be paid in two installments of \$850, the first of which the Receiver paid on October 4, 2018.²

In connection with the SEC's retained forensic expert, the Receiver has undertaken to have EquityBuild devices and records imaged, including cell phones, tablets, and computers for current and former employees, as well as the Cohens. These efforts were initially complicated by privilege and privacy objections asserted by the Cohens, but these concerns were ultimately resolved in accordance with a plan proposed by the SEC. Moreover, current and former EquityBuild employees have been directed to either return to the Receiver or preserve all records and devices that remain in their possession. Pursuant to that direction, the Receiver has obtained and is working to obtain cell phones, electronic records, and hard copy records (including certain original records).

Additionally, the Receiver requested all EquityBuild-related documentation in the possession, custody, and/or control of a Chicago law firm that acted essentially as outside general counsel to EquityBuild and its affiliates.³ The law firm initially refused to produce the requested documentation absent a subpoena. Although the Receiver, relying on the Order Appointing Receiver, indicated that no subpoena was necessary, on December 11, 2018, it issued a subpoena rather than move for a rule to show cause. The law firm then refused to produce the requested documentation pending the potential assertion of attorney-client privilege objections by the

² The Receiver secured a reduced rate for the third platform, although licenses for this platform expire in July 2019. Thereafter, the yearly cost for two licenses will increase to \$2,136.

³ This law firm is separate from the Chicago-based firm that acted as general counsel as referenced in the first status report. (Docket No. 107 at 5-6)

Cohens. Finally, having ostensibly received no objections from the Cohens, and by letter dated February 25, 2019, the law firm offered to make the responsive documents available.

d. Business Operations

The Receiver has continued to identify and eliminate unnecessary costs. By the time the First Status Report was filed, the Receiver had reduced EquityBuild's staff to two employees. Since then, the Receiver terminated the remaining employees, although one such individual is now working for the Receiver as an independent contractor on a limited, as-needed basis. Since the filing of the First Status Report, the total "payroll" expenditure for the fourth quarter of 2018 (including payments to independent contractors) was \$17,371.80. The Receiver anticipates that such expenditures will decrease substantially in the future. (*See also infra* p. 21)

e. Factual Investigation

In an effort to reconstruct what transpired since the inception of the Defendants' scheme and to trace, where possible, the flow of investor funds into and back out of real properties owned by EquityBuild or its affiliates, the Receiver and his retained professionals have been reviewing and analyzing the following: (i) documents and correspondence sent to or received from the EquityBuild principals, to whose email accounts the Receiver has access; (ii) bank records from EquityBuild and its affiliate entities; (iii) EquityBuild documents (largely stored in cloud-based and other electronic media, although some received in paper form); (iv) available underlying transaction documents contained in the files of former Chicago-based EquityBuild counsel received to date; and (v) files produced by former EquityBuild securities counsel, accountants, and employees. Moreover, the Receiver has requested documents and records from the Cohens (including those called for by the Order Appointing Receiver), some of which remain outstanding.

The Receiver and his retained professionals have also collected, reviewed, and analyzed all available loan documentation associated with the financing or refinancing, through various lenders, of substantially all of the EquityBuild portfolio during the 2017-2018 time frame.⁴ Among other efforts, the Receiver and his professionals have endeavored to ascertain the terms of the loans and the current loan balances, and to obtain and review available due diligence materials submitted by EquityBuild in connection with the original loan applications.

f. 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. (For a list of the Illinois properties subsumed within the Receivership Estate, *see* Docket No. 107, First Status Report at Exhibit 1) As identified in the Receiver's First Status Report, the Receiver 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.*)

Together with the Receiver, SVN has identified three categories of multifamily residential apartment buildings not yet selected for conveyance: (i) properties to sell in the near term for the purpose of infusing 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. (*See also* Docket No. 166, Receiver's Liquidation Plan)

⁴ Approximately 80% of the mortgaged properties in the EquityBuild portfolio were financed or refinanced in the 2017-2018 time period. The balance of the mortgaged properties were financed or refinanced in the 2014-2015 time period.

At least initially, the Receiver determined that public sales are likely to be most advantageous. Compliance with the requirements imposed on private sales by 28 U.S.C. § 2001 (*e.g.*, obtaining three appraisals per property) could impose significant costs on the Estate and necessitate potentially harmful delays. (Docket No. 166) The Receiver will continue to evaluate cost effective means of selling the properties.

For those properties earmarked for a public sale through sealed bid 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 appropriate period of time to complete property tours. Criteria the Receiver and SVN will evaluate in assessing offers include, without limitation:

- 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 potential buyer's proposed strategy for the real estate;
- the reputation of the proposed buyer's ownership group;
- the potential buyer's due diligence process, including underwriting and requirements for returns and holding periods (Docket No. 166); and
- the goal of achieving a diverse group of potential buyers with a local presence.

Following careful and thoughtful selection of a final bidder, a purchase and sale agreement will be executed and the buyer will be afforded a brief and reasonable amount of time to conduct

any further due diligence it deems necessary. The sale would then be presented to the Court for final approval. (Docket No. 166)

Sale of the First Tranche of Properties

On November 12, 2018, the Receiver moved for Court approval of a sealed-bid public sale auction of the first tranche of properties. (Docket No. 130) The Receiver sought to sell the following six multi-family residential apartment buildings:

- i. 5001 S. Drexel Boulevard, Chicago, IL 60615;
- ii. 7500-06 S. Eggleston Avenue, Chicago, IL 60620;
- iii. 7547-49 S. Essex Avenue, Chicago, IL 60649;
- iv. 7927-49 S. Essex Avenue, Chicago, IL 60617;
- v. 8100 S. Essex Avenue, Chicago, IL 60617; and
- vi. 6160-6212 S. Martin Luther King Drive, Chicago, IL 60637.

Following hearings on November 16 and 21, 2018, this Court held that the Receiver's proposed sealed-bid public sale complied with the requirements of 28 U.S.C. §§ 2001 and 2002 and granted the Receiver's motion. (Docket No. 164, November 21, 2018 Notification of Docket Entry)

The Receiver subsequently published notices of the public sales of these six properties once a week for four weeks in regularly issued newspapers of general circulation in both Cook County and federal judicial district where the properties are located, as follows: A notice of sale appeared in the Chicago Sun Times on November 28, December 5, December 12, and December 19, 2018, and a notice of sale appeared in the Chicago Daily Law Bulletin on November 29, December 6, December 13, and December 19, 2018. During this same four-week time period, SVN marketed the properties, without limitation, on public media websites such as SVN's own site, CoStar

Group, LoopNet, City Feet, RealNex, CREXI, theBrokerList, Real Connex, and LinkedIn. SVN also sent e-mails to a network of potential purchasers, including but not limited to potential purchasers identified by the Receiver. (*See also* Docket No. 130)

The Receiver received multiple offers on each property. The Receiver accepted what he determined in his business judgment to be the strongest bid for each property, and executed purchase and sale agreements on December 20, 2018 for five of the properties and for the sixth property on January 3, 2019. Each contract remains subject to Court approval. The aggregate list price for the six properties in the first tranche was \$7,265,000 and the aggregate sales price for those properties is \$7,695,000. On February 15, 2019, the Receiver moved for Court approval of the pending sales free and clear of all mortgages, liens, claims, and encumbrances. (Docket No. 230) Therein, the Receiver asked that proceeds from the sales of the unencumbered properties be held in the Receiver's Account and remain available to pay expenses associated with the Receivership. (*Id.*) He further asked that the proceeds from the sales of properties encumbered by secured debt be held in a separate real estate sales proceeds account (established by the Receiver, and for which the Receiver will maintain an accounting as to all sums deposited therein that correspond to each sale of real estate) not available to pay for operating expenses of the Receivership nor for any other expense or distribution, absent further order of Court. (*Id.*)

Creditor Wilmington Trust and Defendants Jerome and Shaun Cohen filed objections to the Receiver's motion. (Docket Nos. 233 & 239) The Receiver's first motion for Court approval of the sale of the first tranche of real estate free and clear of mortgages, liens, claims, and encumbrances has been referred to Magistrate Judge Young B. Kim for a report and recommendation. (Docket No. 238)

Sale of the Second Tranche of Properties

On February 15, 2019, the Receiver moved for judicial approval of a sealed-bid public sale of a second tranche of properties. (Docket No. 228) The second sales tranche consists of twelve properties, specifically:

- i. 2909 E. 78th Street, Chicago, IL 60649;
- ii. 4520-26 S. Drexel, Chicago, IL 60653;
- iii. 6749-57 S. Merrill (a/k/a, 2136 E. 68th Street), Chicago, IL 60649;
- iv. 7110 S. Cornell Avenue, Chicago, IL 60649;
- v. 638 N. Avers, Chicago, IL 60624;
- vi. 701 S. 5th Avenue (a/k/a, 414 Walnut), Maywood, IL 60153;
- vii. 7625-33 S. East End Avenue, Chicago, IL 60649;
- viii. 7635-43 S. East End Avenue, Chicago, IL 60649;
- ix. 7750-58 S. Muskegon (a/k/a, 2818-36 E. 78th Street), Chicago, IL 60649;
- x. 7600 S. Kingston Avenue (a/k/a, 2527 E. 76th Street), Chicago, IL 60649;
- xi. 7748-50 S. Essex Avenue (a/k/a, 2450-52 E. 78th Street), Chicago, IL 60649; and
- xii. 8326-58 S. Ellis, Chicago, IL 60619.

Many of these properties are encumbered by a conventional mortgage and EquityBuild affiliate debt (*i.e.*, the debt owed to and secured by mortgages in favor of “investor lenders”). (Docket No. 228) Moreover, many of the properties in this tranche are cross-collateralized with other properties to be sold in future tranches. (*See id.* at 4-5)

Certain institutional lenders – Liberty EBCP, LLP (“Liberty”), U.S. Bank National Association (“USB”), Freddie Mac, and BC57, LLC (“BC57”) – filed objections to the Receiver’s second motion to approve a public sale process. (*See* Docket Nos. 232, 235, 240) The Receiver’s

motion to approve the sealed-bid public sale auction process for the proposed second tranche of properties has been referred to Magistrate Judge Young B. Kim. (Docket Nos. 237 & 238)

Additional Real Property Information

Since his appointment, the Receiver has worked to ensure that the two existing property management companies remained in place and that all health, life, and safety issues at the properties are addressed expeditiously. The property managers possess intimate knowledge of the real estate assets and have provided advice and information to the Receiver regarding preservation of properties within the Receivership Estate. In addition to collecting rents and paying routine operating expenses, the property managers have also been assisting in the defense of a thicket of administrative and housing court actions alleging building code violations of widely varying levels of severity filed by the City of Chicago.

All assets in the portfolio are insured. The Receiver is committed in accordance with the advice of his retained professionals, the property managers, and asset management consultants, to undertake capital improvements to cure outstanding building code violations or that are demonstrably capable of yielding increases in occupancy that would drive commensurate increases in property value.

In addition to the properties mentioned in this Second Status Report and those listed on Exhibit 1 to the First Status Report, the Receiver has learned that at least three properties not subsumed within the Receivership Estate were purchased and are still owned by EquityBuild “investors,” subject to mortgages securing EquityBuild affiliate debt, *i.e.*, loans obtained from EquityBuild “lender-investors.” The Receiver will seek a resolution as to affected mortgagees that would allow the properties to be sold and the proceeds distributed among the building owners and the mortgagees, subject to Court approval.

g. Entities Within the Receivership Estate

The Receiver and his retained professionals have worked to compile a comprehensive list of EquityBuild affiliate entities to be included within the Receivership Estate. The Receiver has filed a motion to amend and clarify the Order Appointing Receiver to specifically identify these Receivership Defendants in the Order Appointing Receiver. (Docket No. 226) This motion has been referred to Magistrate Judge Young B. Kim. (Docket Nos. 237 & 238)

h. Status of Property Tax Liability

There are 26 properties in the Receivership Estate for which 2017 property taxes remain unpaid, amounting to \$407,176 in collective tax liability as of the date of this status report. The total first installment 2018 Cook County property tax liability for all properties in the portfolio totals \$854,049.69 and is due on March 1, 2019. The Receiver is working to determine sources of funds available to pay property taxes. The Receiver and his counsel are in discussions with institutional lenders holding reserve accounts to request that these be used, as needed, to pay current property tax liability. The Receiver plans to use funds received from future rent on a property-by-property basis to pay unpaid real estate taxes. The Receiver also expects additional amounts to become available following the sale of unencumbered properties in the first tranche of properties that are currently before the Court for approval that could be used for payment of taxes. Finally, unpaid property taxes for any property that is sold can also be paid from proceeds of the sale.

On November 16, 2018, the Receiver filed a motion to approve property tax appeal counsel to pursue appeals of selected properties on a strictly contingency-fee basis. (Docket No. 156) The Court granted this motion on November 21, 2018. (Docket No. 164) The Receiver's property tax appeal counsel thereafter pursued property tax appeals on 16 properties. As of the date of this

filing, the Receiver's property tax appeal counsel has not received a decision from the applicable township boards of review.

i. Institutional Lenders

Since filing his First Status Report, the Receiver and his retained professionals have maintained regular contact with the institutional lenders, not only for the purpose of gathering critical information relating to the loans made to EquityBuild and its affiliates, but also for the purpose of responding to myriad inquiries regarding the management and financial condition of the various properties. To date, the Receiver and his counsel have received hundreds (if not thousands) of e-mails and telephone calls from more than twenty institutional lenders, servicers, originators, and trustees, as well as their respective counsel. Among other things, the lenders and their representatives have sought information regarding occupancy, income, and expenses relating to approximately 88 separate properties. The Receiver's counsel has also worked with the institutional lenders and the property managers to coordinate site visits to at least 85 properties, and in certain instances, the Receiver has received multiple requests to visit the same property. Accordingly, the Receiver negotiated agreements with counsel for several lenders pursuant to which the Receiver allowed repeat visits to certain properties in consideration of the lenders' agreements to limit their asserted rights to include costs relating to certain duplicative visits in any claim against the Receivership Estate.

The Receiver has also provided the institutional lenders with direct access to the Receivership Estate's insurance broker for the purpose of confirming that the applicable properties are carrying adequate levels of general liability and property insurance.

On February 1, 2019, the Receiver and his counsel met with available lenders' counsel to, among other things, answer common questions posed by the lenders. Eight counsel representing

several lenders participated in this meeting in person or by telephone, along with the Receiver and his counsel.

Three institutional lenders – Freddie Mac, Liberty, and BC57 – filed motions seeking to enforce assignments of rents. On February 13, 2019, the Court ruled on all three motions. (Docket No. 223) The Court granted the motions in part and denied them in part and ordered that “[t]he Receiver must: (1) not commingle the Rents and use the Rents from each property solely for the benefit of that particular property; (2) separately account for the Rents and provide a monthly accounting upon request; and (3) restore the Rents, to the extent that there are enough funds now or later, if they have been used for the benefit of other properties.” The Court also stated that this ruling would apply equally to all other similarly situated creditors. (*Id.* at 9) The Court declined to rule on whether (and to what extent) any of these creditors “have first priority or any other rights to the rents or properties associated with the alleged Ponzi scheme.” (*Id.*) The Court also declined to rule on whether the rents constitute Receivership Assets. (*Id.*) In doing so, “the [C]ourt agree[d] with the Receiver that priority determinations should not be rendered until a claims process has been approved and implemented.” (*Id.* at 9 n.3)

In the coming weeks, the Receiver, working in connection with his counsel, accountants, and property managers, will provide the lenders with documents and reporting information as required by the February 13, 2019 Order.

j. Other Potential Receivership Assets

The Receiver is also evaluating whether certain non-Illinois properties are or should be considered Receivership Assets and thus subsumed within the EquityBuild portfolio. These include properties that have or may have been purchased with EquityBuild investor funds. Based

on evidence gathered to-date, these include without limitation: single-family homes in Naples, FL, Plano, TX, and Jackson, MS; and a plot of vacant land in Houston, TX.

Defendant Jerome Cohen has challenged the Receiver's position that the Naples property is a Receivership Asset. Defendant Shaun Cohen has similarly challenged the Receiver's position with respect to the Plano property.⁶ The Receiver and his retained accountant have conducted a forensic accounting and tracing analysis with respect to these properties. Based on that analysis, the Receiver has determined these assets were funded with investor funds.

In addition, the asset freeze contained in the Order Appointing Receiver covered funds corresponding to single-family homes in Jackson, Mississippi. The Receiver is investigating the extent of any commingling and to determine whether funds corresponding to the Mississippi properties ought to be distributed to the investors in those properties.

Shaun Cohen also has disclosed a life insurance policy held in trust with a cash surrender value of \$100,000. The Receiver has asserted that the policy is an asset of the Receivership Estate. Shaun Cohen's position is that the policy is outside the Receivership Estate. Jerome Cohen also has a life insurance policy but has failed to cooperate with the Receiver in regards to that asset.

k. Securing Bank and Investment Accounts

The Receiver has notified, contacted, and conferred with the banks and other financial institutions that the Receiver has been able to identify as having custody or control of any funds, accounts, or other assets held by, in the name of, or for the benefit of, directly or indirectly, any and all of the Receivership Defendants. In certain instances, the Receiver has liquidated the funds

⁶ This property is currently being rented on a property rental website and is generating income. The Receiver has only received limited information from Shaun Cohen regarding this asset and financial records associated with it.

or accounts and transferred all proceeds to the accounts established by the Receiver for the operation and benefit of the Receivership estate. On February 26, 2019, Wells Fargo disclosed to the Receiver that there has been activity in certain accounts covered by the Court's asset freeze order. Without notice to the Receiver or his prior authorization, it appears Wells Fargo has allowed funds to be deposited, withdrawn, and charged off and closed in certain of these accounts. In most instances, these accounts hold *de minimis* amounts. As of this writing, the best information available to the Receiver suggests that the total amounts on deposit has actually increased by approximately \$10,000. Wells Fargo has not provided an explanation as to why the freeze on these accounts has not been consistently maintained. The Receiver intends to gather further information from Wells Fargo in the coming days.

l. Accounts Established by Receiver for the Benefit of the Receivership Estate

The Receiver has established custodial accounts at a federally insured financial institution to hold all cash equivalent Receivership property. The interest-bearing checking account is used by the Receiver to collect liquid assets of the estate and to pay the portfolio-related and administrative expenses. The Receiver has also established a separate interest-bearing account for the purpose of depositing and holding funds from the sale of real estate encumbered by secured debt until such time as it becomes appropriate to distribute such funds, upon Court approval, to the various creditors of the Estate, including but not limited to the defrauded investors or lenders.

m. Determination of Status of Investor Accounts

The Receiver has continued to take steps to determine the identity of all investors and the amounts of their respective deposits, interest, and withdrawals. This process will be assisted through the claims process. To accomplish this task, the Receiver has: searched the cloud-based and other digital media received from the Receivership Defendants; reviewed information supplied

directly by investors (including mortgages and account statements); and consulted available bank records. In addition, many investors have reached out to the Receiver to identify themselves, the amount of their investment, and, in many instances, have provided documents. To date, the Receiver has identified approximately 741 potential investors. The Receiver believes that some of these investors purchased promissory notes secured by recorded mortgages (not necessarily in a first position) and that other investors purchased promissory notes that were ostensibly intended to be secured, but for which no mortgage was ever recorded. In addition, some investors purchased property from EquityBuild and now hold title to real estate rather than a debt instrument.

n. Contact with Investor Victims

As previously indicated, the Receiver is continuously updating his list of known investors in the Receivership Defendants' fraudulent offerings. The Receiver also is evaluating the funds the Receivership Defendants received from the investors, which will be aided by an orderly claims process.

Since his appointment, the Receiver has received thousands of emails and voicemails from investors and has asked investors for patience during this lengthy process because responding to individual inquiries depletes Receivership assets. To ease the burden and provide basic information, therefore, the Receiver has established a web page (<http://rdaplawnet.com/receivership-for-equitybuild>) for investors and other interested parties to obtain information and certain court filings related to the Receivership estate. A copy of this Status Report will be posted on the Receiver's web page.

o. Open Litigation

Since the filing of the First Status Report, this Court lifted the automatic stay of litigation in the matter captioned *Watson, et al. v. EquityBuild, Inc., et al.*, Case No. 2017 L 1320, Circuit

Court of Cook County, Law Division.⁷ (Docket No. 205, Notification of Docket Entry) This Order provided, among other things, that the stay was lifted and allows plaintiffs to proceed in a limited fashion against EquityBuild and 8100 S. Essex, only to the extent of the amount of available insurance coverage (if any). As part of the agreement reached, each plaintiff waived his, her, and its rights claims against the Receivership Estate for any amount in excess of applicable insurance coverage and agreed to not file any claim as part of the claims process in this action. (*Id.*)

Moreover, the Receiver and his counsel continue to work closely with the City's corporation counsel for each department (circuit court, buildings, streets and sanitation, and waste management), as well as the property managers, to address all open building code violations, to address life and safety issues, and to preserve the respective properties. To that end, the Receiver's counsel has appeared on City of Chicago related matters on approximately seven occasions since the filing of the First Status Report.

There are nearly two dozen currently open building code violations involving the City of Chicago, as follows:

- There are nine currently known City of Chicago municipal housing court matters that involve conditions pre-existing the establishment of the Receivership. The Receiver's counsel has been communicating with the corporation counsel and the respective property managers to address the alleged violations and the preservation of those properties. Issues raised in these matters include but are not limited to, repairs to rehab approximately 16 units and a roof for a building that was affected by a fire in 2016, replacement of at least three porches, the repair of at least three additional porches, masonry/tuckpointing work, and replacement of two boilers. As of the First Status Report, one porch replacement had been completed and passed inspection. Additionally, since then, the Receiver asked for and received a mandatory order to vacate one building with a broken boiler and dismissal order

⁷ That state court lawsuit arose from an arson fire that occurred in 2016 at 8100 South Essex. It includes three consolidated cases brought by the plaintiffs and a third-party complaint brought by EquityBuild against the arsonist. The plaintiffs in the state court lawsuit are seeking damages resulting from multiple deaths and several serious injury claims.

for a duplicate heat case on the same property; this property is currently under contract to be sold in the first tranche of property sales (*see* Docket No. 230). The Receiver is also aware of a heat violation that was originally filed as an administrative matter; the Receiver asked for City assistance through a mandatory order to vacate this property, which can be achieved once the matter is re-filed in circuit court. This property is also under contract to be sold in the first tranche of property sales (*see* Docket No. 230). Moreover, for another property with porch violations, the property manager has been making repairs such that the porches are now in improved condition. The Receiver has also consistently posted signage at this property.

- As of December 31, 2018, approximately twelve City of Chicago administrative proceedings filed by the City of Chicago Buildings Department were known to be pending. Compliance with local law may ultimately range from “turning” one unit, to replacing over 90 lintels on one building, to a porch replacement, to masonry/tuckpointing work. Since the Receiver’s appointment, he has achieved dismissal of eight buildings matters.
- As of December 31, 2018, approximately two administrative proceedings were known to be pending with the Department of Streets and Sanitation. Since the Receiver’s appointment, he has achieved dismissal of 22 streets and sanitation matters with either no fine imposed, a single-count fine imposed, or payment of fines immediately upon receipt of the notice.
- Since filing his first status report, the Receiver has achieved dismissal on two waste management matters. One matter was non-suited on January 4, 2019. As to the other matter, also on January 4, 2019, one count was non-suited and the other count was a liable plea with a minor fine.

The Receiver is also aware of two open City of Chicago violations for which notice has been sent but a court date has not yet been assigned.

p. Tax Issues

With respect to tax implications relating to the Defendants’ scheme, the Receiver cannot advise the investors on tax matters and informed investors accordingly by the letter sent on September 21, 2018. Moreover, the Receiver and his retained professionals do not plan to issue 1099s. With respect to valuation, loss, or other tax issues, investors and their tax advisors may wish to seek independent tax advice and consider IRS Rev. Proc. 2009-20 and IRS Rev. Rul. 2009-9.

Whitley Penn was retained to prepare income tax returns for EquityBuild and its affiliates for the tax years 2016 and 2017. Whitley Penn has reported that its efforts have been significantly challenged by EquityBuild's information and record keeping practices. Whitley Penn has been working with the Receiver to obtain necessary documents and information in order to prepare and file what it presently anticipates as 32 tax returns. Twelve entities were previously classified as having an undetermined tax filing status. Based on further information from former EquityBuild employees, Whitley Penn determined that these entities do not have a filing requirement. Whitley Penn has been reviewing the properties owned by each of the entities and compiling income and expense reports for each of the properties. Many of these reports were not available and had to be requested from the Receiver. Whitley Penn has stated that, as of this filing, it still needs additional information in order to properly account for certain items. Whitley Penn does anticipate further information requests as returns are completed but anticipates some returns for 2016 and 2017 for Receivership entities will be filed by March 31, 2019.

Additionally, BrookWeiner was retained to perform accounting, tax, and related work regarding assets of the Receivership Defendants such as the accounting for ongoing business operation of the Receivership Defendants. BrookWeiner prepared and distributed W2's to former EquityBuild employees for 2018 and has also filed any remaining 2018 Q3 and Q4 employment reports with the necessary state and federal agencies.

II. RECEIVER'S FUND ACCOUNTING

The Receiver's Standardized Fund Accounting Report ("SFAR") for the Fourth Quarter 2018 is attached hereto as Exhibit 1. The SFAR sets forth the funds received and disbursed from the Receivership Estate during this reporting period. As reported in the SFAR, the amount of cash on hand as of December 31, 2018 was \$307,345.37. (*See also infra* Sections IV and V) The

information reflected in the SFAR is based on records and information currently available to the Receiver. The Receiver and his advisors are continuing with their evaluation and analysis.

III. RECEIVER'S SCHEDULE OF RECEIPTS AND DISBURSEMENTS

The Receiver's Schedule of Receipts and Disbursements ("Schedule") for the Fourth Quarter 2018 is attached hereto as Exhibit 2. The Schedule reflects \$687,481.53 in receipts and \$380,136.16 in disbursements as of December 31, 2018.

With respect to the receipts, \$17,645.60 from "Refunds from EB law firm retainers" relates to retainers received from three separate law firms. With respect to one of those firms, the attorney initially refused to turn over the retainer (which totaled \$5,000). The Receiver reached a resolution where the firm was to remit \$3,500 to the Receiver and apply the remaining \$1,500 to his unpaid invoice. The Receiver determined, after consultation with the SEC, that this resolution in this manner was in the best interest of the Receivership – which the Receiver also determined was the most cost effective resolution – because the relatively *de minimis* amount was not enough to warrant seeking prior Court intervention or approval.

With respect to disbursements, \$8,557.16 was payment for IT and web marketing related services provided by an EquityBuild independent contractor from August 17, 2018 through September 30, 2018. \$12,535.16 was payment for services performed by an EquityBuild independent contractor from August 17, 2018 through August 30, 2018. These services were performed at the request of the Receiver at the start of the Receivership. \$81,248.40 relates to the payment of property taxes that the Receiver authorized during the third quarter of 2018, and for which payment was not processed until the fourth quarter of 2018 (October 2018). These include a \$63,074 redemption amount prior to the expiration of the redemption period to avoid losing three properties and \$18,174.40 in 2017 real estate taxes for one property for which payment of the tax

arrearages was a prerequisite to CHA tenant move-ins. (*See* Receiver's First Status Report, Docket No. 107 at 12)

IV. RECEIVERSHIP PROPERTY

All known Receivership Property is identified and described in the Master Asset List attached hereto as Exhibit 3. (The Receiver previously set forth a list of real estate within the Receivership Estate in his first status report. *See* Docket No. 107, Exhibit 1)

The Master Asset List identifies 53 checking accounts in the names of the affiliates and 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 earlier. 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 and is in discussions with counsel for the above-referenced investor as to the latter amounts.

The Master Asset List does not include assets and potentially recoverable assets for which the Receiver is still evaluating the value, potential value, and/or ownership interests. The Receiver is in the process of evaluating certain other types of assets that may be recoverable by the Receivership Estate, including but not limited to charitable donations, loans, gifts, settlements for which payment has not yet been received, and other property given to family members, former employees, and others.

V. PROJECTED FUTURE EXPENSES

There are significant future expenses associated with the management of the EquityBuild portfolio. These expenses include, but are not limited to, property tax arrearages, accruing property tax liability, casualty and liability insurance, and capital expenses associated with repairs needed to comply with the code violations discussed earlier. Some of the more pressing expenses include the following:

- More than \$407,000 in delinquent 2017 Cook County real estate taxes;
- More than \$850,000 for the first installment 2018 Cook County property tax liability for all properties in the portfolio;
- More than \$49,000 for monthly insurance premiums;
- Approximately \$188 for monthly payments to maintain three selected data platforms.⁸

The Receiver also plans to file an application for professional fees and expenses for the third and fourth quarters of 2018. The Receiver presently anticipates professional fees and expenses for these quarters in the following approximate amounts:⁹

- \$97,266.00 in professional fees for the Receiver during the 3rd quarter of 2018;
- \$262,525.00 in professional fees and expenses of \$8,644.19 for the Receiver's counsel, RDAPK, during the 3rd quarter of 2018;

⁸ Some of the real estate taxes will be paid by March 1, 2019 but the precise amount was not confirmed as of this writing. In addition, this list of expenses does not include any amounts claimed by pre-Receivership creditors, who will have an opportunity to submit proof of claims in due course. The Receiver also is tracking the identity and amounts alleged due from various creditors of EquityBuild and its affiliates. To date, the Receiver has identified at least 54 additional creditors who seek payment for amounts in excess of \$580,000. Nor do listed expenses include the cost of potential repairs associated with any of the properties, which could be substantial. The Receiver and his retained professionals are evaluating the extent which repairs must and/or should be made.

⁹ The approximate professional fees may differ from amounts that will be set forth once the Receiver's fee application is prepared. However, the Receiver believes the foregoing amounts are reasonable approximations at this time.

- \$147,018.00 in professional fees for the Receiver during the 4th quarter of 2018;
- \$397,469.00 in professional fees and \$6,127.73 in expenses for the Receiver's counsel, RDAPK, during the 4th quarter of 2018;
- Professional fees of \$2,585.00 for BrookWeiner during the 3rd quarter of 2018;
- Professional fees of \$22,522.20 for BrookWeiner during the 4th quarter of 2018;
- Professional fees of \$8,538.50 for Prometheus during the 3rd and 4th quarters of 2018;
- Professional fees of \$13,827.00 for Whitley Penn during the 3rd quarter of 2018; and
- Professional fees of \$27,610.00 for Whitley Penn during the 4th quarter of 2018.

VI. LIQUIDATED AND UNLIQUIDATED CLAIMS HELD BY THE RECEIVERSHIP ESTATE

The Receiver and his attorneys are 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.

VII. CREDITORS AND CLAIMS AGAINST THE RECEIVERSHIP ESTATE

As discussed above, the Receiver and his attorneys are in the process of identifying potential claimants, particularly investor victims, in order to provide notice of the Receivership.

On February 22, 2019, the Receiver filed a motion to approve the claims process, which will allow all potential claimants to submit a claim and supporting documentation. (Docket No. 241) This motion has been referred to Magistrate Judge Young B. Kim. (Docket No. 245)

The Receiver anticipates that investigating and calculating the claims of investors and creditors will take at least a year from the Bar Date because the process will entail the final review and confirmation of all investor and non-investor claims by the Receiver, and if appropriate, the filing of objections to any claims determined to be unacceptable and resolution of all claims

disputes by the Court. In connection with his motion to approve the claims process, the Receiver asked the Court to set a status date on the claims process thirty (30) days after the Bar Date at which point the Receiver intends to propose a timetable for the claims process and discovery schedule relating to same.

Thereafter, the Receiver will then analyze the claims and propose for Court approval a just and fair distribution plan. Upon formulation of a distribution plan, the Receiver will file a motion with the Court, giving notice to all investors and other known creditors of the Receivership Estate, of the Receiver's motion for Court approval of a distribution plan. At that point, the Receiver anticipates a process through which claimants may file objections. The Receiver presently expects that the soonest he could propose a distribution plan to the Court following a claims process would be in early 2020. Distribution of funds pursuant to a distribution plan would depend on when funds have been received by the Receivership Estate, including with respect to claims pursued by the Receiver (with Court approval). That timing is too speculative at this point for the Receiver to project with reasonable certainty.

VIII. CONCLUSION

At this time, the Receiver recommends the continuation of the Receivership for at least the following reasons:

1. The continued investigation and analysis of assets and potentially recoverable assets for which the Receiver is still evaluating the value, potential value, and/or ownership interests;
2. The continued efforts of the Receiver to liquidate various assets of the Receivership Estate;

3. The continued investigation and analysis of the potential claims against the Receivership Estate, including, but not limited to, the claims and records of investors;

4. The continued investigation, analysis, and recovery of potential fraudulent transfer claims and claims against third parties relating to the Receivership Estate;

5. The continued analysis and formulation, in consultation with the SEC, of a just and fair distribution plan for the creditors of the Receivership Estate, and the subsequent notice to investors and potential claimants, and submission of a motion for Court approval, of such plan; and

6. The carrying out of any other legal and/or appointed duties of the Receiver as identified in the August 17, 2018, Order Appointing Receiver, or as the Court deems necessary.

Dated: February 28, 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 Receiver's Second Status Report, via ECF filing, to all counsel of record on February 28, 2019.

I further certify I caused to be served the Defendant Jerome Cohen via e-mail and via U.S. Mail.

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

/s/ Michael Rachlis

Michael Rachlis
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Exhibit 1

Receivership; Civil Court Docket No. 18-cv-05587

Reporting Period 10/1/2018 to 12/31/2018

Fund Accounting (See Instructions):				
		<u>Detail</u>	<u>Subtotal</u>	<u>Grand Total</u>
Line 1	Beginning Balance (As of 10/1/2018):	\$210,134.04		\$210,134.04
	<i>Increases in Fund Balance:</i>			
Line 2	Business Income			
Line 3	Cash and unliquidated assets			
Line 4	Interest/Dividend Income	\$268.26		
Line 5	Business Asset Liquidation			
Line 6	Personal Asset Liquidation	\$23,065.43		
Line 7	Net Income from Properties	\$435,755.36		
Line 8	Miscellaneous - Other¹	\$18,258.44		
	Total Funds Available (Line 1-8):			\$687,481.53
	<i>Decrease in Fund Balance:</i>			
Line 9	Disbursements to Investors			
Line 10	Disbursements for receivership operations²	(\$344.39)		
<i>Line 10a</i>	Disbursements to receiver or Other Professionals ³	(\$21,942.87)		
<i>Line 10b</i>	Business Asset Expenses ⁴	(\$357,848.90)		
<i>Line 10c</i>	Personal Asset Expenses			
<i>Line 10d</i>	Investment Expenses			
<i>Line 10e</i>	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses		\$0.00	
<i>Line 10f</i>	Tax Administrator Fees and Bonds			
<i>Line 10g</i>	Federal and State Tax Payments			
	Total Disbursements for Receivership Operations		(\$380,136.16)	
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
<i>Line 11a</i>	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses		\$0.00	
<i>Line 11b</i>	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			

Receivership; Civil Court Docket No. 18-cv-05587

Reporting Period 10/1/2018 to 12/31/2018

	Legal Advisers.....		
	Tax Advisers.....		
	2. Administrative Expenses		
	3. Investor identification		
	Notice/Publishing Approved Plan.....		
	Claimant Identification.....		
	Claims Processing.....		
	Web Site Maintenance/Call Center.....		
	4. Fund Administrator Bond		
	5. Miscellaneous		
	6. Federal Account for Investor Restitution (FAIR) reporting Expenses		
	Total Plan Implementation Expenses		
	Total Disbursement for Distribution Expenses Paid by the Fund		\$0.00
Line 12	Disbursement to Court/Other:		
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees		
Line 12b	Federal Tax Payments		
	Total Disbursement to Court/Others:		
	Total Funds Disbursed (Lines 1-9):		(\$144,679.61)
Line 13	Ending Balance (As of 12/31/2018):		\$307,345.37
Line 14	Ending Balance of Fund - Net Assets:		
Line 14a	Cash & Cash Equivalents		\$307,345.37
Line 14b	Investments (unliquidated Huber/Hubadex investments)		
Line 14c	Other Assets or uncleared Funds		
	Total Ending Balance of Fund - Net Assets		\$307,345.37

¹ Refund of retainers from various law firms (\$17,645.60); refund of employment tax from payroll service (\$612.84).

² Document production fees to banks for records.

³ Payments to service providers for internet/web services (\$8,557.16), payment for services performed by an independent contractor (\$12,535.71), software licenses (\$850.00).

⁴ Payroll (\$17,371.80); employment taxes (\$8,288.52); insurance (\$249,256.18); payroll service (\$384.00); property taxes (\$81,248.40); property fines (\$1,300.00).

Exhibit 2

EQUITYBUILD, INC. RECEIVERSHIP
Case No. 18-cv-05587
4th Quarter 2018
Schedule of Receipts and Disbursements

Beginning Balance 10/1/18			\$210,134.04
RECEIPTS			
	<u>Received From</u>	<u>Amount</u>	
	Shaun Cohen	\$23,065.43	
	Refunds of EB law firm retainers	\$17,645.60	
	Net rental income	\$435,755.36	
	Paychex (employment tax refund)	\$612.84	
	Interest earned on Receiver's account	\$268.26	
	TOTAL RECEIPTS:		\$687,481.53
DISBURSEMENTS			
	<u>Paid To</u>	<u>Amount</u>	
	EquityBuild, Inc. employees	(\$17,371.80)	
	State and Federal Treasury Departments (employment taxes)	(\$8,288.52)	
	FIRST Insurance Funding Corp. ¹	(\$248,175.43)	
	The Hartford (workers' comp. insurance)	(\$1,080.75)	
	Paychex (payroll services)	(\$384.00)	
	Bank of America ²	(\$45.39)	
	Wells Fargo ²	(\$299.00)	
	IT & Web Marketing Services (work performed by an EquityBuild independent contractor from August 17, 2018 through September 30, 2018)	(\$8,557.16)	
	Trinity Inspection & Restoration (work performed by EquityBuild independent contractor from August 18, 2018 through August 31, 2018)	(\$12,535.71)	

EQUITYBUILD, INC. RECEIVERSHIP
 Case No. 18-cv-05587
 4th Quarter 2018
 Schedule of Receipts and Disbursements

	Applied Business Software (software licenses)	(\$850.00)	
	Cook County Clerk (property taxes)	(\$81,248.40)	
	City of Chicago, Dept. of Finance (payment of fines relating to dismissal of code violations)	(\$1,300.00)	
	TOTAL DISBURSEMENTS:		(\$380,136.16)
	Grand Total Cash on Hand at 12/31/18:		\$307,345.37
	¹ Installments on premium finance agreement		
	² Document production fees		

Exhibit 3

Master Asset List

Receiver's Account (as of 12/31/2018)		
Institution	Account Information	Amount
AXOS Fiduciary Services	Checking	\$307,345.37

Receivership Defendants' Accounts			
Institution	Account Information	Current Value¹	Amount Transferred to Receiver's Account
Wells Fargo	Checking (53 accounts in the names of the affiliates and affiliate entities included as Receivership Defendants) ²	\$5,795.03 ³	\$105,870.94 ⁴
Wells Fargo ¹	Checking (account in the names of Shaun Cohen and spouse)		\$23,065.43 ⁵
Byline Bank	Checking (2 accounts in names of Receivership Defendants)	\$21,828.73	
			Total: \$128,936.37

EquityBuild Real Estate Portfolio (in Illinois)	
For a list of the properties within the EquityBuild portfolio identified by property address, alternative address (where appropriate), number of units, and owner, <i>see</i> Exhibit 1 to the Receiver's First Status Report, Docket No. 107.	
Other, Non-Illinois Real Estate	
Description	Appraised Market Value
Single family home in Naples, Florida	±\$1,400,000.00 ⁶
	Approximate mortgage amount: \$500,000.00 Approximate value less mortgage: \$900,000.00
Single family home in Plano, Texas	±\$450,000.00
	Approximate mortgage amount: \$400,000.00 Approximate value less mortgage: \$50,000.00
Plot of vacant land in Houston, Texas	To be determined

¹ The Current Value reflects the approximate balance in the frozen bank accounts.

² The Receiver is investigating whether each of these accounts is properly included within the Receivership Estate.

³ \$5,795.03 reflects the value as of 9/30/18. On February 26, 2019, Wells Fargo disclosed to the Receiver that there has been activity in certain accounts covered by the Court's asset freeze order. Without notice to the Receiver or his prior authorization, it appears Wells Fargo has allowed funds to be deposited, withdrawn, and charged off and closed in certain of these accounts. In most instances, these accounts hold de minimis amounts. As of this writing, the best information available to the Receiver suggests that the total amounts on deposit has actually

increased by approximately \$10,000. Wells Fargo has not provided an explanation as to why the freeze on these accounts has not been consistently maintained. The Receiver intends to gather further information from Wells Fargo in the coming days.

⁴ This amount was transferred to the Receiver's Account as of 8/27/18, and is included as part of the total balance of the Receiver's Account as of 12/31/18.

⁵ This amount was transferred to the Receiver's Account as of 11/8/18, and is included as part of the total balance of the Receiver's Account as of 12/31/18.

⁶ Source: www.zillow.com