

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

RESPONSE TO RECEIVER’S MOTION TO AMEND ORDER APPOINTING RECEIVER TO EXPRESSLY IDENTIFY AND INCLUDE SPECIFIC RECEIVERSHIP ASSETS

Jerome H. Cohen (“Defendant”) respectfully files this Response (“Response”) to the Receiver’s MOTION TO AMEND ORDER APPOINTING RECEIVER TO EXPRESSLY IDENTIFY AND INCLUDE SPECIFIC RECEIVERSHIP ASSETS. In support of its Response, the Defendant states as follows:

BACKGROUND

The Receiver’s motion, (Doc. #265) makes multiple assertions that are designed to further the argument that the Naples house was purchased using Investor Monies (as defined by Doc. 265). The Receiver shows in Exhibit 1, a wire receipt showing \$134,279.07 paid from an EquityBuild account to be used as a down payment for the Naples property. The Receiver also references certain improvements made to the house and references Exhibit 1 to support his claim.

The Receiver as well as the Bernard Fish affidavit list a dollar amount of \$1,363,824.39 as having been deposited into account ending in 3641 from EquityBuild yet no mention is made of the monies transferred into the EquityBuild, EquityBuild Finance and 3641 accounts from the Tikkun account.

Additionally, the Receiver references a claim to a Homestead exemption and, as support of his argument that it is inapplicable, he references case law.

Lastly, the Receiver cites Florida case law to advance his argument that Florida Homestead and Life Estate protection is not valid.

The Defendant raises certain objections to the arguments used by the Receiver. First, the down-payment for the Naples house was not paid for with Investor Monies. Second, the Receiver made two mortgage payments using funds. Third, the specific improvements which influenced property value were the pool and fence and were paid for from the Tikkun account which was not Investor Monies. Fourth, the principal source of funds in the Tikkun account were not Investor Monies. Fifth the house has a current value of between \$1,400,000 and \$1,500,000 according to Trulia and Zillow and all but a small fraction of the equity in the house derives from market changes since purchase and the down payment neither of which come from Investor monies. Sixth, the Receiver characterizes the accounting analysis of Bernard Fish prejudicially. Seventh, the Florida Homestead and Life Estate exemption is valid.

ARGUMENT

I. THE DOWN-PAYMENT FOR THE NAPLES PROPERTY WAS NOT FUNDED WITH INVESTOR MONIES.

The Receiver shows in Exhibit 1, a wire receipt showing \$134,279.07 paid from an EquityBuild account to be used as a down payment for the Naples property. The Receiver knows full well and intentionally neglects to state that the exact amount of \$134,279.07 was transferred into the EquityBuild account from an account owned by Tikkun Holdings, LLC on the same date and prior to the wire being initiated to cover the down payment as is also shown in Exhibit 2 of Doc. 265, thereby showing that the funds for the down-payment originated from the

Tikkun account. The Tikkun account had between \$700,000 and \$800,000 that was earned prior to mid 2014 and was not Investor Monies.

II. THE RECEIVER MADE TWO MORTGAGE PAYMENTS SINCE HIS APPOINTMENT.

Every other mortgage payment made since the appointment of the Receiver has been made by the Defendant. All utilities, insurance, tax and maintenance expenses have also been paid by the Defendant.

III. THE IMPROVEMENTS AND RENOVATIONS WERE PAID FOR BY TIKKUN.

As is stated by the Receiver in Doc# 265, the renovations and improvements were paid for by both the Tikkun account and 3641. Also, as stated by the Receiver in Doc# 265, \$54,783.65 and \$98,595.85 respectively from the Tikkun and 3641 accounts. Exhibit A, Item 17 of the Receiver's motion shows that Tikkun deposited \$174,265.85 into the 3641 account thereby showing that the funds originated from Tikkun for the payment of the renovations and improvements.

IV. THE PRINCIPAL SOURCE OF FUNDS IN THE TIKKUN ACCOUNT WERE NOT INVESTOR MONIES.

The Tikkun account was funded principally by between \$700,000 and \$800,000 in monies earned from sources that are not part of this action and are not Investor Monies and the Receiver has provided no evidence that the \$700,000 to \$800,000 that was the principle funding of the Tikkun account prior to and on the date the home was purchased was Investor Monies. Tikkun had an opening bank balance of \$715,000 on 6/1/2014 which was not Investor Monies.

Should the Court desire additional detail on the source of this money, it will be provided upon request.

V. THE EQUITY IN THE NAPLES HOUSE DERIVES LARGELY FROM MARKET CHANGES AND THE DOWN PAYMENT NEITHER OF WHICH WERE FROM INVESTOR MONIES

The defendant paid \$720,000 of which \$572,000 was borrowed in the form of a mortgage as is shown on the HUD-1 closing statement in Exhibit 1. \$148,000 was paid by Tikkun and those funds were not investor monies. The property is valued at between \$1,400,000 and \$1,500,000 according to both Zillow and Trulia as shown in Exhibit 2. Assuming the lower current valuation of \$1,400,000 less the original mortgage amount of \$572,000 leaves \$828,000 (93%) of the \$891,000 in total current equity that cannot be attributed to Investor Monies. Therefore, the Receiver's Motion to have the property transferred into the Receivership should be denied.

VI. THE RECEIVER CHARACTERIZES ACCOUNT ANALYSIS FIGURES PREJUDICIALLY

The Receiver and the Bernard Fish affidavit list a dollar amount of \$1,363,824.39 as having been deposited into account ending in 3641 from EquityBuild. No mention is made of the monies transferred into the EquityBuild and EquityBuild Finance accounts from the Tikkun account.

Additionally, in note 3 of the Affidavit of Bernard Fish, he provides an "analysis" of the activity of the Tikkun bank account in which he calculates that \$9,220,700.21 was deposited into the Tikkun account from EquityBuild, EquityBuild Finance and Southside Development. The Receiver neglected to also detail that during the timeline analyzed and reported on in the

affidavit of Bernard Fish, \$9,496,662 was deposited by Tikkun Holdings into EquityBuild, EquityBuild Finance and Southside Development. The Defendant reiterates he does not have access to the accounting records and is using Bernard Fish's own accounting for most of the calculations contained herein.

VII. FLORIDA HOMESTEAD AND LIFE ESTATE EXEMPTION IS VALID

The very case law the Receiver cites states that the Homestead Act does not provide protection to a home purchased with the proceeds of a fraud. The defendants have signed a consent agreement with the SEC and neither admit nor deny the allegations of the Complaint and as is stated in the Consent Agreement "further agree that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion...(c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court." Florida law requires a finding by a finder of fact that the Defendant is guilty of fraud and the proceeds of the fraud were used to purchase the property. Additionally, in the *SEC vs Kirkland* case cited by the Receiver, the transfer of the property to the Receivership and its sale was authorized because the total of the Investor Monies used to buy the property exceeded the equity. Therefore, the case law cited by the Receiver is not relevant. Further, the defendant has previously stated that 93% of the current equity in the property was definitively not from Investor Monies so even if a future finder of fact were to determine that the remainder was from Investor Monies, the case law the Receiver cited would still not be relevant since the remedy imposed in similar cases has been to grant a judgement for the amount of the investor monies that contributed to the purchase of the property and to attach a lien thereto.

CONCLUSION

The Florida property was purchased with a combination of a mortgage and a down payment that was not Investor Monies. The equity in the Florida property is the result of that down payment and market appreciation. Florida Homestead and Life Estate protection is valid. Jerome Cohen respectfully requests the Receiver's motion be denied.

March 29th, 2019

Respectfully submitted,

DEFENDANT JEROME H. COHEN

By:

Jerome H. Cohen



CERTIFICATE OF SERVICE

I hereby certify that on March 29th, 2019, a copy of the foregoing **RESPONSE TO RECEIVER'S MOTION TO AMEND ORDER APPOINTING RECEIVER TO EXPRESSLY IDENTIFY AND INCLUDE SPECIFIC RECEIVERSHIP ASSETS** was served by filing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.



Shaun D. Cohen



Jerome H. Cohen

EXHIBIT 1



A. Settlement Statement (HUD-1)

B. Type of Loan

- 1. FHA
- 2. RHS
- 3. Conv. Unins.
- 4. V.A.
- 5. Conv. Ins.

6. File Number
15-6061 Cohen

7. Loan Number
504372346

8. Mortg. Ins. Case Num.

ID:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER: Jerome H. Cohen, joined by his spouse, Patricia Schroyer
Address of Borrower: 980 Scott Drive, Marco Island, Florida 34145

E. NAME OF SELLER: James M. Reid and Philippa H. Reid, husband and wife
Address of Seller: 1050 8th Avenue N, Naples, Florida 34102

TIN:

F. NAME OF LENDER: Flagstar Bank, FSB, ISAOA/ATIMA
Address of Lender: 5151 Corporate Drive, Troy, Michigan 48098

G. PROPERTY LOCATION: 1050 8th Avenue N, Naples, Florida 34102

H. SETTLEMENT AGENT: Paul P. Pacchiana, Attorney at Law
Address: 5621 Strand Blvd, Suite 210, Naples, Florida 34110

TIN: 13-2769361

Phone: 239-596-0777

I. SETTLEMENT DATE: 8/26/15
Place of Settlement: 5621 Strand Blvd, Suite 210, Naples, Florida 34110

DISBURSEMENT DATE: 8/26/15

J. Summary of borrower's transaction		K. Summary of seller's transaction	
100. Gross amount due from borrower:		400. Gross amount due to seller:	
101. Contract sales price	720,000.00	401. Contract sales price	720,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (Line 1400)	22,572.80	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance:		Adjustments for items paid by seller in advance:	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross amount due from borrower:	742,572.80	420. Gross amount due to seller:	720,000.00
200. Amounts paid or in behalf of borrower:		500. Reductions in amount due to seller:	
201. Deposit or earnest money	25,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	576,000.00	502. Settlement charges to seller (line 1400)	36,911.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Principal amount of second mortgage		504. Payoff of first mortgage loan: Bank of America	157,001.84
205.		505. Escrow held by Seller	10,000.00
206.		506.	
207.		507. Deposit is being disbursed as proceeds	
208. Principal amt of mortgage held by seller		508. Principal amt of mortgage held by seller	
209. Transfer taxes paid by Buyer	5,040.00	509. Transfer taxes paid by Buyer	5,040.00
209a.		509a.	
Adjustments for items unpaid by seller:		Adjustments for items unpaid by seller:	
210. City/town taxes		510. City/town taxes	
211. County taxes from 01/01/15 to 08/26/15	2,253.73	511. County taxes from 01/01/15 to 08/26/15	2,253.73
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total paid by/for borrower:	608,293.73	520. Total reductions in amount due seller:	211,206.57
300. Cash at settlement from/to borrower:		600. Cash at settlement to/from seller:	
301. Gross amount due from borrower (line 120)	742,572.80	601. Gross amount due to seller (line 420)	720,000.00
302. Less amount paid by/for the borrower (line 220)	(608,293.73)	602. Less total reductions in amount due seller (line 520)	(211,206.57)
303. Cash (<input checked="" type="checkbox"/> From <input type="checkbox"/> To) Borrower:	134,279.07	603. Cash (<input checked="" type="checkbox"/> To <input type="checkbox"/> From) Seller:	508,793.43

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

Settlement charges:		Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
700. Total Real Estate Broker Fees \$36,000.00			
Division of commission (line 700) as follows:			
701.	\$ 18,000.00 to Amerivest Realty		
702.	\$ 18,000.00 to Bartley Realty		
703.	Commission paid at settlement		36,000.00
704.			
705.	to		
706.	to		
800. Items Payable in Connection with Loan:			
801.	Our origination charge	\$12,320.00 (from GFE #1)	
802.	Your credit or charge (points) for the specific interest rate chosen	(\$8,979.84) (from GFE #2)	
803.	Your adjusted origination charges to Flagstar Bank, FSB, ISAOA/ATIMA	(from GFE A)	3,340.16
804.	Appraisal fee to DART APPRAISAL	(from GFE #3) 520.00 POC (B)*	
805.	Credit report to CORELOGIC CREDCO, LLC	(from GFE #3)	32.95
806.	Tax service to FIRST AMERICAN RE TAX	(from GFE #3)	69.00
807.	Flood certification to FIRST AMERICAN FLOOD	(from GFE #3)	5.75
808.	to		
809.	to		
810.	to		
811.	to		
812.	to		
813.	to		
900. Items required by lender to be paid in advance:			
901.	Daily interest charges from 08/26/15 to 09/01/15 @ 63.1233 /day (from GFE #10)		378.74
902.	Mortgage insurance premium for months to (from GFE #3)		
903.	Homeowner's insurance premium for 1 years to FEDERATED NAT'L INS CO (from GFE #11)		1,924.00
904.	Flood insurance premium for 1 years to FEDERATED NAT'L INS CO 305.00 POC (B)*		
905.	years to		
1000. Reserves deposited with lender:			
1001.	Initial deposit for your escrow account (from GFE #9)		3,470.92
1002.	Homeowner's insurance 3 months @ \$160.33 per month \$480.99		
1003.	Mortgage insurance months @ per month		
1004.	Property taxes 12 months @ \$289.24 per month \$3,470.88		
1005.	Flood insurance 3 months @ \$25.42 per month \$76.26		
1006.	months @ per month		
1007.	months @ per month		
1008.	months @ per month		
1009.	Aggregate accounting adjustment (\$557.21)		
1100. Title charges:			
1101.	Title services and lender's title insurance (from GFE #4)		1,278.28
1102.	Settlement or closing fee to Paul P. Pacchiana, Attorney at Law \$150.00		
1103.	Owner's title insurance to Old Republic Nat. Title/Paul P. Pacchiana (from GFE #5)		3,675.00
1104.	Lender's title insurance to Old Republic Nat. Title/Paul P. Pacchiana \$445.00		
1105.	Lender's title policy limit \$576,000.00		
1106.	Owner's title policy limit \$720,000.00		
1107.	Agent's portion of the total title insurance premium \$2,884.00 to Paul P. Pacchiana, Attorney at Law		
1108.	Underwriter's portion of the total title insurance premium \$1,236.00 to Old Republic National Title Insurance Company		
1109.	Abstract or title search to Paul P. Pacchiana, Attorney at Law \$125.00		
1110.	Attorney's fees to Paul P. Pacchiana, Attorney at Law \$450.00		
1111.	Title Insurance surcharge to Old Republic National Title Insurance Co \$3.28		
1112.	Wire fees/copies/courier (2 incoming) to Paul P. Pacchiana, Attorney at Law \$105.00		
1113.	to		
1200. Government recording and transfer charges:			
1201.	Government recording charges (from GFE #7)		190.00
1202.	Deed \$18.50 Mortgage(s) \$171.50 Releases \$0.00 \$190.00		
1203.	Transfer taxes (from GFE #8)		8,208.00
1204.	City/County tax/stamps Deed \$0.00 Mortgage(s) \$1,152.00		
1205.	State tax/stamps Deed \$5,040.00 Mortgage(s) \$2,016.00		
1206.			
1207.			
1208.			
1300. Additional settlement charges:			
1301.	Required services that you can shop for (from GFE #6)		
1302.	Survey to		
1303.	Utility Estoppel to Paul P. Pacchiana, Attorney at Law		3.00
1304.	Solid Waste Estoppel to City of Naples		383.00
1305.	Wire fees - 3 outgoing(2 Seller proceeds, to Paul P. Pacchiana, Attorney at Law		105.00
1306.	to		
1307.	Seller Attorney fees to Burt Eisenberg, Esq.		400.00
1308.	Courier fees to Burt Eisenberg, Esq.		20.00
1309.			
1400. Total settlement charges:			
(Enter on lines 103, Section J and 502, Section K)		22,572.80	36,911.00

* POC (B) = Paid outside of closing by borrower
 * POC (S) = Paid outside of closing by seller

** The exception rate option was used in this file

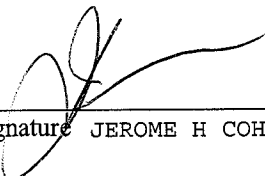
ADDENDUM TO HUD-1

Loan Number: 504372346

File Number:

Borrower: JEROME H COHEN

	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
800. ITEMS PAYABLE IN CONNECTION WITH LOAN		
809. Administrative Fee - Broker to: FLAGSTAR BANK, FSB	800.00	
810. Lender Comp Fee to: BROKER	11,520.00	
811. LOAN ORIGINATION FEE to: FLAGSTAR BANK, FSB		
1100. TITLE CHARGES		
1109. Title Endorsement Fees to: OLD REPUBLIC NAT'L TITLE/PAUL PACCHIANA ATTORNEY	445.00	
1110. Copy/Fax/Phone Fee to: PAUL P. PACCHIANA, ATTORNEY AT LAW	30.00	
1111. Attorney Fee to: PAUL P. PACCHIANA, ATTORNEY AT LAW	450.00	
1112. Searches - Departmental/Title to: OLD REPUBLIC TITLE/PAUL PACCHIANA/COLLIER COUNTY C	153.28	



 Signature JEROME H COHEN Date

 Signature Date

 Signature Date

 Signature Date

 Signature Date

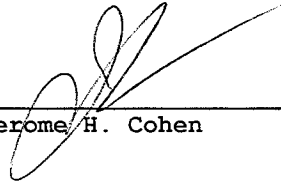
 Signature Date

HUD-1 SETTLEMENT STATEMENT ADDENDUM

File Number: 15-6061 Cohen

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower(s)

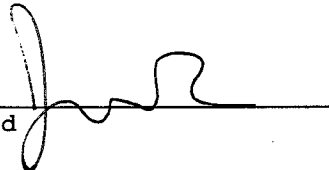


Jerome H. Cohen

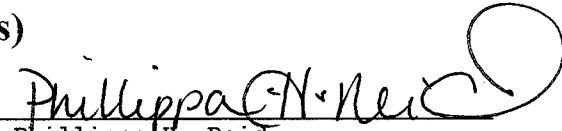


Patricia Schroyer

Seller(s)



~~John M. Reid~~
Jane
Jm



Phillippa H. Reid

Settlement Agent

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.


Paul P. Pacchiana, Attorney at Law

By: 

Date: 8/26/15

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

EXHIBIT 2



Buy

Naples Florida

Don't miss out!
New homes are getting
the first to know.

OFF MARKET

1050 8th Ave N, Naples, FL 34102

Zestimate: \$1,408,201

4 Beds · 5 Baths · 3,400 Sq Ft

 EDIT FACTS


 LIST HOME

 MORE

Your Home Value


Zestimate [?]

\$1,408,201




ZESTIMATE RANGE [?]

\$1.20M - \$1.66M



LAST 30 DAY CHANGE

-\$47,076 (-3.2%)




ONE YEAR FORECAST [?]

\$1,500,720 (+6.6%)

[Zestimate history & details](#)

Your Zestimate Tools

Home Shoppers are Waiting

 59 shoppers are looking in your neighborhood and price range.

I own this home and would like to ask an agent about selling 1050 8th Ave N, Naples, FL



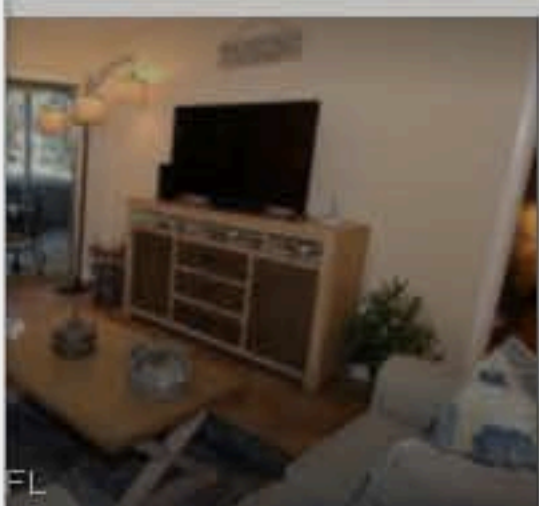
[Contact Agent](#)

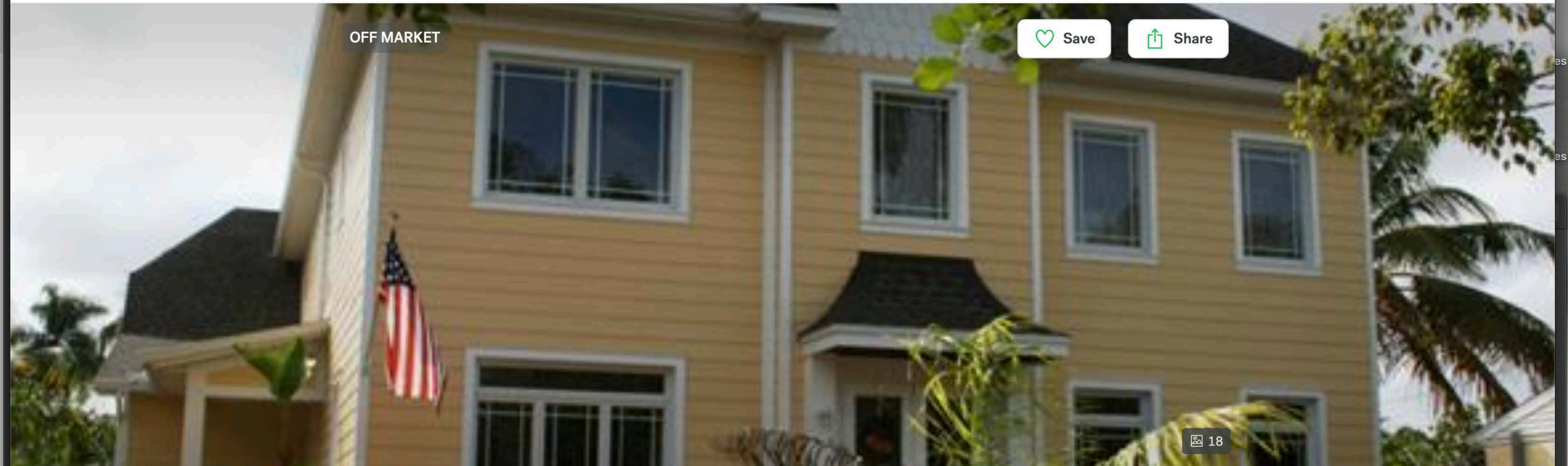
Or call 239-360-6556 for more info

EXPAND CLOSE

Zillow

Search Saved Homes (1)



OFF MARKET

Save Share

18

1050 8th Ave N

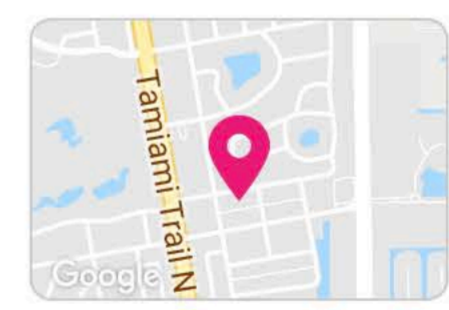
Naples, FL 34102 Lake Park

2,981 sqft

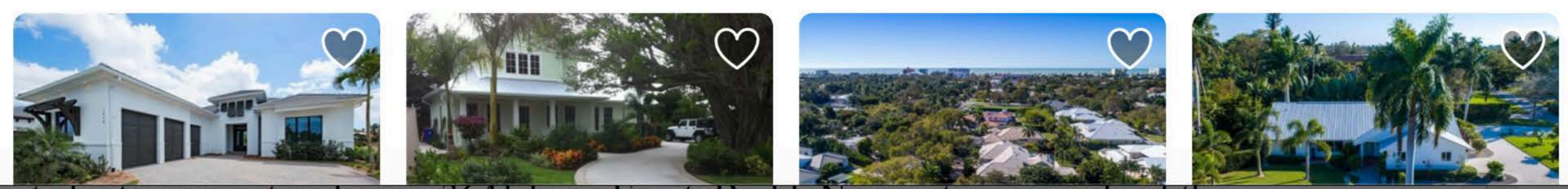
\$1,450,134

Trulia Estimate

as of Mar 29, 2019



Homes Nearby For Sale



having been deposited into account ending in 3641 from EquityBuild. No mention is made of the