

**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 RESPONSE TO MOTION
TO CONTINUE JULY 10, 2019 EVIDENTIARY HEARING**

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 (collectively, the “Receivership Defendants”), provides the following objection to Jerome Cohen’s Motion to Continue July 10, 2019 Evidentiary Hearing (Docket No. 425),¹ and in support states as follows:

¹ This response also addresses Cohen’s motion to extend the date to file his witness and exhibit list and continue July 10, 2019 hearing or to strike exhibits and witnesses from Receiver’s list (Docket No. 409) and this Court’s June 12, 2019 Order (Docket No. 413). The Receiver understands this Court granted Cohen’s motion and allowed him to file a witness and exhibit list by June 26, 2019. (Docket No. 413) However, as the Court indicated in its June 12 Order that it will take into account Cohen's argument in that neither the witness nor the exhibits were mentioned in support of the Receiver's motion when ruling on that motion, the Receiver offers this submission to ensure the record reflects his position on the issues raised in Cohen’s motion (Docket No. 409) and addressed by the Court’s June 12 Order.

I. The Court Should Deny Cohen's Motion To Continue (Docket No. 425) And Proceed With The Evidentiary Hearing On July 10, 2019.

In his motion, Cohen seeks a continuance of the July 10, 2019 evidentiary hearing to at least August 12, 2019 purportedly based on the assertion that he was not provided or otherwise did not have access to certain trial exhibits. (Docket No. 425 at 4) That is false. As explained below, Cohen received or had access to all exhibits on the Receiver's exhibit list.

Specifically, Cohen's motion states he did not receive Exhibits 16 through 54. This is inaccurate. Exhibit Nos. 17-24 (SEC summary exhibits) were provided to Cohen by counsel for the SEC, Benjamin Hanauer, who emailed these exhibits to Cohen in connection with its witness and exhibit list on May 31, 2019. (Exhibit 1, email correspondence between B. Hanauer and J. Cohen) Benjamin Hanauer also gave a copy of Exhibit Nos. 25-28 (transcripts of Jerry Cohen testimony) to Cohen's former counsel, Lisa Braganca, at the August 17, 2018 hearing before Judge Lee. The Receiver produced Exhibits Nos. 28-54 (bank records) to Cohen on May 17, 2019 via a Dropbox link. (Exhibit 2, email correspondence between N. Mirjanich and J. Cohen) Finally, Exhibit 16, which is the complaint in *SEC v. Slowinski* matter, is publicly available (e.g., <https://www.sec.gov/litigation/complaints/2019/comp24483.pdf>).

The Receiver has not identified previously and does not anticipate using any underlying documents from the *SEC v. Slowinski* investigation at the evidentiary hearing. And, notably, the complaint itself was identified solely in response to Cohen's sur-reply (discussed below), which raised issues for the first time that Cohen had previously waived. As stated in the Receiver's motion, the Receiver intends to prove that Investor Monies were used to purchase and maintain the Naples Property, not funds from this joint venture. Those documents have been provided and produced to Cohen. Any further delay in the hearing date is unwarranted.

II. This Court Should Allow The Testimony Of Ann Tushaus And Exhibits 16, 25, 26, And 27 In Connection With The Receiver's Motion To Expand The Order Appointing Receiver Because No New Arguments Are Being Raised Therein.

Also related to the upcoming hearing, Cohen previously raised the issue that one of the witnesses identified on the Receiver's witness list, SEC accountant Ann Tushaus, and certain of the exhibits identified (Exhibits 16, 25, 26, and 27) should be stricken because they are premised on the *Slowinski* matter, and are being used to show funds from a third party source were tainted, which Cohen contends is both improper and untimely. (Docket No. 409 at 2-3) Once again, Cohen is mistaken for several reasons.

As stated in the SEC and Receiver's joint motion to allow SEC counsel to conduct the direct examination of SEC accountant Ann Tushaus at the evidentiary hearing, the purpose of calling Ann Tushaus as a witness is to save the Receivership Estate time and expense in preparing and examining a forensic accounting witness. (Docket No. 402) As further stated in that motion, Ann Tushaus performed an analysis of the bank records that was consistent with and confirmed the analysis performed by the Receiver's retained professional, Bernard Fish. (*Id.* ¶¶ 3-5) Magistrate Judge Kim granted this joint motion, allowing the Receiver to designate an attorney from the SEC to examine accountant Ann Tushaus if he wishes. (Docket No. 407) By having Ann Tushaus testify as to the source of funds, the Receiver is not raising any new arguments not previously raised in the Receiver's motion and supported by the Receiver's retained professional, Bernard Fish. Put differently, the content of the forensic accounting testimony and evidentiary support for the arguments that establish that Investor Monies were used to purchase and maintain the Naples Property will be the same if presented by Ms. Tushaus, but at substantial savings to the Receivership Estate.

Moreover, the purpose of Ann Tushaus' testimony is unrelated to the *SEC v. Slowinski* complaint, except insofar as Cohen himself attempts to introduce evidence to show any funds derived from a joint venture with Slowinski (the subject of the referenced complaint) were used to pay for the Naples Property. This issue was raised by Cohen in his sur-reply, not by the Receiver, and it cannot now be seen as a surprise that their may be rebuttal testimony to such evidence (if it were allowed) through Ms. Tushaus.

Nor is Ann Tushaus a surprise witness. The SEC submitted a declaration from Ann Tushaus in support of its motion for TRO and she testified at the hearing on August 17, 2019 (Docket No. 5), and the SEC previously submitted declarations in support of its motion for disgorgement. (Docket Nos. 195-1, 297-1) Moreover, the Receiver identified Ann Tushaus as a potential witness nearly six weeks in advance of the upcoming July 10, 2019 evidentiary hearing, in accordance with the deadline for disclosures set by the Court – a deadline with which Cohen did not comply. (Docket No. 392, Receiver's Witness and Exhibit List)

Cohen's objection regarding the surprise introduction of transcripts of his own testimony is equally unpersuasive. First of all, the testimony is from Cohen himself. Second, Cohen had these transcripts (Exhibits 25, 26, and 27) since at least August 2018, when the SEC provided a copy of these transcripts to Cohen's counsel, Lisa Braganca, during the August 17, 2018 hearing before Judge Lee. Third, the Receiver disclosed these transcripts as potential exhibits nearly six weeks in advance of the upcoming July 10, 2019 evidentiary hearing. (Docket No. 392, Receiver's Witness and Exhibit List) Finally, anything contained in Cohen's transcripts can be used for impeachment or as an admission.

For these reasons, the Receiver respectfully requests that the Court deny Cohen's request for an extension, overrule Cohen's objection as to Ann Tushaus and Exhibits 16, 25, 26, and 27, and for such other relief as the Court determines is just and appropriate.

Dated: June 27, 2019

Kevin B. Duff, Receiver

By: /s/ Nicole Mirjanich

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2019, I provided service of the foregoing Receiver's Response To Motion To Continue July 10, 2019 Evidentiary Hearing, via ECF filing to all counsel of record, and via electronic mail to the following individuals and entities:

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EXHIBIT 1

Hanauer, Benjamin J.

From: Hanauer, Benjamin J.
Sent: Friday, May 31, 2019 2:08 PM
To: jerry@reagan.com
Cc: Stockwell, Timothy J
Subject: FW: Activity in Case 1:18-cv-05587 United States Securities and Exchange Commission v. Equitybuild, Inc. et al witness list
Attachments: 2019-05-31 - 391 - SEC Witness-Exhibit List for Evidentiary Hearing.pdf; EX 13 - Cohen, Jerry Wells Fargo Detail FINAL.pdf; EX 14 - Cohen, Jerry Wells Fargo Summary Table FINAL.pdf; EX 15 - Rental Income, Investor Payments, Investor Deposits Summary FINAL.pdf; EX 16 - Tikkun Holdings Transaction Detail May 2013-August 2015 FINAL.pdf; EX 17 - Tikkun Holdings Summary Chart May 2013-August 2015 FINAL.pdf; EX 18 - Tikkun Holdings Transaction Detail September 2015 - May 2018 FINAL.pdf; EX 19 - Tikkun Holdings Summary Chart September 2015 - May 2018 FINAL.pdf; EX 20 - Chart of RA, Commission, Consulting, and Loan Transactions May 2013 to Sept 4 2015.pdf

Mr. Cohen:

Attached is the SEC's witness and exhibit list for the July 10 evidentiary hearing, which I just filed with the Court. Also attached are copies of summary exhibits referenced on our exhibit list.

Thanks
-Ben

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From: usdc_ecf_ilnd@ilnd.uscourts.gov <usdc_ecf_ilnd@ilnd.uscourts.gov>
Sent: Friday, May 31, 2019 2:00 PM
To: ecfmail_ilnd@ilnd.uscourts.gov
Subject: Activity in Case 1:18-cv-05587 United States Securities and Exchange Commission v. Equitybuild, Inc. et al witness list

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United States District Court

Northern District of Illinois - CM/ECF LIVE, Ver 6.2.2

Notice of Electronic Filing

The following transaction was entered by Hanauer, Benjamin on 5/31/2019 at 2:00 PM CDT and filed on 5/31/2019

Case Name: United States Securities and Exchange Commission v. Equitybuild, Inc. et al

Case Number: [1:18-cv-05587](#)

Filer: United States Securities and Exchange Commission

Document Number: [391](#)

Docket Text:

[WITNESS List by United States Securities and Exchange Commission \(Hanauer, Benjamin\)](#)

1:18-cv-05587 Notice has been electronically mailed to:

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1:18-cv-05587 Notice has been delivered by other means to:

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The following document(s) are associated with this transaction:

Document description:Main Document

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[STAMP dcecfStamp_ID=1040059490 [Date=5/31/2019] [FileNumber=20563566-0] [5ef313711c98ab40f936b62158c3327b78a00b62e7c3c202d84ec3a9bddd6968ad32705bc3240f67b3668f4fc3c973e25b577ee378521ac9bc66fa03c4bb1112]]

EXHIBIT 2



From: Nicole Mirjanich nm@rdaplawn.net
Subject: SEC v. EquityBuild Document Production
Date: May 17, 2019 at 3:45 PM
To: jerryc@reagan.com
Cc: Michael Rachlis mrachlis@rdaplawn.net, Hanauer, Benjamin J. HanauerB@sec.gov
Bcc: Kevin Duff kduff@rdaplawn.net

Jerry,

The following Dropbox link contains the Receiver's production in accordance with the Court's Order (Docket No. 357):

https://www.dropbox.com/sh/wjrn1yhpgd10ao3/AAAvlCKe_KNIUDIRtWkfqQSIa?dl=0

As a reminder, under Federal Rule of Civil Procedure 5.2, a party filing a document such as those contained herein may only include the last four digits of the financial-account number.

--

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Please note that effective January 1, 2019, our firm name has changed.

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