

**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. Manish S. Shah
)	
EQUITYBUILD, INC., EQUITYBUILD)	Magistrate Judge Young B. Kim
FINANCE, LLC, JEROME H. COHEN,)	
and SHAUN D. COHEN,)	
)	
Defendants.)	

**RECEIVER’S TWENTY-FIFTH STATUS REPORT
(Third Quarter 2024)**

Kevin B. Duff, as 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”), and pursuant to the powers vested in him by Order of this Court, respectfully submits this Twenty-Fifth Status Report for the quarter ending September 30, 2024.

I. CREDITORS AND CLAIMS AGAINST THE RECEIVERSHIP ESTATE

During the Third Quarter 2024, claims were resolved for each of the following properties:

Group Number	Property Number	Property Address
1	74	3074 Cheltenham Place
1	75	7625-33 S East End Avenue
1	76	7635-43 S East End Avenue
1	77	7750-58 S Muskegon Avenue
1	78	7201 S Constance Avenue
2	1	1700-08 W Juneway Terrace
2	79	6160-6212 S Martin Luther King Drive
2	101	6949 S Merrill Boulevard

Group Number	Property Number	Property Address
4	6	6437-41 S Kenwood Avenue
4	9	8100 S Essex Avenue
4	58	5955 S Sacramento Avenue
4	59	6001-05 S Sacramento Avenue
4	60	7026-42 S Cornell Avenue
4	61	7237-43 S Bennett Avenue
4	62	7834-44 S Ellis Avenue
4	71	701-13 S 5th Avenue
4	100	11117-11119 S Longwood Drive
4	116	1102 Bingham, Houston, TX ¹
4	141	431 E 42nd Place
5	3	5001 S Drexel Boulevard

This resulted in an additional \$18,483,685.13 distributed to claimants during the quarter, bringing the aggregate total of distributions to claimants as a result of resolved claims to \$36,932,519.84. In addition, during the Third Quarter 2024, the following activities transpired with respect to the process to resolve the claims by groups of properties:

Group 1

There are 179 claims asserting an interest in the five properties in Group 1:

1. 3074 Cheltenham Place (Property 74)
2. 7625-33 S East End Avenue (Property 75)
3. 7635-43 S East End Avenue (Property 76)
4. 7750 S Muskegon Avenue (Property 77)
5. 7201 S Constance Avenue (Property 78)

Following issuance of the Seventh Circuit's mandate affirming the district court's order on Group 1 claims, the district court entered a July 15, 2024 order instructing the Receiver to submit a revised proposed distribution order for Group 1, which the Receiver prepared and submitted to the Court on July 19, 2024 (Dkt. 1714). The Court entered a final distribution order on July 23, 2024 (Dkt. 1717), and the Receiver worked to verify distribution information with the Group 1

¹ A claimant in reference to 1102 Bingham has filed an appeal to the Seventh Circuit challenging the district court's ruling on its claim. *See* discussion of AMark appeal below.

claimants receiving distributions. Distribution checks were mailed to these claimants the week of August 26, 2024, and many, but not all, of the checks were negotiated in the third quarter, as indicated on Exhibit 1.

During the quarter, the Receiver also negotiated with claimant BC57, LLC regarding both (i) BC57's claim as a secured creditor in second position to the balance remaining in the property account for 7625 East End (Property 75) after distributions to claimants deemed in first position were made pursuant to the Court's Group 1 distribution order (Dkt 1717), and (ii) the Receiver's avoidance claims with respect to BC57 (Dkt. 1118, 1217, 1227). The parties reached an agreement, and the Receiver prepared and, on August 27, 2024, filed a motion to withdraw his avoidance claim and approve a \$125,000 distribution to BC57. (Dkt. 1738) After allowing time for any objections, the Court granted the motion on September 11, 2024 (Dkt. 1750) and the distribution to BC57 was made. Pursuant to the Court's order, the balance remaining in the account after all distribution checks have been cashed (approximately \$217,342.00) will be transferred to the Receiver's account for the benefit of unsecured creditors and the administration of the estate.²

Group 2

There are 309 claims asserting an interest in the five properties in Group 2:

1. 1700-08 W Juneway Terrace (Property 1)
2. 5450-52 S Indiana Avenue (Property 4)
3. 7749-59 S Yates Boulevard (Property 5)
4. 6160-6212 S Martin Luther King Drive (Property 79)
5. 6949-59 S Merrill Avenue (Property 101)

During the quarter, the Receiver prepared proposed distribution orders for the Group 2 properties following entry of the Court's June 20, 2024 Memorandum Opinion and Order on the

² Because this transfer will be made in the fourth quarter after all the distribution checks have been cashed, the funds remain in the property account on Exhibit 1.

Group 2 claim priority dispute (Dkt. 1679). On July 11, 2024, the Receiver submitted a proposed distribution order for Property 101 (Dkt. 1696), and on July 12, 2024, the Receiver submitted a proposed distribution order for the remaining Group 2 properties 1, 4, 5, and 79 (Dkt. 1697). The Court entered these orders on July 15, 2024. (Dkt. 1699, 1700)

On July 17, 2024, claimant Shatar Capital filed a notice of appeal of the Court's rulings with respect to 5450 S Indiana (Property 4) and 7749 S Yates (Property 5), and filed a motion in the district court to stay distributions on these two properties pending the appeal (Dkt. 1708, 1709). The Receiver prepared a response to Shatar's motion, which he filed on August 1, 2024. (Dkt. 1727). Certain Individual Investors filed an opposition to Shatar's motion (Dkt. 1726) and Shatar filed a reply on August 8, 2024. The Court granted in substantial part Shatar's motion to stay on September 11, 2024 (Dkt.1750), meaning no distributions will be made on 5450 Indiana (Property 4) or 7749 Yates (Property 5) until after the appeal is resolved. On September 11, 2024, the Shatar appeal was referred to mandatory mediation pursuant to Circuit Rule 33, which began on October 7, 2024 and remains ongoing. In light of this ongoing mediation, on October 9, 2024, the briefing schedule set by the Court of Appeals was suspended pending further court order.

The Receiver's team worked during the quarter to confirm payee and address information for the claimants receiving distributions on properties 1, 79, and 101. Distribution checks were mailed to these claimants the week of August 26, 2024, and many, but not all, of the checks were negotiated in the third quarter, as indicated on Exhibit 1.

Group 3

There are 204 claims asserting an interest in the Group 3 properties, which include:

1. 7301-09 S Stewart Avenue (Property 10)
2. 7500-06 S Eggleston Avenue (Property 11)
3. 3030-32 E 79th Street (Property 12)
4. 2909-19 E 78th Street (Property 13)

5. 7549-59 S Essex Avenue (Property 14)
6. 8047-55 S Manistee Avenue (Property 15)
7. 7927-49 S Essex Avenue (Properties 102-106)

The three properties in Chicago Capital Fund I (“CCF1”) are Properties 10, 11, and 12.

The three properties in Chicago Capital Fund II (“CCF2”) are Properties 13, 14, and 15.

The Group 3 proceedings have concluded and all Group 3 distributions have been made.

Group 4

There are 402 claims asserting an interest in the eleven properties in Group 4:

1. 6437-41 S Kenwood Avenue (Property 6)
2. 8100 S Essex Avenue (Property 9)
3. 5955 S Sacramento Avenue (Property 58)
4. 6001-05 S Sacramento Avenue (Property 59)
5. 7026-42 S Cornell Avenue (Property 60)
6. 7237-43 S Bennett Avenue (Property 61)
7. 7834-44 S Ellis Avenue (Property 62)
8. 701-13 S 5th Avenue, Maywood, Illinois (Property 71)
9. 11117-19 S Longwood Drive (Property 100)
10. 1102 Bingham Street, Houston, Texas (Property 116)
11. 431 E 42nd Place (Property 141)

On May 31, 2024, the Court ruled orally from the bench accepting the Receiver’s recommendations as to the Group 4 claims (Dkt. 1671), and overruling the objections of claimants AMark Investment Trust (Dkt. 1651) and claimants DVH Investment Trust, Therese Tibbits, and Peter Nuspl (Dkt. 1648). During the quarter, the Receiver’s team prepared a proposed order approving the Group 4 distributions, which was entered by the Court on July 10, 2024 (Dkt. 1695), and worked to confirm payee and address information for the Group 4 claimants. Distribution checks were mailed to the Group 4 claimants the week of July 29, 2024. Most claimants have deposited their checks, although a number of checks needed to be reissued and a few claimants have yet to negotiate their distribution checks leaving small balances in several of the Group 4 property accounts as of September 30, 2024. (*See* Exhibit 1)

On June 28, 2024 and July 16, 2024, claimant AMark Investment Trust (“AMark”) filed notices of appeal of the Court’s rulings with respect to its claim to the remaining proceeds of the sale of 1102 S Bingham after the court-ordered distributions were made. (Dkt. 1685, 1703). On July 17, 2024, the Seventh Circuit Court of Appeals consolidated the AMark appeals, and then on July 25, 2024 the AMark appeals were consolidated with the Shatar appeal, discussed *supra*. Like the Shatar appeal, AMark’s appeal was referred to a mandatory mediation pursuant to Circuit Rule 33, which took place on October 7-8, 2024. The mediation was successful, and the Receiver is in the process of documenting such agreement and will be filing a motion to approve the settlement with the district court. Pursuant to the parties’ agreement, if it is approved, the appeal will be dismissed with prejudice and more than \$200,000 will be transferred to the Receiver’s account for the benefit of unsecured claimants and the administration of the estate.

Group 5

There are 83 claims asserting an interest in the four properties in Group 5:

1. 5001 S Drexel Boulevard (Property 3)
2. 7300-04 St Lawrence Avenue (Property 49)
3. 310 E 50th Street (Property 52)
4. 4520-26 S Drexel Boulevard (Property 63)

The priority disputes with respect to 7300 St. Lawrence (Property 49), 310 E 50th (Property 52), and 4520 S Drexel (Property 63) were resolved in prior quarters (Dkt. 1676, 1677), and all distributions in accordance with these orders were made.

During the quarter, the Receiver continued discussions with counsel for Wilmington Trust regarding its secured interest in the Group 5 property located at 5001 S Drexel (Property 3). These discussions led to the filing of a motion to approve the distribution of proceeds from Property 3 on September 6, 2024 (Dkt. 1742), and the withdrawal of the objections made by Wilmington Trust (Dkt. 1647). The Court granted the motion on September 11, 2024, overruling the objections of

claimant Horst S. Filtzer, Jr. (Dkt. 1648), and entered a final distribution order on September 12, 2024 (Dkt. 1752). Distributions pursuant to that order have been made, and the claims process for Group 5 has concluded.

Group 6

There are 151 claims asserting an interest in the sixteen properties in Group 6:

1. 1414 &1418 East 62nd Place (Property 8)
2. 6217-27 S Dorchester Avenue (Property 68)
3. 2800-06 E 81st Street (Property 108)
4. 4570-52 S Indiana Avenue (Property 109)
5. 5618-20 S Martin Luther King Drive (Property 110)
6. 6558 S Vernon Avenue (Property 111)
7. 7450 S Luella Avenue (Property 112)
8. 7840-42 S Yates Avenue (Property 113)
9. 7760 S Coles Avenue (Property 50)
10. 1401 W 109th Place (Property 51)
11. 6807 S Indiana Avenue (Property 53)
12. 8000-02 S Justine Street (Property 54)
13. 8107-09 S Ellis Avenue (Property 55)
14. 8209 S Ellis Avenue (Property 56)
15. 8214-16 S Ingleside Avenue (Property 57)

The claims process for Group 6 is ongoing. During the quarter, the Receiver's team reviewed standard discovery responses from 32 claimants, many of which produced documents, including a substantial production (13,022 pages) from institutional lender UBS. Additionally, the Receiver reviewed documents produced pursuant to subpoenas issued to title companies Chicago Title (6,207 pages), Network Title (over 300 pages plus some loose documents), OS National (263 MB consisting of 430 files in 57 folders), and Primary Title Services (1,591 pages). On July 16, 2024, the Court entered an order extending the deadline for the close of Group 6 discovery from July 30, 2024 to August 9, 2024. (Dkt. 1707)

During the quarter, the Receiver made a proposal to counsel for institutional lender Citibank NA and counsel for certain of the investor lenders regarding the potential resolution of

the claims asserting an interest in 6217 Dorchester (Property 68) and 1414 E 62nd (Property 8), and engaged in discussions with those counsel regarding the proposal. On August 23, 2024, the Receiver moved for an extension of the deadline to file his submission as to those two Group 6 properties, which the Court granted. (Dkt. 1734) The parties have reached an agreement regarding these distributions, and the Receiver's motion to approve distribution of proceeds from the sale of these properties was filed on October 22, 2024. (Dkt. 1770)

On August 27, 2024, the Receiver filed his initial submission regarding the remaining thirteen properties in Group 6, containing his recommendations regarding the claims against the properties and disclosing the Receiver's avoidance claims relating to the properties. (Dkt. 1740) On September 10, 2024, claimants UBS AG and Midland Loan Services each moved for discovery relating to the Receiver's avoidance claims (Dkt. 1746, 1748), and on September 11, 2024 the Court entered and continued these motions and deferred briefing on the Receiver's avoidance claims pending the Court's resolution of the priority disputes (Dkt. 1750). On September 24, 2024, the SEC filed its position statement (Dkt. 1754), and position statements were filed by the certain investor lenders (Dkt. 1755), UBS AG (Dkt. 1756), Midland Loan Services (Dkt. 1757), and Michael and Nancy Guilford (Dkt. 1759). On October 15, 2024, replies were filed by the SEC (Dkt. 1765), Certain Investor Lenders (Dkt. 1766), UBS AG (Dkt. 1767), Midland Loan Services (Dkt. 1768), and the Receiver (Dkt. 1769). The Court will decide issues of lien priority and subsequently will be presented and approve a plan for distribution of the fund balances in the accounts for these thirteen Group 6 properties.

Group 7

There are 192 claims asserting an interest in the six properties in Group 7:

1. 4533-47 S Calumet Avenue (Property 2)
2. 7109-19 S Calumet Avenue (Property 7)

3. 4611-17 S Drexel Boulevard (Property 64)
4. 6250 S Mozart Avenue (Property 69)
5. 638-40 N Avers Avenue (Property 70)
6. 7255-57 S Euclid Avenue (Property 73)

The claims process for Group 7 is proceeding. During the quarter, the Receiver worked to review the written discovery responses to the Group 7 standard discovery requests submitted by the 4 institutional lenders and 44 individual investor-lenders, as well as substantial document productions from institutional lender BMO Bank (3,201 pages) and many of the individual claimants. Additionally, the Receiver team has been reviewing documents produced pursuant to subpoenas issued to title companies Chicago Title (4,021 pages), Greater Illinois Title (2,109 pages), and Primary Title Services (1,250 pages), as well as productions from loan originators BC57, LLC (1,362 pages) and Lument Real Estate Capital (f/k/a Red Mortgage) (4,162 pages) and CBRE Capital Markets (6,171 pages). The Receiver is still seeking documents from Regions Bank (successor-in-interest to loan originator Sabal), which had been expected by October 4, 2024 pursuant to correspondence from counsel for Region's Bank, but are still outstanding.

During the quarter, the Receiver's team worked on finalizing the recommendations and preparing his submission for the Group 7 claims.

On July 16, 2024, the Court entered an order extending the schedule for the Group 7 claims process. (Dkt. 1707) Pursuant to this order, all discovery in Group 7 was completed by September 30, 2024 (with the exception of certain deficiencies that the Receiver's team has been following up on), and the Receiver will file his recommendations regarding the claims and disclose any avoidance claims by October 28, 2024. All submissions and responsive statements for Group 7 will be submitted to the Court by December 16, 2024. (*Id.*)

Group 8

There are 470 claims asserting an interest in the 17 properties in Group 8:

1. 2736 W 64th Street (Property 80)
2. 4317-19 S Michigan Avenue (Property 81)
3. 6355-59 S Talman Avenue (Property 82)
4. 6356 S California Avenue (Property 83)
5. 7051 S Bennett Avenue (Property 84)
6. 7201-07 S Dorchester Avenue (Property 85)
7. 7442-48 S Calumet Avenue (Property 86)
8. 7508 S Essex Avenue (Property 87)
9. 7546-48 S Saginaw Avenue (Property 88)
10. 7600-10 S Kingston Avenue (Property 89)
11. 7656-58 S Kingston Avenue (Property 90)
12. 7701-03 S Essex Avenue (Property 91)
13. 7748-52 S Essex Avenue (Property 92)
14. 7957-59 S Marquette Road (Property 93)
15. 816-20 E Marquette Road (Property 94)
16. 8201 S Kingston Avenue (Property 95)
17. 8326-58 S Ellis Avenue (Property 96-99)

The Receiver anticipates that Group 8 proceedings will commence before the conclusion of the Group 7 proceedings in December 2024 and be completed by the spring of 2025. The Court has set a status hearing for Group 8 on November 4, 2024.

Group 9

Group 9 consists of two properties located at:

1. 1131-41 E 79th Place (Property 67)
2. 7024-32 S Paxton Avenue (Property 72)

The claims process for the Group 9 properties has concluded. The Court found that the individual investor lender claims with respect to these two properties were not secured by the properties (Dkt. 1666), and therefore those claims will be considered in either Group 10 or one of the other groups, as indicated in Exhibits 2 and 3 to the Receiver's Motion to Approve Distributions for Properties 67 and 72 (Dkt. 1653).

Group 10

The final claims group, Group 10, consists of claims asserting an interest in equity funds or unsecured promissory notes, as well as trade creditors, other types of non-lender creditors, and claimants whose claims have been found inferior to other secured claims or who did not recover the maximum amount of approved distributions from the secured funds. During the quarter, the Receiver worked with his team, including the accounting firm KMA, on distribution planning. A distribution plan for these claims will be addressed after the priority disputes and claims secured by the liquidated properties of the estate have been resolved.

* * *

In addition to the activity reported above, during the quarter, the Receiver participated in a status hearing held by the Court on September 11, 2024 to discuss the Court's rulings with respect to a number of the motions and issues discussed herein, and the status of proceedings with respect to all claim groups.³

Finally, the Receiver repeats the following reminders regarding claims and the claims process. Claimants may want to consider whether to hire counsel to assist them with the claims process. Claimants do not have an obligation to retain counsel in order to participate in the claims process, but the Receiver and his counsel cannot provide legal advice to any claimant, nor can the Receiver advise claimants regarding whether or not they should retain counsel. Any claimant that chooses to proceed without counsel should visit the section of the Court's website (www.ilnd.uscourts.gov) named "[Information for People Without Lawyers \(Pro Se\)](#)" which provides useful information and also states the following: "The rules, procedures and law that affect your case are very often hard to understand. With that in mind, you should seriously consider

³ A transcript of the September 11, 2024 proceedings is attached hereto as **Exhibit 5**.

trying to obtain professional legal assistance from an attorney instead of representing yourself as a pro se party.” Claimants may also want to speak with a lawyer to assist them in determining for themselves whether or not to retain counsel.

All claimants have a continuing responsibility to ensure that the Receiver at all times has current and up-to-date contact information so that the Receiver may provide important information relating to the claims process, the claimant’s claim, or the Receivership Estate. Additionally, any claimants who have closed their retirement accounts and transferred their interests to a different IRA or 401k custodian, or to themselves individually, should notify the Receiver and provide documentation of the transfer or distribution from their former custodian. Claimants may provide updated information and documentation to the Receiver at equitybuildclaims@rdaplw.net.

II. ADDITIONAL OPERATIONS OF THE RECEIVER

a. Identification and Preservation of Assets

During the Third Quarter 2024, the Receiver continued efforts to identify, preserve, and recover assets, including, *inter alia*, through claims asserted against former EquityBuild professionals and insiders.

b. Financial Reporting of Receipts and Expenditures

The Receiver only needed to devote a minimal amount of work during the quarter to financial reporting.

c. Open Litigation

The Receiver is aware of four actions currently pending in the Circuit Court of Cook County in which an EquityBuild entity is a named defendant, including:

- *Equity Trust Co. Custodian FBO Joseph Kennedy IRA v. EquityBuild Inc., et al.*, Case No. 2022 CH 02709. This foreclosure action on 107-11 N. Laramie was filed March 25, 2022 pursuant to this Court’s Order partially lifting the stay of litigation. (Dkt.

- 1176) On July 31, 2024, Plaintiff filed a motion for default judgment against EquityBuild, in direct violation of the stipulated order entered February 22, 2022, which partially lifted the stay of litigation and provided that plaintiff would not seek a deficiency judgment against EquityBuild. (*Id.*) The plaintiff subsequently withdrew its motion, as demanded by the Receiver. On October 8, 2024, plaintiff filed an alias summons to Defendant PP P24 1, LLC, which the complaint alleges is the legal title holder of the property.
- *Jerrine Pennington for Valerie Pennington, Deceased v. 4533 Calumet, LLC*, Case No. 2021 L 10115. An order indefinitely transferring this matter to the circuit court's special stay calendar pursuant to this Court's Order Appointing Receiver (Dkt. 16) was entered on January 27, 2022. At a Trial Setting Call on February 15, 2024, the case was placed on the Law Division's insurance stay calendar.
 - *Bauer Latoza Studio Ltd. v. EquityBuild Inc.*, Case No. 2019 L 000787. An order indefinitely transferring this matter brought by a trade-creditor claimant to the circuit court's special stay calendar pursuant to this Court's Order Appointing Receiver (Dkt. 16) was entered on March 21, 2019.
 - *Michigan Shore Apartments, LLC v. EquityBuild, Inc., et al.*, Case No. 2018 CH 09098. The stay of this matter pursuant to this Court's Order Appointing Receiver (Dkt. 16), was continued by court order entered December 5, 2023, and is scheduled for a hearing on the status on the stay of litigation on December 3, 2024. In the December 5, 2023 order, the Court granted counsel for Liberty EBCP, LLC's motion to withdraw, and on April 8, 2024 Northeast Bank filed a motion to substitute as defendant in place of

Liberty EBCP, LLC, on the grounds that it is the successor to the Liberty lien, which was granted on April 17, 2024.

d. Claimant Communications

The Receiver has provided and continues to maintain numerous resources to keep claimants informed about proceedings in this action. To provide basic information, the Receiver established and regularly updates a webpage (<http://rdaplawnet.com/receivership-for-equitybuild>) for claimants 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 Receivership web site. It is anticipated that the appearance of the website that hosts the Receivership webpage may change in the coming quarter; however, the receivership webpage link and information will remain active and available.

Court filings and orders are also available through PACER, which is an electronic filing system used for submissions to the Court. Investor claimants and others seeking court filings and orders can visit www.ilnd.uscourts.gov for information about accessing filings through PACER.

Beyond those avenues, the Receiver keeps claimants informed regarding major occurrences in the Receivership and in the claims process for specific Groups through regular email communications. Additionally, the Receiver continues to receive and respond to numerous emails and voicemails from claimants and their representatives. The Receiver and his staff responded in writing to approximately 284 such inquiries during the Third Quarter 2024, and sent an additional 438 emails confirming distribution payee and address information, in addition to conducting a number of oral communications. The Receiver will continue to work to ensure that information is available and/or otherwise provided as quickly and completely as practicable, asks all stakeholders and interested parties for patience during this lengthy process, and reiterates that

responding to individual inquiries depletes Receivership assets. These quarterly status reports and the Receiver's other court filings remain the most efficient means of communicating information regarding the activities of the Receivership Estate.

e. Control of Receivership Property and Records

The Receiver has continued efforts to preserve all EquityBuild property and records. The Receiver continues to undertake efforts to maintain, preserve, and utilize EquityBuild's internal documents during the pendency of this matter, as well as for use in document productions and investigations in the matters brought by the Receiver against the former EquityBuild professionals.

f. Factual Investigation

The Receiver and his retained professionals have continued to review and analyze 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; (iv) available underlying transaction documents received to-date from former Chicago-based EquityBuild counsel; (v) files produced by former EquityBuild counsel, accountants, and employees; and (vi) files produced pursuant to subpoenas issued by the Receiver.

g. Tax Issues

During the Third Quarter of 2024, the Receiver's tax administrator, Miller Kaplan, assisted with certain tax issues relating to property distributions, and worked on preparation of the Receiver's 2023 tax returns.

The Receiver has informed investors that he cannot provide advice on tax matters. Moreover, the Receiver and his retained professionals do not plan to issue Forms 1099-INT or other tax forms to investors. However, Forms 1099-R may or have been issued to investors who

held investments through retirement accounts and received distributions therefrom. With respect to valuation, loss, or other tax issues, investors and their tax advisors may wish to seek independent tax advice and to consider IRS Rev. Proc. 2009-20 and IRS Rev. Rul. 2009-9.

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

The Receiver established custodial accounts at a federally insured financial institution to hold all cash proceeds from the sale of the Receivership properties. These interest-bearing checking accounts are used by the Receiver to collect liquid assets of the Estate and to pay portfolio-related and administrative expenses. The Receiver also established separate interest-bearing accounts to hold funds from the sale of real estate, as directed by Court order, 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.

Attached as **Exhibit 1** is a schedule reflecting the balance of funds in all of the property specific accounts as of September 30, 2024, with a description of any changes to the account balance during the quarter.

III. RECEIVER'S FUND ACCOUNTING

The Receiver's Standardized Fund Accounting Report ("SFAR") for the Third Quarter 2024 is attached hereto as **Exhibit 2**. The SFAR discloses the funds received and disbursed from the Receivership Estate during this reporting period. As reported in the SFAR, cash on hand as of September 30, 2024 equaled \$6,360,075.63. 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.

IV. RECEIVER'S SCHEDULE OF RECEIPTS AND DISBURSEMENTS

The Receiver's Schedule of Receipts and Disbursements ("Schedule") for the Third Quarter 2024 is attached hereto as **Exhibit 3**. This Schedule in the aggregate reflects

\$2,003,309.64 in total receipts and \$359,536.41 in total disbursements to and from the Receiver's (non-property) accounts during the quarter.

V. RECEIVERSHIP PROPERTY

All known Receivership Property is identified and described in the Master Asset List attached hereto as **Exhibit 4**. The Master Asset List identifies 56 checking accounts in the names of the affiliate entities identified as Receivership Defendants, reflecting transfers of \$213,249.56 to the Receiver's account. (*See also* Dkt. 348 at 23-24 for additional information relating to these funds) The Master Asset List also identifies funds in the Receiver's account in the amount of \$6,360,075.63.

The Master Asset List does not include funds received or recovered after September 30, 2024. Nor does it include 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.

Additionally, the balances of the 55 remaining property-specific interest-bearing accounts established to hold the proceeds from sold real estate are reflected in Exhibit 1. These accounts cumulatively contained \$31,698,147.92 as of September 30, 2024.

VI. LIQUIDATED AND UNLIQUIDATED CLAIMS HELD BY THE RECEIVERSHIP ESTATE

During the Third Quarter 2024, the Receiver continued to prosecute actions in the Circuit Court of Cook County and the Northern District of Illinois against former EquityBuild outside counsel. These claims are for professional malpractice and aiding and abetting the Cohens' breaches of their fiduciary duties. The period included significant efforts relating to discovery and settlement negotiations.

As previously reported, the case of *Duff v. Mark L. Rosenberg and Law Offices of Mark L. Rosenberg*, Civil Action No. 1:21-cv-6756 (N.D. Ill.), was settled in the prior quarter for \$350,000.00, comprising the remainder of the Defendants' insurance policy limits. In the Third Quarter 2024, the settlement payment was made and the case was dismissed.

In *Duff v. Rock Fusco & Connelly, LLC, Ioana Salajanu, and Bregman Berbert Schwartz & Gilday, LLC ("BBS&G")*, Case No. 20-L-8843 (Cir. Ct. Cook Cty.), the Receiver undertook substantial efforts dedicated to written and oral discovery issues, review and analysis of EquityBuild records and records produced and for production in discovery, motion practice related to discovery, and review of supplemental productions from the BBS&G Defendants and the Rock Fusco & Connelly ("Rock Fusco") Defendants. During the quarter, the Receiver also completed the depositions of additional BBS&G fact witnesses and prepared for the depositions of the remaining fact witnesses. The Receiver also worked to address Defendants' Rule 206(a)(1) deposition notices and prepare for deposition regarding numerous potential topics. The Receiver further undertook efforts to address additional supplemental written discovery requests issued by the Defendants. Settlement discussions with all Defendants became active, and led to several days in mediation separately with the BBS&G Defendants and the Rock Fusco Defendants. As to the BBS&G Defendants, the dispute has been settled with the District Court approving the \$4,000,000.00 (four million dollar) settlement on October 10, 2024. (Dkt. 1763) Separately, as to the Rock Fusco Defendants, a settlement in principle has been achieved, and is in the process of being reduced to a written settlement agreement that will be presented to the District Court in conjunction with a motion for approval.

In *Duff v. DeRoo, et al.*, Case No. 1:24-cv-01402 (N.D. Ill), this Court entered judgment for the Receiver and against DeRoo on June 11, 2024 in the amount of \$125,000.00, which

constituted the unpaid final installment of the \$325,000 settlement with DeRoo, plus pre- and post-judgment interest. After the Receiver initiated proceedings to discover DeRoo's assets and enforce the judgment, DeRoo made a payment in the amount of \$128,769.08 on July 26, 2024.

VII. PROFESSIONAL FEES AND EXPENSES

During the quarter, the Receiver prepared and submitted his 24th Fee Application, to which objections were filed by the institutional lenders. (Dkt.1736) On September 12, 2024 the Court granted the Receiver's 24th Fee Application, approving the allocations to properties, and imposing a 20% holdback on all fees. (Dkt. 1751, 1758) The net amounts were transferred from the individual property accounts during the quarter, as reflected in Exhibit 1.

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 current assets and potentially recoverable assets for which the Receiver is still evaluating the value, potential value, and/or ownership interests;
2. The continued investigation, analysis, and recommendations regarding the claims against the Receivership Estate, including, but not limited to, the claims and records of investors;
3. The continued investigation, analysis, and recovery of potential fraudulent transfer claims and claims against third parties;
4. The continued analysis and formulation, in consultation with the SEC and the Court, of a just and fair distribution plan for the creditors of the Receivership Estate; and
5. The discharge 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: October 24, 2024

Respectfully submitted,

Kevin B. Duff, Receiver

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

Attorneys for Kevin B. Duff, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing Receiver's Twenty-Fifth Status Report, via ECF filing, to all counsel of record on October 24, 2024.

I further certify that I caused true and correct copies of the foregoing to be served by electronic mail to all known individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form or subsequently updated).

I further certify that the Receiver's Twenty-Fifth Status Report will be posted to the Receivership webpage at: <http://rdaplawnet.com/receivership-for-equitybuild>

/s/ Michael Rachlis

Michael Rachlis
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Exhibit 1

SEC v. EquityBuild, Inc., et al.

No. 18-cv-5587

Balances of Funds in Property Specific Accounts as of September 30, 2024

Account Number	Account Name	Property Number	Account Balance as of 9/30/24 (including September 2024 interest and account transfers posted October 2, 2024)	Date of Settlement	Date of Distribution	Reason for Change (if any) 7/1/24 - 9/30/24
0462	1700 Juneway	1	\$25,635.49	10/20/2020	8/22/2024	Interest earned, \$25,635.50; distributions to claimants per 7/15/24 Order (Dkt. 1699) (\$2,790,647.12); transfer to RDP for fees per 7/15/24 Order (Dkt. 1699) (\$29,480.23)
0603	4533 S. Calumet	2	\$2,330,594.60	12/1/2020		Interest earned, \$29,039.15; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$2,548.74)
0033	5001-05 S Drexel	3	\$0.00	5/22/2019	9/25/2024	Interest earned, \$34,493.56; distributions to claimants per 9/11/24 Order (Dkt. 1752) (\$1,822,276.00); transfer to RDP for fees per 9/11/24 Order (Dkt. 1752) (\$36,423.24); transfer balance of account to Receiver's account per 9/11/24 Order (Dkt. 1752) (\$1,014,330.34)
0371	5450 S. Indiana	4	\$1,837,328.57	6/25/2020		Interest earned, \$22,876.56; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$685.32)
0231	7749-59 S. Yates	5	\$596,719.90	4/22/2020		Interest earned, \$7,437.64; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$872.72)
0389	6437 S. Kenwood	6	\$3,065.45	6/25/2020	7/25/2024	Interest earned, \$8,928.20; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$1,374,610.67); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$11,906.64); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$5,862.75)
0280	7109 S. Calumet	7	\$1,537,073.42	2/28/2022		Interest earned, \$19,158.53; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$2,217.83)

SEC v. EquityBuild, Inc., et al.

No. 18-cv-5587

Balances of Funds in Property Specific Accounts as of September 30, 2024

Account Number	Account Name	Property Number	Account Balance as of 9/30/24 (including September 2024 interest and account transfers posted October 2, 2024)	Date of Settlement	Date of Distribution	Reason for Change (if any) 7/1/24 - 9/30/24
0991	1414 E. 62nd Place	8	\$9,674.10	5/26/2021		Interest earned, \$128.86; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$680.79)
0058	8100-14 S Essex	9	\$1,617.09	4/30/2019	7/25/2024	Interest earned, \$5,338.62; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$870,324.76); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$19,768.18); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$3,721.50)
0405	7760 S. Coles	50	\$84,405.67	6/26/2020		Interest earned, \$1,061.47; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$885.49)
0843	1401 W. 109th	51	\$16,642.95	5/26/2021		Interest earned, \$217.54; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$840.07)
1114	6807 S. Indiana	53	\$105,385.57	5/26/2021		Interest earned, \$1,320.72; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$734.71)
0413	8000 S. Justine	54	\$162,089.02	6/26/2020		Interest earned, \$2,027.89; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$847.89)
0421	8107-09 S. Ellis	55	\$78,749.52	6/30/2020		Interest earned, \$991.91; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$951.48)
0439	8209 S. Ellis	56	\$232,171.53	7/1/2020		Interest earned, \$2,899.18; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$772.02)
0447	8214-16 S. Ingleside	57	\$192,231.87	6/30/2020		Interest earned, \$2,413.55; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$1,688.31)

SEC v. EquityBuild, Inc., et al.

No. 18-cv-5587

Balances of Funds in Property Specific Accounts as of September 30, 2024

Account Number	Account Name	Property Number	Account Balance as of 9/30/24 (including September 2024 interest and account transfers posted October 2, 2024)	Date of Settlement	Date of Distribution	Reason for Change (if any) 7/1/24 - 9/30/24
0116	5955 S. Sacramento	58	\$0.00	11/5/2019	7/26/2024	Interest earned, \$2,721.74; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$446,944.53); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$9,001.47); transfer balance of account and residual interest to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$2,721.74)
0124	6001-05 S. Sacramento	59	\$606.59	11/5/2019	7/26/2024	Interest earned, \$1,928.24; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$319,005.26); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$8,533.65); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$1,321.65)
0132	7026-42 S. Cornell	60	\$2,043.56	11/6/2019	7/26/2024	Interest earned, \$5,813.07; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$881,158.41); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$12,109.27); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$3,769.51)
0140	7237-43 S. Bennett	61	\$985.55	6/30/2021	7/26/2024	Interest earned, \$2,979.16; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$462,558.72); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$14,049.73); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$1,993.61)
0157	7834-44 S. Ellis	62	\$0.00	11/4/2019	7/26/2024	Interest earned, \$10,581.32; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$1,708,891.24); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$12,353.20); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$10,581.32)

SEC v. EquityBuild, Inc., et al.

No. 18-cv-5587

Balances of Funds in Property Specific Accounts as of September 30, 2024

Account Number	Account Name	Property Number	Account Balance as of 9/30/24 (including September 2024 interest and account transfers posted October 2, 2024)	Date of Settlement	Date of Distribution	Reason for Change (if any) 7/1/24 - 9/30/24
0868	4611 S. Drexel	64	\$5,257,758.03	5/14/2021		Interest earned, \$65,485.58; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$3,659.74)
0876	6217 S. Dorchester	68	\$2,322,997.94	7/6/2021		Interest earned, \$28,982.86; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$5,629.82)
0512	6250 S. Mozart	69	\$868,519.61	12/22/2020		Interest earned, \$10,841.48; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$2,545.26)
0363	638 N. Avers	70	\$520,765.69	10/15/2021		Interest earned, \$6,510.42; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$2,320.56)
0165	701-13 S. 5th Avenue	71	\$1,162.14	3/31/2020	7/26/2024	Interest earned, \$3,735.37; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$604,377.51); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$13,215.84); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$2,573.23)
0884	7255 S. Euclid	73	\$1,105,901.69	6/29/2021		Interest earned, \$13,802.75; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$3,078.40)
0496	3074 Cheltenham	74	\$9,604.79	9/24/2020	8/23/2024	Interest earned, \$9,604.84; distributions to claimants per 7/23/24 Order (Dkt. 1717) (\$944,762.69); transfer to RDP for fees per 7/23/24 Order (Dkt. 1717) (\$24,016.14)

SEC v. EquityBuild, Inc., et al.

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Balances of Funds in Property Specific Accounts as of September 30, 2024

Account Number	Account Name	Property Number	Account Balance as of 9/30/24 (including September 2024 interest and account transfers posted October 2, 2024)	Date of Settlement	Date of Distribution	Reason for Change (if any) 7/1/24 - 9/30/24
0199	7625 S. East End	75	\$355,123.98	12/20/2019	8/23/2024	Interest earned, \$12,781.99; distributions to claimants per 7/23/24 Order (Dkt. 1717) (\$872,632.50); transfer to RDP for fees per 7/23/24 Order (Dkt. 1717) (\$25,564.98)
0207	7635 S. East End	76	\$10,783.08	12/20/2019	8/23/2024	Interest earned, \$10,783.09; distributions to claimants per 7/23/24 Order (Dkt. 1717) (\$1,009,157.95); transfer to RDP for fees per 7/23/24 Order (Dkt. 1717) (\$24,263.03)
0223	7750 S. Muskegon	77	\$3,411.32	12/18/2019	8/23/2024	Interest earned, \$3,411.33; distributions to claimants per 7/23/24 Order (Dkt. 1717) (\$323,280.30); transfer to RDP for fees per 7/23/24 Order (Dkt. 1717) (\$24,417.44)
0561	7201 S. Constance	78	\$7,487.74	9/30/2020	8/23/2024	Interest earned, \$7,487.73; distributions to claimants per 7/23/24 Order (Dkt. 1717) (\$718,581.50); transfer to RDP for fees per 7/23/24 Order (Dkt. 1717) (\$23,605.46)
0066	6160-6212 S King	79	\$3,463.53	4/30/2019	8/23/2024	Interest earned, \$3,463.56; distributions to claimants per 7/15/24 Order (Dkt. 1699) (\$325,326.50); transfer to RDP for fees per 7/15/24 Order (Dkt. 1699) (\$28,333.73)
0488	2736 W. 64th	80	\$338,248.80	9/29/2020		Interest earned, \$4,212.50; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$211.46)

SEC v. EquityBuild, Inc., et al.

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Balances of Funds in Property Specific Accounts as of September 30, 2024

Account Number	Account Name	Property Number	Account Balance as of 9/30/24 (including September 2024 interest and account transfers posted October 2, 2024)	Date of Settlement	Date of Distribution	Reason for Change (if any) 7/1/24 - 9/30/24
0900	4317 S. Michigan	81	\$852,323.52	12/2/2020		Interest earned, \$10,611.10; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$230.66)
0520	6355 S. Talman	82	\$463,324.89	9/29/2020		Interest earned, \$5,769.87; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$265.22)
0538	6356 S. California	83	\$271,393.20	9/29/2020		Interest earned, \$3,380.17; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$189.06)
0553	7051 S. Bennett	84	\$422,174.37	9/23/2020		Interest earned, \$5,256.83; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$189.06)
0579	7201-07 S. Dorchester	85	\$352,184.57	10/20/2020		Interest earned, \$4,386.06; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$216.25)
0975	7442-48 S. Calumet	86	\$550,389.29	11/16/2020		Interest earned, \$6,853.08; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$230.66)
0587	7508 S. Essex	87	\$720,952.40	10/28/2020		Interest earned, \$8,983.15; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$805.15)
0355	7546 S. Saginaw	88	\$547,387.74	5/13/2020		Interest earned, \$6,816.20; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$264.45)
0298	7600 S. Kingston	89	\$1,394,284.75	12/3/2020		Interest earned, \$17,359.28; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$452.27)

SEC v. EquityBuild, Inc., et al.

No. 18-cv-5587

Balances of Funds in Property Specific Accounts as of September 30, 2024

Account Number	Account Name	Property Number	Account Balance as of 9/30/24 (including September 2024 interest and account transfers posted October 2, 2024)	Date of Settlement	Date of Distribution	Reason for Change (if any) 7/1/24 - 9/30/24
0306	7656 S. Kingston	90	\$88,551.33	12/2/2020		Interest earned, \$1,105.32; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$255.74)
0918	7701 S. Essex	91	\$758,476.51	11/16/2020		Interest earned, \$9,442.62; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$189.06)
0215	7748 S. Essex	92	\$1,227,028.97	12/18/2019		Interest earned, \$15,274.54; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$212.90)
0595	7957 S. Marquette	93	\$211,223.01	9/21/2020		Interest earned, \$2,632.24; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$266.30)
0926	816 E. Marquette	94	\$862,568.49	11/18/2020		Interest earned, \$10,738.18; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$189.06)
0314	8201 S. Kingston	95	\$269,122.17	5/21/2020		Interest earned, \$3,351.72; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$189.06)
0322	8326-58 S. Ellis	96-99	\$1,348,565.76	6/11/2020		Interest earned, \$16,788.35; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$309.27)
0454	11117 S. Longwood	100	\$3,332.77	7/8/2020	7/26/2024	Interest earned, \$10,774.77; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$1,740,886.09); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$12,516.74); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$7,441.96)

SEC v. EquityBuild, Inc., et al.

No. 18-cv-5587

Balances of Funds in Property Specific Accounts as of September 30, 2024

Account Number	Account Name	Property Number	Account Balance as of 9/30/24 (including September 2024 interest and account transfers posted October 2, 2024)	Date of Settlement	Date of Distribution	Reason for Change (if any) 7/1/24 - 9/30/24
0330	6949-59 S. Merrill	101	\$0.00	12/1/2020	7/17/2024	Interest earned, \$3,588.13; distributions to claimants per 7/15/24 Order (Dkt. 1700) (\$1,093,263.55); transfer to RDP for fees per 7/15/24 Order (Dkt. 1700) (\$24,709.37); transfer balance of account and residual interest to Receiver's account per 7/15/24 Order (Dkt. 1700) (\$393,438.43)
0942	2800 E. 81st	108	\$451,403.45	4/30/2021		Interest earned, \$5,638.40; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$1,619.42)
0959	4750 S. Indiana	109	\$769,550.86	4/21/2021		Interest earned, \$9,605.55; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$2,210.34)
0504	5618 S. Martin Luther King	110	\$629,589.09	9/29/2020		Interest earned, \$7,853.70; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$1,418.46)
0546	6554-58 S. Vernon	111	\$524,691.00	10/15/2020		Interest earned, \$6,552.28; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$1,751.39)
0249	7450 S. Luella	112	\$194,567.69	5/7/2020		Interest earned, \$2,436.55; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$1,195.26)
0967	7840 S. Yates	113	\$364,981.50	4/23/2021		Interest earned, \$4,561.17; transfer for 24th fee app per 9/30/24 Order (Dkt. 1758) (\$1,497.46)

SEC v. EquityBuild, Inc., et al.

No. 18-cv-5587

Balances of Funds in Property Specific Accounts as of September 30, 2024

Account Number	Account Name	Property Number	Account Balance as of 9/30/24 (including September 2024 interest and account transfers posted October 2, 2024)	Date of Settlement	Date of Distribution	Reason for Change (if any) 7/1/24 - 9/30/24
0983	431 E. 42nd Place	115	\$0.00	11/5/2020	8/9/2024	Interest earned, \$301.02; transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$5,145.95); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$50,930.49)
0074	1102 Bingham	116	\$397,831.80	10/6/2021	7/26/2024	Interest earned, \$5,913.13; distributions to claimants per 7/10/24 Order (Dkt. 1695) (\$175,000.00); transfer to RDP for fees per 7/10/24 Order (Dkt. 1695) (\$17,792.78); transfer balance of account to Receiver's account per 7/10/24 Order (Dkt. 1695) (\$2,454.77)
	TOTAL FUNDS HELD:		\$31,698,147.92			

Exhibit 2

STANDARDIZED FUND ACCOUNTING REPORT for EQUITYBUILD, INC., et al. - Cash Basis
 Receivership; Civil Court Docket No. 18-cv-05587
 Reporting Period 7/1/2024 to 9/30/2024

Fund Accounting (See Instructions):				
		<u>Detail</u>	<u>Subtotal</u>	<u>Grand Total</u>
Line 1	Beginning Balance (As of 7/1/2024):	\$4,716,302.40		\$4,716,302.40
	<i>Increases in Fund Balance:</i>			
Line 2	Business Income			
Line 3	Cash and unliquidated assets			
Line 4	Interest/Dividend Income	\$57,927.73		
Line 5	Business Asset Liquidation			
Line 6	Personal Asset Liquidation			
Line 7	Net Income from Properties			
Line 8	Miscellaneous - Other¹	\$1,945,381.91		
	Total Funds Available (Line 1-8):			\$6,719,612.04
	<i>Decrease in Fund Balance:</i>			
Line 9	Disbursements to Investors			
Line 10	Disbursements for receivership operations			
Line 10a	Disbursements to receiver or Other Professionals ²	(\$359,536.41)		
Line 10b	Business Asset Expenses			
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses		\$0.00	
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	Total Disbursements for Receivership Operations		(\$359,536.41)	
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	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	
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			

STANDARDIZED FUND ACCOUNTING REPORT for EQUITYBUILD, INC., et al. - Cash Basis
 Receivership; Civil Court Docket No. 18-cv-05587
 Reporting Period 7/1/2024 to 9/30/2024

	Distribution Agent.....		
	Consultants.....		
	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 1-12):		(\$359,536.41)
Line 13	Ending Balance (As of 9/30/2024):		\$6,360,075.63
Line 14	Ending Balance of Fund - Net Assets:		
Line 14a	Cash & Cash Equivalents	\$6,360,075.63	
Line 14b	Investments (unliquidated EquityBuild investments)		
Line 14c	Other Assets or uncleared Funds		
	Total Ending Balance of Fund - Net Assets		\$6,360,075.63

¹ Settlement payment from T. DeRoo, \$128,769.08; transfers in of residual interest for resolved properties (property nos. 10-15, 49, 52, 63, 67, 72, 102, 107 and 6, 9, 49, 52, 59-63, 71, 100, 101, 116, 141) and auxiliary account, \$106,592.72; transfers in from Group 4 properties for RDP fees per 7/10/24 Order (Dkt 1695), \$136,393.45; transfer in balance of 6949 Merrill (Property 101) account per 7/15/24 Order (Dkt 1700), \$389,850.30; transfer in RDP fee amounts for Group 1 distributions (Properties 74-78) per Dkt 1717, \$121,867.05; transfer in RDP fee amounts for Group 2 distributions (Properties 1, 79) per Dkt 1699, \$57,813.96; transfer in balance of 5001 Drexel (Property 3) per 9/11/24 Order (Dkt 1752), \$1,004,095.35 = Total: \$1,945,381.91

STANDARDIZED FUND ACCOUNTING REPORT for EQUITYBUILD, INC., et al. - Cash Basis
Receivership; Civil Court Docket No. 18-cv-05587
Reporting Period 7/1/2024 to 9/30/2024

² RDP (Group 4 Distribution - RDP fees per 7/10/24 Order (Dkt 1695), (\$136,393.45); Groups 1&2 Fee Distribution to RDP per Dkts #1699, 1717, (\$179,681.01); contingent fees and expenses from final DeRoo settlement payment, (\$43,461.95) = Total: (\$359,536.41)

Receiver:

/s/ Kevin B. Duff

(Signature)

Kevin B. Duff, Receiver EquityBuild, Inc., et al.

(Printed Name)

Date:

9/30/24

Exhibit 3

EQUITYBUILD RECEIVERSHIP ESTATE ACCOUNT #0181

July 1 - September 30, 2024

Schedule of Receipts and Disbursements

Beginning Balance 7/1/24				\$4,716,302.40
RECEIPTS				
		Received From	Amount	
Interest	7/1/2024	Interest	\$14,029.65	
Transfer In	7/2/2024	Transfer accumulated interest for auxiliary account	\$126.92	
Transfer In	7/2/2024	Transfer accumulated interest on distributed properties (property nos. 10-15, 49, 52, 63, 67, 72, 102, 107)	\$13,662.39	
Transfer In	7/11/2024	Transfers from Group 4 properties for RDP fees per 7/10/24 Order (Dkt 1695)	\$136,393.45	
Transfer In	7/18/2024	Transfer balance of 6949 Merrill account per 7/15/24 Order (Dkt 1700) on Property 101 distribution	\$389,850.30	
Wire In	7/26/2024	DeRoo final payment on settlement, plus interest	\$128,769.08	
Interest	8/1/2024	Interest	\$21,060.38	
Transfer In	8/9/2024	Transfer residual interest on resolved properties (property nos. 6, 9, 49, 52, 59-63, 71, 100, 101, 116, 141)	\$92,803.41	
Transfer In	8/28/2024	Transfer RDP fee amounts for Group 1 distributions (Properties 74-78) per Dkt 1717	\$121,867.05	
Transfer In	8/28/2024	Transfer RDP fee amounts for Group 2 distributions (Properties 1, 79) per Dkt 1699	\$57,813.96	
Interest	9/3/2024	Interest	\$22,837.70	
Transfer In	9/27/2024	Transfer balance of 5001 Drexel per 9/11/24 Order #1752	\$1,004,095.35	
		TOTAL RECEIPTS		\$2,003,309.64
		Paid To	Amount	
Wire Out	7/12/2024	RDP (Group 4 Distribution - RDP fees per 7/10/24 Order (Dkt 1695)	(\$136,393.45)	
Wire Out	8/29/2024	Groups 1&2 Fee Distribution to RDP per Dkts #1699, 1717	(\$179,681.01)	
Wire Out	9/26/2024	Damian & Valori LLP (contingent fee from final DeRoo settlement payment for distribution to counsel)	(\$43,461.95)	

EQUITYBUILD RECEIVERSHIP ESTATE ACCOUNT #0181

July 1 - September 30, 2024

Schedule of Receipts and Disbursements

		TOTAL DISBURSEMENTS:		(\$359,536.41)
		Grand Total Cash on Hand at 9/30/2024:		\$6,360,075.63

Exhibit 4

Master Asset List

Receiver's Account (as of 9/30/2024)		
Institution	Account Information	Amount
AXOS Fiduciary Services	Checking #0181	\$6,360,075.63

Receivership Defendants' Accounts			
Institution	Account Information	Current Value	Amount Transferred to Receiver's Account
Wells Fargo	Checking (53 accounts in the names of the affiliates and affiliate entities included as Receivership Defendants)		\$190,184.13 ¹
Wells Fargo	Checking (account in the names of Shaun Cohen and spouse)		\$23,065.43 ²
Byline Bank	Checking (2 accounts in names of Receivership Defendants)	\$21,912.62 ³	
			Total: \$213,249.56

EquityBuild Real Estate Portfolio	
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 Plano, Texas	±\$450,000.00
	Approximate mortgage amount: \$400,000.00 Approximate value less mortgage: \$50,000.00

¹ This amount reflects the total value of all of the frozen bank accounts held by Wells Fargo that were transferred to the Receiver's account; the final transfer was made on 1/22/20, and included as part of the Receiver's Account as of 3/31/20.

² 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 3/31/19.

³ The Receiver is investigating whether these accounts are properly included within the Receivership Estate.

Exhibit 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION, et al.,

Plaintiffs,

vs.

EQUITYBUILD, INC.,
EQUITYBUILD FINANCE, L.L.C.,
JEROME H. COHEN, SHAUN D. COHEN,
and CITIBANK, N.A., as Trustee,

Defendants.

No. 18 C 5587

Chicago, Illinois
September 11, 2024
10:37 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS -
Status and Motion Hearing
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES:

For Plaintiff SEC: U.S. SECURITIES AND EXCHANGE
COMMISSION
BY: MR. BENJAMIN J. HANAUER
175 West Jackson Boulevard, Suite 1450
Chicago, Illinois 60604
(312) 353-8642

For Certain Trustees U.S. Bank, Fannie Mae,
Citibank, Wilimington Trust, and Creditor
SABAL TL1: DENTONS U.S., L.L.P.
BY: MR. ANDREW T. McCLAIN
233 South Wacker Drive, Suite 5900
Chicago, Illinois 60606-6361
(312) 876-8170

For Citibank, Trustee and Northeast Bank,
Institutional Lender: DICKINSON WRIGHT, P.L.L.C.
BY: MR. RONALD A. DAMASHEK
55 West Monroe Street, Suite 1200
Chicago, Illinois 60603
(312) 641-0060

1 APPEARANCES (Continued):

2

3 For Midland Loan Srvs.: AKERMAN, L.L.P.
4 BY: MR. THOMAS B. FULLERTON
5 71 South Wacker Drive, 46th Floor
6 Chicago, Illinois 60606
7 (312) 634-5700

8 For BC57, L.L.C., LOEB & LOEB, L.L.P.
9 Shatar and other BY: MR. ANDREW DeVOOGHT
10 institutional lenders: 321 North Clark Street, Suite 2300
11 Chicago, Illinois 60654
12 (312) 464-3156

13 For Certain Individual TOTTIS LAW
14 Investors: BY: MR. MAX A. STEIN
15 401 North Michigan Avenue, Suite 530
16 Chicago, Illinois 60611
17 (312) 527-1448

18 For UBS AG: KATTEN MUCHIN ROSENMAN, L.L.P.
19 BY: MR. ZACHARY M. SCHMITZ
20 525 West Monroe Street
21 Chicago, Illinois 60661
22 (312) 902-5200

23 For the Receiver: RACHLIS DUFF & PEEL, L.L.C.
24 BY: MR. MICHAEL RACHLIS
25 MS. JODI ROSEN WINE
MR. KEVIN B. DUFF
542 South Dearborn Street, Suite 900
Chicago, Illinois 60605
(312) 733-3950

COLLEEN M. CONWAY, CSR, RMR, CRR
Official Court Reporter
219 South Dearborn Street, Room 1918
Chicago, Illinois 60604
(312) 435-5594
colleen_conway@ilnd.uscourts.gov

1 (Proceedings available by phone/heard in open court:)

2 THE CLERK: 18 CV 5587, United States Securities And
3 Exchange Commission versus EquityBuild.

4 THE COURT: Good morning, everyone.

5 For the people that are in attendance in the
6 courtroom, we have the lawyers' -- the lawyers have signed in.
7 We know who you are for the record. But if you do speak, if
8 you could identify yourselves, when you speak, into the
9 microphone, for the court reporter's benefit, I'd appreciate
10 it.

11 There are a few motions that have been filed to talk
12 about. I wanted to talk about Group 6, Group 7, Group 8. Then
13 there's the Shatar's motion to stay pending appeal. So those
14 are the things that are on my agenda.

15 Let me start with the motion to approve the fees and
16 expenses for the judgment against Mr. DeRoo.

17 Does anyone, who's present here in the courtroom,
18 have any objection to that? I don't see anyone responding.

19 That motion is granted.

20 Counsel for the receiver had to chase Mr. DeRoo, and
21 a contingency fee for that success is reasonable, as are the
22 costs. And so that motion is granted.

23 The motion to withdraw the avoidance claim with
24 respect to the Group 1 BC57 property, there was an objection
25 that a claimant had raised to that compromise, and it was an

1 objection that, I suspect, many other claimants would share and
2 have shared over time, which is that everyone should be treated
3 equally.

4 And I appreciate that point of view, and it's
5 generally correct, but there is a difference between victims
6 who had a different legal relationship to assets than other
7 victims, and that distinction is one that has driven so much of
8 what has been happening in this case for the last several
9 years, but it's one that we have tried to honor, while also
10 balancing the big-picture fairness in a case where no one is
11 going to get what they bargained for and everyone is losing
12 something. But that distinction is what is underlying the
13 issue with respect to why BC57 might still have a position as
14 to that Group 1 property.

15 Does the receiver have anything else to say with
16 respect to that motion as to the BC57 property?

17 MR. RACHLIS: No, Your Honor.

18 THE COURT: Okay. I agree that it's a reasonable
19 compromise so that we don't have to spend more time and
20 resources getting to the bottom of a possible avoidance claim
21 as to what's left there. Ultimately, here now, we're really
22 just talking about a small amount in the grand scheme of
23 things, and it's better to compromise and move forward so that
24 we can get Group 1 closed.

25 And so that motion is granted.

1 The motion to approve the distribution of Property 3,
2 5001 South Drexel, I don't believe there are any objections to
3 that.

4 Is the receiver aware of any objections to that?

5 MR. RACHLIS: No, Your Honor.

6 THE COURT: That motion is granted.

7 Again, it's an appropriate and reasonable compromise
8 for that, that property, to get things wrapped up there and
9 moving along. So that motion is granted.

10 The twenty-fourth fee application. Can the SEC
11 confirm for me that the SEC has reviewed it and it comports
12 with the SEC's guidelines?

13 MR. HANAUER: Yes as to both inquiries.

14 THE COURT: Thank you.

15 I need a little bit more time with the fee
16 application. I haven't read it as closely as I have in the
17 past to be prepared for this hearing. I just didn't get to it.
18 But I will -- I don't need more briefs on it. I have seen the
19 objections that have been filed to the fee application, the
20 twenty-fourth fee application, and I'll try to get you a ruling
21 on that soon.

22 Let me address Shatar's motion for a stay pending
23 appeal.

24 I don't agree that Shatar has a strong likelihood of
25 success on appeal, but there is a non-zero chance of success,

1 and using a sliding scale approach, that's enough to persuade
2 me that the balance of harms from a wrongful distribution to
3 other claimants' harms, which would include the loss of
4 Shatar's priority, and the administrative expense of trying to
5 unwind distributions incorrectly made, that that weighs in
6 favor of a stay, but not a stay of distributions or
7 disbursements for approved fees and expenses of the receiver.

8 Those fees and expenses harm both Shatar and the
9 claimants equally. But I will -- so I will stay the Group 2
10 distributions for which Shatar has a claim that's pending on
11 appeal, but not as to any other distributions.

12 And even for claims that Shatar has, any
13 Court-authorized distributions to the receiver for fees and
14 expenses are not stayed.

15 So it's a limited stay, but I am granting it, in
16 part, for the reasons I have just stated.

17 Does the receiver need a more detailed written order
18 on that stay in order to implement it? Or do you need to
19 propose a different, maybe, distribution order in light of
20 this?

21 MR. RACHLIS: You know, we'd have to -- you know, if
22 it's okay, Your Honor, let us look back to what we have done
23 with Group 1, which -- where Your Honor had also entered a
24 stay, and see if we've submitted something different. We'll
25 try to be consistent with that. Because I understand your

1 order to be consistent with what you have done with BC57.

2 THE COURT: I think I might -- I am not so sure -- in
3 Group 1, I may not have even -- I may have stayed receiver fees
4 and expenses --

5 MR. RACHLIS: Oh, I didn't --

6 THE COURT: -- in Group 1. So I am doing less.

7 MR. RACHLIS: Let's take a look back. If it'll be a
8 help to the Court and to the receivership, we will be happy to
9 submit an order that's consistent with --

10 THE COURT: Right.

11 MR. RACHLIS: -- your previous --

12 THE COURT: Because what I really don't want to
13 happen -- I think with respect to Group 1, I stayed all Group 1
14 distributions pending appeal.

15 MR. RACHLIS: Yeah.

16 THE COURT: And I am not staying all distributions.
17 I am only staying distributions where there's a claim that
18 Shatar has, which there is more than that going on in Group 2.

19 MR. RACHLIS: I understand.

20 THE COURT: So I am trying to keep as much -- I am
21 trying to get as much money out the door for Group 2 as I think
22 is appropriate while balancing some risk that we will have to
23 unwind something.

24 So that's my approach. Mr. Stein?

25 MR. STEIN: Yes, Your Honor. Thank you. Max Stein

1 on behalf of certain individual investors.

2 If I might? If the stay could be self-terminating
3 upon the issuance of the mandate from the Seventh Circuit?

4 Last time, with the Group 1, we had to come back and
5 ask you to lift the stay. This way, it puts the onus back on
6 Shatar to come to you and say: Okay. Assuming they've lost,
7 we still want a stay for some reason.

8 THE COURT: Is there a chance that, over time, the
9 actual dollars and cents to be distributed will change?

10 And if it takes, perhaps, thirteen months to get a
11 mandate from the Court of Appeals, might we need another order
12 anyway, because something will have happened?

13 MR. RACHLIS: There will be a change in those
14 numbers, Your Honor, over that time period.

15 THE COURT: So I am not going to automatically
16 terminate the stay.

17 (Counsel nods.)

18 THE COURT: You're going to have to come to me for a
19 final distribution order when the time is right anyway. So
20 I'll leave it at that.

21 Am I missing any pending motions that I haven't
22 addressed? I'll ask the receiver.

23 MR. RACHLIS: There's no -- you're going to -- Your
24 Honor has indicated you're going to talk about Group 6 at this
25 point, so I don't -- there's nothing outside of the current of

1 Group 6 or no other motions that we're aware of that are left
2 open.

3 THE COURT: Right. There are motions with respect to
4 Group 6 for discovery.

5 MR. RACHLIS: Right.

6 THE COURT: Our Group 6 schedule has position
7 statements, I think, due September 24th.

8 (Counsel nod.)

9 THE COURT: And responsive statements due October
10 15th.

11 Are you still on track for that? I'll start with the
12 receiver.

13 MR. RACHLIS: Your Honor, we had submitted our
14 position statement on Group 6 on August 27th, so the next round
15 of briefing that you're referring to is from claimants and
16 others who are interested in responding.

17 THE COURT: But from your perspective, then, you
18 would be in a position to then file your responsive statement
19 to that on October 15th?

20 MR. RACHLIS: At this point, yes, Your Honor.

21 Of course, we don't know what we don't know in terms
22 of what may be submitted. But the answer, generally speaking,
23 is yes, Your Honor.

24 THE COURT: With respect to anyone present in the
25 courtroom who may be filing a responsive statement on Group 6,

1 can you tell me if you're on track?

2 I see Mr. DeVooght.

3 MR. DeVOOGHT: Good morning, Your Honor.

4 We are on track for September 24th for Group 6.

5 THE COURT: Do we have counsel for UBS and Midland
6 here?

7 MR. FULLERTON: Yes, Your Honor. Tom Fullerton for
8 Midland Loan Services.

9 MR. SCHMITZ: And Zachary Schmitz for UBS AG.

10 THE COURT: I am wondering about the discovery that
11 you think you might need, and I am -- at least with respect to
12 UBS, I don't have a great sense of what exactly you think
13 you're going to ask from me. I am not sure who the discovery
14 you might want is from and whether this is really new, such
15 that it's not information that you probably have already
16 developed.

17 So can you tell me a little bit more about that,
18 please?

19 MR. SCHMITZ: Sure, Your Honor.

20 I think, initially, two individuals that come to
21 mind. The main individual that's mentioned in the receiver's
22 statement is a former UBS employee, and so there's, you know,
23 challenges in communicating with that individual outside of the
24 discovery process, Mr. Reyes.

25 Additionally, UBS is exploring a defense with an

1 expert witness, and we would request time, you know, based on
2 what the receiver has submitted, you know, to consult and
3 retain an expert to address those allegations.

4 THE COURT: Why does Midland need an expert now -- or
5 time for an expert now -- about fair market value?

6 It seems like that is something that could have been
7 developed before now.

8 MR. FULLERTON: Your Honor, I tend to agree. The --
9 but Midland did not want to bear the expense of hiring an
10 expert as it relates to the fair market values of the
11 properties at issue.

12 At the time that the mortgages were granted to the
13 initial mortgagee, which is actually a -- Midland is servicing
14 these loans on behalf of a securitization. They're a little
15 downstream. We didn't want to bear that expense.

16 We've -- Your Honor may recall that one of the loans
17 at issue that we call EB3 has been adjudicated with respect to
18 many different properties. And the avoidance claims had not
19 been lodged as it relates to that loan. So we were, frankly,
20 hoping that that would remain true here and, as it turns out,
21 it's not.

22 So we would request that we have time to potentially
23 retain an expert to determine those fair market values.

24 I'll also say, though, that I have spoken with
25 receiver's counsel, and to the extent -- the dollars at issue,

1 as it relates to Midland, are not that great in the grand
2 scheme of things. It is possible that we'll be able to resolve
3 our differences without having to incur great expense in
4 discovery and litigating the matter further.

5 And I think Mr. Rachlis has some thoughts there as
6 well.

7 THE COURT: Well, what thoughts does the receiver
8 have about --

9 (Counsel laugh.)

10 THE COURT: -- discovery on Group 6?

11 MR. RACHLIS: Let's go --

12 THE COURT: A little closer to the microphone,
13 please.

14 MR. RACHLIS: I apologize, Your Honor.

15 Starting -- let's go back -- moving backwards.

16 With respect to Midland, Mr. Fullerton is right -- we
17 have spoken with him -- and think that, essentially, as the
18 Court has done before, entering and continuing this motion will
19 likely make sense, both because of the dollars at stake and
20 because, as the Court has seen, guidance from your opinions and
21 rulings on priority have been of assistance in resolving many
22 of the claims. One --

23 THE COURT: I am pausing. I'll pause there just to
24 say, it does look, though, that Group 6 might have -- is more
25 likely to have avoidance issues even if I resolve the priority

1 the way the receiver wants me to, which is a little different
2 than what we've done before and makes me worry about our
3 calendar and our schedule.

4 MR. RACHLIS: Absolute -- I agree, Your Honor. I
5 think the Midland issue -- separating them out is important.

6 I do think on the Midland side of things, I do
7 believe that that area is small enough, and differences would
8 likely be able to be overcome once -- you know, once other
9 things occur. So I do think that there is wisdom that we've
10 gleaned from other circumstances where this has been handled.

11 So that's Midland. One other point I did just want
12 to note.

13 Counsel's correct that in prior resolutions, you
14 know, compromises on certain properties in EB3, there have not
15 been avoidance claims raised, but for each of those, if one
16 goes back to the pleading, you will find, either in footnote or
17 in text, that there was not any waiver or any comment in
18 regards to the avoidance claims. Those compromises were
19 reached based on circumstances associated with those
20 individualized properties. And so as -- for a lot of different
21 reasons.

22 So while it is true as to those, I think those are
23 very much individualized and really don't set any precedent
24 whatsoever in regards to this issue.

25 But I just wanted to make that clear that there

1 was -- that that's the circumstance on those other properties.

2 As to UBS, looking at that. I think Your Honor's
3 generalized questions are correct in terms of reading the
4 motion. It was a little -- it is unclear as to what transpired
5 or what type of discovery would be needed at this point in
6 time.

7 We were unaware, for example, that there's a former
8 employee that may be -- process may be needed associated with
9 getting to that employee.

10 But overall, there -- getting Your Honor's input on
11 priority seems to help every time we've been involved in
12 discussions and guidance in that respect.

13 So we certainly don't oppose if Your Honor was --
14 with respect to both of these, to enter and continue them to a
15 time after you've looked at the priority question.

16 So as to keep the schedule, I mean, going now, as to
17 practical concerns, Your Honor, of course, is correct, we do
18 want to keep the schedule on Group 6. We do want to keep the
19 schedule on Group 7. We know Your Honor wants to talk about
20 Group 8 and Group 10. And all of those we hope to stay, to
21 some degree, on a schedule that is satisfactory to the Court.

22 So it's with those concerns in mind as well that we
23 were thinking that the way these have been handled previously
24 may make the most sense right now.

25 THE COURT: Do you know now whether Group 7 will have

1 a similar issue of a pot of money that might not be fully
2 resolved by the priority, a priority decision?

3 Do you know enough now about what's in Group 7?

4 MR. RACHLIS: I don't believe that we do.

5 (Receiver's counsel conferring.)

6 MR. RACHLIS: At least as to one -- I'm sorry. At
7 least as to one property. There's, I believe, six properties
8 in Group 7.

9 So there may be one property that fits within that
10 category.

11 THE COURT: It may be that -- maybe what we can do is
12 resolve priority as to the remaining groups and then, in
13 effect, shift the groups a little bit and then say: Now let's
14 do whatever avoidance claims are left as to all outstanding
15 groups. And that might be a way to have resources targeted to
16 the right issues at the right time that doesn't cause people to
17 be spending time, say, conducting discovery for avoidance
18 issues on Group 6 while you are preparing priority briefing on
19 Group 7.

20 MR. RACHLIS: Right.

21 THE COURT: I think we might be at the right time in
22 the big picture to make those kinds of adjustments given all we
23 have learned moving forward.

24 So that thought has crossed my mind, but I am
25 wondering what the receiver's reaction to that is.

1 MR. RACHLIS: There is wisdom to that approach, Your
2 Honor, both because it is -- well, for many reasons. It allows
3 the schedule to sort of stay in place. It allows the parties
4 to understand the Court's view on priority in other areas
5 associated with the various groupings. And then it allows the
6 parties to further have discussions associated with that and
7 then ultimately having, you know, these few properties out
8 there in a group in its own subgrouping, if you will.

9 And the fact is is that, you know, we have had
10 one-offs, as Your Honor well knows, through this process, but
11 they have proven over time -- it's taken time, but we've been
12 able to get through on those. And that's been true with 4520
13 Drexel. It's been true with 5001 Drexel.

14 So there are opportunities. And I think that that
15 process may allow similar opportunities to occur as well.

16 THE COURT: Does UBS have any problem if I just enter
17 and continue your motion for discovery?

18 MR. SCHMITZ: No, Your Honor.

19 THE COURT: And Midland, any issue with that?

20 MR. FULLERTON: No, Your Honor. Thank you.

21 THE COURT: Nothing is stopping you from continuing
22 to discuss with the receiver whether there is a potential
23 compromise.

24 (Counsel nod.)

25 THE COURT: And big picture. As we've seen with, for

1 example, Group 1 and BC57, if a compromise can be arrived at
2 that avoids litigation over avoidance claims, that very likely
3 is a savings of resources that I would find a reasonable
4 compromise.

5 So once you get more information about who's got
6 priority, you may be in a better position to think that
7 through. But I imagine everyone has an interest in keeping
8 expenses down.

9 So if you can get out while you can without
10 continuing to fight the receiver over factually-intensive
11 issues about particular transactions in a world where the
12 underlying events here, as we've said before, are fraught with
13 imperfect and perhaps unreliable records and witnesses and
14 information. So I think compromise is ultimately where
15 resources are going to be better expended.

16 So those motions for discovery are entered and
17 continued.

18 Is Group 7 on track?

19 MS. ROSEN WINE: Excuse me, Your Honor. If I may?
20 Jodi Wine for the receiver.

21 Just one housekeeping issue with this -- what we've
22 just been discussing.

23 Right now, the schedule has the claimants required to
24 respond to the receiver's avoidance positions in the September
25 24th filing. So that should be bifurcated. And maybe we could

1 have a similar order entered for Group 7; that to the extent
2 there are any avoidance claims made, that the responsive
3 statements would be bifurcated?

4 THE COURT: Do you have a sense of how many avoidance
5 claims might be live controversies after the priority issue is
6 resolved in Group 6?

7 MS. ROSEN WINE: In Group 6 or Group 7?

8 THE COURT: Both.

9 MR. RACHLIS: Well --

10 THE COURT: I think we already know about Group 6.
11 That's why I was --

12 MS. ROSEN WINE: Right.

13 THE COURT: -- focused on Group 7.

14 MS. ROSEN WINE: I don't think we can comment yet on
15 Group 7.

16 THE COURT: Okay. I will adjust the schedule to say
17 that with respect to Groups 6 and 7, briefing on avoidance
18 claims is deferred pending resolution of priority disputes.

19 But I do want in the opening brief filed by the
20 receiver, I do want a preview of where the avoidance claims are
21 at or how live they may be, just so that I have a sense of what
22 it might look like down the road.

23 So I still want to put on the receiver in the opening
24 salvo, as you have already done with Group 6, but then when
25 Group 7 comes, I still want to see something about what might

1 we be looking at on avoidance. But I am not going to put other
2 people to the expense of lodging responses or issues with
3 respect to avoidance until after I resolve priority.

4 Does that make sense to the receiver?

5 MR. RACHLIS: Yes.

6 MS. ROSEN WINE: Yes.

7 MR. RACHLIS: It does, Your Honor. And that's --
8 we've been operating under that sort of assumption at this
9 point.

10 THE COURT: So is Group 7 on track in terms of the
11 schedule we have?

12 It's -- I think discovery is supposed to wrap up on
13 -- at the end of this month.

14 MR. RACHLIS: Yes. We are working towards that goal.
15 We've been operating more -- we know that there's a -- our
16 position statement is due on October 28th.

17 I guess it is not beyond the realm of possibility
18 that we may file a motion or ask the Court for some additional
19 time on discovery, but I don't know that that would influence
20 the filing of our position statement.

21 As Your Honor knows, we are trying to corral
22 documents and other information, and we don't know for certain
23 that we may have everything by that September 28th date, so --
24 but our goal is to get our position statement consistent with
25 the schedule that the Court currently has for Group 7.

1 THE COURT: Okay. So for now, I am keeping the Group
2 7 schedule as it's been set.

3 Any thoughts on Group 8 from the receiver?

4 (Receiver's counsel conferring.)

5 THE COURT: Any thoughts of Group 8 from the
6 receiver?

7 MR. RACHLIS: Yes.

8 (Receiver's counsel conferring.)

9 MR. RACHLIS: You know, there's one other property
10 that Your Honor's been advised of in Group 6 for 6217
11 Dorchester.

12 THE COURT: There are two properties, right?

13 MR. RACHLIS: Oh, yeah. Two, yes.

14 THE COURT: Yes. Two more weeks, you can have two
15 more weeks before you file anything with respect to those
16 properties.

17 MR. RACHLIS: That's great, Your Honor.

18 We would like -- happy to report that it appears that
19 there is agreement between the certain investor -- at least
20 certain investors and the institutional investor that's
21 involved.

22 We understand that there is some follow-up that needs
23 to be done on their ends. And so the hope is to have a motion
24 in front of Your Honor in two weeks from today, if that is
25 acceptable.

1 And, Your Honor, it will need to include some type of
2 time period for objections by any claimant that's part of that
3 property. Would Your Honor wish to set a time for those
4 objections now?

5 THE COURT: Yes. Any motions with respect to those
6 two properties in Group 6 that have been carved out, any
7 motions from the receiver with respect to those should be filed
8 in two weeks, which is September 25th. And any objections to
9 what is proposed in that motion should be filed by October 2nd.

10 You don't need to notice the motion for presentment.

11 MR. RACHLIS: Okay.

12 THE COURT: You can just file it. And we have a
13 schedule for objections. Then I'll take a look at what gets
14 filed.

15 And if the receiver becomes aware of objections that
16 might not have been formally filed on the docket, please use
17 October 2nd to let me know about those objections.

18 MR. RACHLIS: Yes. We will do that.

19 (Receiver's counsel conferring.)

20 MR. RACHLIS: Your Honor, do I understand if the
21 objections are due -- our motion would be due on September
22 25th, and Your Honor's giving seven days for any objection?

23 THE COURT: Yes.

24 MR. RACHLIS: Is that adequate time for --

25 THE COURT: I would hope so.

1 MR. RACHLIS: Okay.

2 THE COURT: Does anyone think we need more time?

3 MR. STEIN: Your Honor, Max Stein.

4 While I represent certain of the individual
5 investors, the settlement here would be one that I think the
6 entirety of the individual investors group would want to be
7 aware of, and they may not have reason to be aware of it.

8 So a seven-day response time might be a bit tight,
9 unless you're simply asking for people to raise their hand and
10 say, "I have an objection." But, rather, I think it might make
11 more sense to say 21 days to submit your objection, in total,
12 so that everybody can then see it.

13 THE COURT: I'll give everyone two weeks. So October
14 9th to assert any objections.

15 (Receiver's counsel nod.)

16 THE COURT: And it's not helpful to me if it's just a
17 hand being raised saying, "I object." I need to know what the
18 basis is. So fair enough.

19 (Counsel nod.)

20 THE COURT: And I do want people to know what's
21 happening here and be heard.

22 So October 9th, then, will be the date for objections
23 to any proposed settlement or motion with respect to those two
24 properties out of Group 6.

25 MR. RACHLIS: Okay.

1 THE COURT: Group 8. Can we talk about Group 8?

2 MR. RACHLIS: Yes. We have been --

3 THE COURT: And I'm sorry. If you would just bear
4 with me one moment.

5 MR. RACHLIS: Yes.

6 (Court conferring with his clerk.)

7 THE COURT: I'm sorry. Go ahead, counsel.

8 MR. RACHLIS: As to Group 8, there have been -- we
9 have been looking at the schedule and considering when that
10 could reasonably start.

11 Importantly, we have been thinking also about the
12 fact that there are 470 claimants in that grouping, 17
13 properties, one institutional investor. So that would be the
14 largest grouping, for sure.

15 In that light, we have been speaking with the
16 institutional lender's counsel that's involved in Group 8, and
17 they have indicated that they are interested in working with us
18 and with Your Honor for purposes of a settlement conference in
19 order to see if we can expedite a possible resolution in that
20 matter.

21 In order to best be in a position to do that, and to
22 be of the most help, I think, to the Court and to any
23 participant, we still need a little bit of time to go through
24 those 470 claims. We're -- it's in process, but if -- given
25 the current Group 6 and Group 7 schedule, realistically, after

1 some serious looking at what needs to be done, if such a
2 conference were to be scheduled sometime in mid-November, that
3 would be -- we think that would be most efficacious, because
4 we'd be able to be in a position to provide more detailed
5 information and make such a conference meaningful. It also
6 would give opportunity for other folks to do the same.

7 There are many different investors who have counsel
8 for Group -- which you would expect given the number of
9 claimants. Mr. Stein represents a group of certain investors.
10 But there are at least -- it appears to be like a dozen
11 different counsel that are involved.

12 And so it may also be of help if we were to set a
13 schedule for -- a scheduled time for that conference, that Your
14 Honor provide us with some thoughts in terms of who should
15 participate in that conference. And if Your Honor would like
16 pre-settlement memoranda or something short, but that would
17 help the Court, because this is a different grouping, and would
18 sort of help sort of guide that discussion. So --

19 THE COURT: How about this? How about this as an
20 idea for Group 8? What if we had a status conference limited
21 to Group 8 and people with an interest in Group 8 in late
22 October?

23 And that group of people can talk about what makes
24 sense for either a conference or getting together on a possible
25 framing report. And then we can talk about when we would all

1 have availability, once we figure out who ought to be in the
2 room for our conference in November.

3 But I think it would make sense if people with an
4 interest in Group 8 had a particular target in mind in closer
5 to late October, to get us together and thinking about Group 8
6 then.

7 MR. RACHLIS: We had thought about that possibility
8 as well. We weren't sure what the most efficient way to --
9 either talk about some of that today or -- but a status
10 conference sometime towards the end of October, I think, would
11 be a good idea.

12 I know that several of us are going to be out at the
13 -- between the 28th -- double-check that. Yeah, the whole week
14 of -- I apologize.

15 Yeah, the week of October 28th, several on our team
16 will be out that week. So we'd be happy to participate either
17 before then or -- if Your Honor would like to see us, or after.

18 THE COURT: How about October 21st? Monday, October
19 21st?

20 MR. DAMASHEK: Judge, Ron Damashek, Northeast Bank,
21 institutional lender for Group 8.

22 I'll be in D.C. doing expert depositions on the 21st.
23 So if we could do something a little bit later that week, that
24 would be fine.

25 MR. RACHLIS: Would Your Honor -- and we also know

1 that we have the October 15th date that is going on, which may
2 not give us enough time to maybe make as meaningful a
3 participation during that week of October 21st.

4 Would Your -- is it too close in time to do something
5 like November 4th or 5th for a conference?

6 THE COURT: I think we can do November 4th or 5th.

7 MR. DAMASHEK: The 5th is Election Day. I don't know
8 if that impacts the Court's schedule.

9 But either day work for the institutional lender.

10 THE COURT: My hope is it won't affect the Court's
11 schedule.

12 (Counsel laugh.)

13 MR. RACHLIS: We can be present. We can be present
14 on either -- whichever day Your Honor wishes.

15 THE COURT: Why don't we do the 4th, if that works.

16 THE CLERK: 10:00 a.m.?

17 THE COURT: Yes.

18 THE CLERK: 10:00 a.m., the 4th of November.

19 THE COURT: So November 4th at 10:00 a.m. will be a
20 status for Group 8 only.

21 MR. RACHLIS: And will Your Honor also have the phone
22 available for any claimant that wishes to participate?

23 THE COURT: For any claimant who wants --

24 MR. RACHLIS: Any Group 8 claimant. I'm sorry.

25 THE COURT: And I'll keep the phone line open for

1 anyone --

2 MR. RACHLIS: Okay.

3 THE COURT: -- who wants to listen, but the subject
4 of the conference will be limited to Group 8.

5 And this is all an effort on my part to try and get
6 Group 8 moving right alongside Group 7 and all with an eye
7 towards some day getting to Group 10.

8 I am no longer as hopeful, as I was in May, that we
9 would get there by the end of December, but the slippage that
10 has occurred is not so worrisome to me that we're looking at
11 December of 2025. I think we're looking at getting to Group 10
12 in early 2025 is my goal.

13 I would say my goal continues to be getting to it by
14 December 2024, but it seems like that's not all that likely,
15 and I don't want to get anyone's hopes up. Although, I perhaps
16 got my own hopes up in the spring.

17 MR. RACHLIS: And, Your Honor, for -- we understand
18 the concern, and we are working diligently in an effort to meet
19 these dates. I did --

20 THE COURT: I see the fee application, so I know
21 you're working.

22 (Counsel laugh.)

23 MR. RACHLIS: So we thought it would be helpful to
24 note the following.

25 There have been 67 properties that have been

1 resolved, and there have been \$35 million of distributions that
2 occurred within the last several months.

3 So there has definitely been a significant amount of
4 progress. There's much to be done, but keeping that in
5 perspective, too, is good.

6 So we recognize that the December 31st date for this
7 year is unlikely. But, nevertheless, we're all working towards
8 that goal.

9 Well, one other comment on the phone -- on phone
10 participation so that anyone listening on the phone now or
11 later is clear.

12 Will they be -- will Group 8 or anyone who's
13 listening in be able to speak on any -- or comment to Your
14 Honor?

15 THE COURT: Yes. We will, again, reach out and
16 invite people who want to be heard to let that be known and
17 then we can open the phone line so that people who want to
18 speak can speak.

19 Again, on November 4th, my hope would be it's focused
20 on someone who has a direct stake in Group 8. But I'll give
21 any interested claimant an opportunity to be heard.

22 We have not heard that anyone wanted to speak this
23 morning from the claimants. There was some interest from
24 someone some time ago, but then there wasn't follow-up. So I
25 haven't heard that anyone wanted to speak today.

1 Is there anything else on -- I'll start with the
2 receiver -- your agenda for this morning?

3 MR. RACHLIS: Not with respect to Group 8.

4 Did you -- Group 10 we haven't discussed. I don't
5 know if Your Honor wishes to discuss Group 10, or we could do
6 that at a different time.

7 THE COURT: I don't think there's much to discuss
8 about Group 10 other than what I had said in the spring, which
9 is I need you to be thinking about what the rubric is going to
10 be for Group 10.

11 But, ultimately, Group 10 is the pot of money for
12 unsecured claimants, and I suspect, and expect, that the idea
13 will be some sort of pro rata percentage calculation likely
14 based on the principal that had been loaned or invested, and
15 then figure out the percentages.

16 I don't know if the denominator is going to be easy
17 to figure out when you're trying to figure out what the
18 percentages ought to be. But I am not sure what else is in the
19 offering there.

20 MR. RACHLIS: Well, we are working on Group 10, Your
21 Honor. And just two comments.

22 First is we are working -- as each group is being
23 completed, we are working with our -- with a group that's
24 working on keeping the portal system together as well as an
25 accountant that basically is tracking these unsecured claims.

1 So each time we go through a group, there is effort being made
2 to have that information put in, such that it will be readily
3 available once we're all done with all the groupings.

4 So there is a consistent effort to work through what
5 would be the Group 10 claimants. It just can't be done all at
6 the same time because we're not through each group. So that
7 work is being done.

8 Second, in terms of thinking about distribution
9 plans.

10 Yeah, we're not in a position to identify, but we
11 will say that we are very cognizant of the Seventh Circuit's
12 opinion in *SEC versus Huber*, which is 702 F.3d 903, which does
13 talk about the different methods for distribution. One is sort
14 of like a pro rata or net loss type of distribution model. The
15 other one which is commonly used as a rising tide methodology.
16 We are looking at both and having other considerations.

17 So it is along those guideposts from the Seventh
18 Circuit that are -- you know, that are helping us work through
19 the various issues.

20 So I hope that, at least, provides some further
21 flavor to Your Honor as to where we're at.

22 THE COURT: That's fine. That's helpful.

23 It prompts me to think of something that I want
24 everyone else to be thinking about, which is, what is the form
25 of a final order in this case, what is that going to look like,

1 such that whatever appeals from a host of interlocutory
2 decisions that have been made in the case, those can ripen to
3 be an appeal from a final order?

4 I want you to be thinking about what that's going to
5 look like. Is that only when distributions have been fully
6 accomplished and all accounts are at zero? Or is it something
7 else that is a final appealable order that closes this case on
8 the District Court docket and alerts everyone to what their
9 next steps might be?

10 This is a pretty complicated receivership, it seems
11 to me, and we might want to be thinking about what that kind of
12 order looks like with a lot of time to give that some thought.

13 So I -- that has popped in my head now, and so I do
14 think that might be a good time for us to end our conference
15 this morning on what, I'll say, is perhaps a slightly hopeful
16 note, because we're all talking about what the end might look
17 like, and that is on everyone's mind, with good appreciation
18 for what the receiver said earlier about what has been
19 accomplished, which is tens of millions of dollars having been
20 distributed, which is a sign of progress notwithstanding all
21 the frustrations that everyone is feeling about both being the
22 victim or -- ultimately, yes, the victim of a very expensive
23 and high-volume set of losses that takes a long time to wrap
24 one's head around and to manage the difficulties and the
25 challenges that come with having lost an investment of that

1 kind, whether you're an institutional investor or an individual
2 investor who had thought about retirement, and what those
3 options would be. And to have to go through a receivership in
4 a lawsuit that was filed in 2018 and not have that be over in
5 2024 is, of course, frustrating. But I think we are doing what
6 we can do to use the available tools to do some patchwork, and
7 that's what we're trying to do.

8 Anything further from the receiver?

9 MR. RACHLIS: Just one item, Your Honor.

10 Would Your Honor wish to set a status conference, a
11 general status conference at this point, as we're having today,
12 sometime down the road?

13 THE COURT: I will do that after I get the receiver's
14 recommendation for Group 7.

15 (Counsel nod.)

16 MR. RACHLIS: Very good, Your Honor.

17 THE COURT: From counsel in the courtroom, anything
18 further anyone wants to address?

19 (Counsel nod.)

20 THE COURT: Thank you for your time this morning.

21 MR. RACHLIS: Thank you, Your Honor.

22 MR. STEIN: Thank you.

23 (Proceedings concluded.)
24
25

C E R T I F I C A T E

I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the Status and Motion Hearing proceedings had in the above-entitled case before the HONORABLE MANISH S. SHAH, one of the Judges of said Court, at Chicago, Illinois, on September 11, 2024.

/s/ Colleen M. Conway, CSR, RMR, CRR

10/02/2024

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date