

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., EQUITYBUILD
FINANCE, LLC, JEROME H. COHEN, and
SHAUN D. COHEN,

Defendants.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

Magistrate Judge Young B. Kim

**MOTION TO APPROVE DISTRIBUTION OF PROCEEDS
FROM THE SALE OF PROPERTY 116 (1102 BINGHAM)**

Kevin B. Duff, as receiver (“Receiver”) for the Estate of Defendants EquityBuild, Inc. (“EquityBuild”), EquityBuild Finance, LLC (“EquityBuild Finance”), their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), hereby moves for approval of a plan for the distribution of certain proceeds from the sale of 1102 Bingham Street, Houston, Texas (“1102 Bingham” or “Subject Property”) which will fully and finally resolve all issues with that property. In support of his Motion, the Receiver states as follows:

1. On May 31, 2024, this Court issued its oral ruling on Group 4 properties, including the property at 1102 Bingham, which accepted the Receiver’s recommendations and overruled AMark’s objections. (Dkt. 1671) Subsequently, claimant AMark Investment Trust (“AMark”) filed two appeals from the Court’s rulings. (Appeal Nos. 24-2121 and 24-2217)

2. The Seventh Circuit issued a Fed. R. App. P. 33 order setting the matters for a mediation, which was held on October 7, 2024. (Appeal Dkt. 14)

3. As a result of the mediation, the parties were able to reach a compromise. The terms of the compromise include the following:

- a) As between AMark and the Receiver, the agreement resolves all claims, issues, and disputes of any kind or nature between and among them, including but not limited to all claims, issues, and disputes relating to 1102 Bingham or AMark's proof of claim submitted in this action;
- b) Within five days of the approval of this Motion, or as soon thereafter as practicable, the Receiver will distribute to claimant AMark, the amount of \$197,000 from the property account for 1102 Bingham. At that time, the remainder of the property account for 1102 Bingham (which is in excess of \$200,000) will be transferred to the Receiver's account and available for use to administer the Receivership Estate or pay unsecured claims;
- c) Any and all other claims, objections, or rights that might exist between or among the Receiver, on the one hand, and AMark, on the other hand, regarding 1102 Bingham or AMark's proof of claim submitted in this action are hereby compromised and waived, such that AMark will receive nothing further from the Receivership Estate;
- d) This agreement is a compromise of disputes and disagreements among or between the Parties;
- e) This agreement does not constitute an admission of the validity of any claim, defense, argument, or position made or taken by any Party;
- f) AMark withdraws and waives all objections it has asserted in this case and its appeals (Appeal Nos. 24-2121 and 24-2217), and agrees that any *lis pendens*

recorded against any estate property, as well as the dismissed lawsuit filed in Harris County, Texas styled *Anson Markwell (as Trustee for the AMark Investment Trust) v. EquityBuild Inc. (dba EquityBuild Capital Inc.)*, Case No. 2018-13722, are hereby resolved; and

- g) AMark further agrees that it will dismiss with prejudice the consolidated appeals pending in the Seventh Circuit Court of Appeals as Case Nos. 24-2121 and 24-2217, at its sole expense.

4. It is well-settled that the district courts have broad equitable powers and are afforded wide discretion in approving a distribution plan of receivership funds. *See, e.g., SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001); *SEC v. Enterprise Trust Co.*, 559 F.3d 649, 652 (7th Cir. 2009) (“District judges possess discretion to classify claims sensibly in receivership proceedings.”); *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992).

5. Because the Receiver is a fiduciary and officer of this Court, the Court may give some weight to the “...Receiver’s judgment of the most fair and equitable method of distribution.” *CFTC v. Eustace*, No. 05-2973, 2008 WL 471574, at *5 (E.D. Pa. Feb. 19, 2008) (approving receiver’s pro-rata distribution plan and recognizing that the receiver does not represent a particular group of investors or claimants but rather proposes a plan that is fair to all investors).

6. Based on the facts and circumstances, the Receiver believes that this resolution is fair and equitable. There are additional savings of time and resources achieved based on the agreement reached between and among the Receiver and AMark. As a result of the agreement set forth in this Motion, Group 4 issues are closed, as are any and all claims or objections by this claimant. AMark’s agreement to dismiss its appeals and to not seek further appeal from any rulings associated with the Subject Property will further save time and resources for many involved in the

Receivership. As a result of approving this agreement and distribution, the claims and issues with respect to the Subject Property and claimant will have concluded.

7. Throughout the negotiations with AMark, the Receiver endeavored to secure the largest amount of funds possible to be transferred to the Receiver's account for unsecured claims and administration of the Estate.

8. If the Court grants this Motion and the property account proceeds are distributed in accordance with the agreement, the Receiver expects over \$200,000 will be transferred to the Receiver's account for the benefit of the unsecured creditors and administration of the Estate. Accordingly, the Receiver requests authorization to pay the fees allocated to the Subject Property during the third and fourth quarter period associated with 1102 Bingham from the Receiver's account.

9. Notice of this Motion is being given to claimants who have submitted claims in this matter. In addition, this Motion will be made publicly available to all interested and potentially interested parties by posting a copy of it to the Receivership web site.

WHEREFORE, the Receiver seeks the following relief:

- a) a finding that adequate and fair notice has been provided to all interested and potentially interested parties of the current Motion;
- b) an order finding that the agreement between the Parties is fair, reasonable, and in the best interests of the Receivership Estate;
- c) an order providing a full and fair opportunity for any interested party to assert its interests and any objections to the relief requested within fourteen (14) days, and replies (if any) within seven (7) days, or setting such other schedule as the Court determines in its discretion is reasonable and just;

- d) approval of the distribution of funds as set forth herein, with distributions to be made within five (5) business days of the Court's approval of this Motion, or as soon as such distributions can be reasonably achieved;
- e) approval to transfer to the Receiver's account any residual interest earned on the account for the Subject Property after the distributions that the Court orders pursuant to this Motion have been made;
- f) approval of the payment from the Receiver's account of the Receiver and attorneys' fees allocated to the Subject Property for the Third and Fourth Quarters of 2024, as well as fees allocated to the Subject Property in any subsequent quarters; and
- g) such other relief as the Court deems fair and equitable.

Dated: October 29, 2024

Respectfully submitted,

s/ Michael Rachlis

Michael Rachlis
Jodi Rosen Wine
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
mrachlis@rdaplawn.net
jwine@rdaplawn.net

Attorneys for Kevin B. Duff, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2024, I cause to be filed the foregoing **Motion To Approve Distribution Of Proceeds From The Sale Of Property 116 (1102 Bingham)** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. Copies of the foregoing were served upon counsel of record via the CM/ECF system.

I further certify that I caused true and correct copy of the foregoing **Motion**, to be served by electronic mail upon all claimants who have asserted claims against the property located at 1101 Bingham Street, Houston, Texas, and upon all 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 **Motion** will be posted to the Receivership webpage at: <http://rdaplaw.net/receivership-for-equitybuild>

/s/ Michael Rachlis _____

Michael Rachlis
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
Fax (312) 733-3952
mrachlis@rdaplaw.net