

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

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

**RECEIVER’S FIFTH MOTION FOR COURT APPROVAL OF THE
PROCESS FOR PUBLIC SALE OF REAL PROPERTY BY SEALED BID**

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”), and pursuant to the powers vested in him by Order of this Court entered on August 17, 2018, respectfully moves for judicial approval of a process for the public sale of certain real property through sealed bid. In support of this motion, the Receiver states as follows:

Preliminary Statement

1. This motion for approval of a proposed process for the public sale of realty is one of three being filed with the Court concurrently. Although each motion seeks effectively the same relief, this motion stands separate because it relates to properties encumbered by so-called “institutional loans,” or debt originated by financial institutions in the business of making loans. These institutional loans were secured by mortgages recorded against properties subsumed within this motion. In addition, four of the seven properties subsumed within this motion are also

encumbered by mortgages recorded in favor of so-called "investor-lenders," or ordinary investors defrauded in the *Ponzi* scheme.

2. Because the Receiver anticipates numerous overlapping objections from the institutional lenders, he has separated the properties subsumed within this motion from those subsumed within the two contemporaneously filed motions (the Receiver's *Third* Motion For Court Approval and the Receiver's *Fourth* Motion For Court Approval) in order to avoid protracted briefing or a lengthy period of judicial review from interfering with his ability to quickly sell the properties encompassed herein.

This Court Authorized The Receiver To Sell Certain Assets Owned By The Receivership Defendants And Subsumed Within The Receivership Estate.

3. The United States Securities and Exchange Commission filed this case against EquityBuild, EquityBuild Finance, Jerome Cohen, and Shaun Cohen alleging violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10b-5, Section 20(a) of the Exchange Act, 15 U.S.C. §78t(a), Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §77e(a) and (c), and Section 17(a) of the Securities Act, 15 U.S.C. §§77q(a).

4. In the Complaint, the SEC alleged that the defendants operated a Ponzi-scheme that raised at least \$135 million from more than 900 investors by, among other things, making untrue statements of material fact in connection with the sale of promissory notes allegedly secured by residential real estate primarily located on the south side of Chicago.

5. On August 28, 2018, the Court entered a judgment against defendants Jerome Cohen and Shaun Cohen which, among other things, enjoined future violations of federal securities laws. (Docket No. 40)

6. In the August 17, 2018 Order Appointing Receiver, the Court assumed exclusive jurisdiction over, and possession of, the assets of the Receivership Defendants, which defendants were expressly identified as including, but not being limited to, 7109 S Calumet LLC. (Docket No. 16, ¶ 1)

7. By Order dated March 14, 2019, the Court expanded the list of Receivership Defendants to include, among other entities, SSPH 6951 S Merrill LLC, 7749-59 S Yates LLC, SSDF7 Portfolio 1 LLC, and SSPH Portfolio 1 LLC. (Docket No. 290)

8. In its Order Appointing Receiver, the Court also conferred upon the Receiver (1) "all powers, authorities, rights and privileges" theretofore possessed by the principals of the Receivership Defendants under applicable state and federal law, as well as by the governing operating and shareholders' agreements and (2) all powers and authority of a receiver at equity, as well as all powers conferred upon a receiver under 28 U.S.C. §§ 754, 959, and 1692, and FRCP 66. (Docket No. 16, ¶ 4)

9. The Court also authorized the Receiver to "take all necessary and reasonable actions to cause the sale" of "all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property." (Docket No. 16, ¶ 38)

The Receiver Seeks Leave To Sell Seven Properties Encumbered By Mortgages Recorded In Favor Of Institutional Lenders.

10. At this time, and in conjunction with discussions with SVN Chicago Commercial, LLC ("SVN"), the Receiver has determined, in an exercise of business judgment, that it is appropriate to sell the following properties (each a residential apartment building) in order to,

among other things, eliminate operating expenses associated with the operation of properties beset by substantial vacancies:

- i. 6949-59 South Merrill Avenue, Chicago, IL 60649 ("6949-59 S Merrill");
- ii. 7450 South Luella, Chicago, IL 60649 ("7450 S Luella");
- iii. 7656 South Kingston, Chicago, IL 60649 ("7656 S Kingston");
- iv. 7109 South Calumet Avenue, Chicago, IL 60619 ("7109-19 S Calumet");
- v. 7546-48 South Saginaw, Chicago, IL 60649 ("7546-48 S Saginaw");
- vi. 7749-59 South Yates, Chicago, IL 60649 ("7749-59 S Yates");
- vii. 8201 South Kingston, Chicago, IL 60617 ("8201 S Kingston").

11. The property at 6949-59 S Merrill is a 31-unit building that was acquired by SSPH 6951 S Merrill, LLC on or about July 21, 2017 for \$1,925,000.

12. The property at 7450 S Luella is a 17-unit building that was acquired by SSPH Portfolio 1, LLC on or about May 22, 2017 for \$610,000.

13. The property at 7656 S Kingston is a 16-unit building that was acquired by SSDF7 Portfolio 1, LLC on or about May 3, 2018 for \$895,000.

14. The properties at 6949-59 S Merrill, 7450 S Luella, and 7656 S Kingston are each encumbered exclusively by mortgages recorded in favor of institutional lenders.

15. The property at 7109-19 S Calumet is a 21-unit building that was acquired by EquityBuild, Inc. on or about September 5, 2014 and conveyed to 7109 S Calumet LLC on or about February 7, 2017.

16. The property at 7546-48 S Saginaw is an 18-unit building that was acquired by EquityBuild, Inc. on or about January 4, 2016 and conveyed to SSDF7 Portfolio 1, LLC on or about May 4, 2018.

17. The property at 7749-59 S Yates is a 35-unit building that was acquired by 7749-59 S Yates LLC on or about March 13, 2017.

18. The property at 8201 S Kingston is a 13-unit building that was acquired by EquityBuild, Inc. on or about September 13, 2016 and conveyed to SSDF7 Portfolio 1, LLC on or about May 4, 2018.

19. The properties at 7109-19 S Calumet, 7546-48 S Saginaw, 7749-59 S Yates, and 8201 S Kingston are each encumbered by mortgages recorded in favor of *both* institutional lenders and individual investor-lenders, and the property at 7109 S Calumet is also encumbered by a *lis pendens* recorded by a Texas-based investor-lender.

The Receiver Seeks Leave To Conduct Sealed Bid Public Sales Of The Seven Properties Made The Subject Of This Motion.

20. The Receiver intends to sell the properties referenced herein by "public sale" in accordance with 28 U.S.C. §§ 2001, 2002.

21. Under 28 U.S.C. § 2002, a public sale of realty may be made by notice published "once a week for four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state or judicial district of the United States wherein the realty is situated."

22. Accordingly, the Receiver will provide notice of the public sale of the properties subject to this motion in the form attached as **Exhibit A** in both the Chicago Sun-Times and the Chicago Daily Law Bulletin.

23. In addition, SVN will market the public sale of the properties referenced in this motion through the following public media websites, which are popular forums for marketing properties in Chicago and throughout the United States, for the entire four week period:

- a. SVN

- b. SVN Chicago Commercial
- c. CoStar Group
- d. LoopNet
- e. City Feet
- f. RealNex
- g. CREXI
- h. theBrokerList
- i. Real Connex
- j. LinkedIn

24. The Receiver plans to conduct the sale of the properties referenced herein pursuant to the sealed bid public sale process articulated in **Exhibit B**.

25. The winning bid accepted by the Receiver for each property, and any compensation paid to SVN in connection therewith, will be subject to and presented to the Court for approval.

26. As part of the public sale process described herein, and consistent with the Order Appointing Receiver, the Receiver requests authorization to sell, and to convey title to, each of the referenced properties free and clear of all mortgages, liens, claims, and encumbrances. (Docket No. 16, Order ¶ 39)

WHEREFORE, the Receiver respectfully requests that this Court grant permission to sell the properties subject to this motion by sealed bid public sale, enter an order in the form attached hereto as **Exhibit C**, and grant such other relief as the Court deems just and proper.

Dated: April 18, 2019

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis_____

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Nicole Mirjanich
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EXHIBIT A

NOTICE OF PUBLIC SALE OF REAL ESTATE

Kevin B. Duff, Receiver for the Estate of EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen, in the action styled *U.S. Securities and Exchange Commission v. EquityBuild, Inc., et al.*, Civil Action No. 1:18-cv-05587, in the United States District Court for the Northern District of Illinois, Eastern Division, gives notice of his intent to sell the following real properties by sealed bid public sale:

- 1) 6949-59 South Merrill Avenue, Chicago, IL 60649
PIN 20-24-417-014-0000
- 2) 7450 South Luella, Chicago, IL 60649
PIN 20-25-225-027-0000
- 3) 7656 South Kingston, Chicago, IL 60649
PIN 21-30-309-026-0000
- 4) 7109 South Calumet Avenue, Chicago, IL 60619
PIN 20-27-105-003-0000
- 5) 7546-48 South Saginaw, Chicago, IL 60649
PIN 21-30-304-020-0000
- 6) 7749-59 South Yates, Chicago, IL 60649
PIN 21-30-318-013-0000
- 7) 8201 South Kingston, Chicago, IL 60617
PIN 21-31-126-001-0000

Offers may be made on a cash basis or subject to a financing contingency, in the latter case by completing Rider A to the form Purchase And Sale Agreement to be supplied by the Seller, accompanied by a proof of funds, and delivered to Jeffrey Baasch (“Broker”), SVN Chicago Commercial, 940 West Adams, Suite 200, Chicago, IL 60607, jeffrey.baasch@svn.com, by no later than 5:00 p.m. CST on [_____]. Offers must be transmitted to the Broker by e-mail or enclosed in a sealed envelope and delivered by U.S. mail, nationally-recognized overnight courier, or hand. Untimely and non-conforming offers may be rejected at the sole discretion of the Broker. The Receiver strongly recommends that prospective purchasers pre-qualify for financing prior to submitting an offer. No liability shall attach to the Receiver, the Broker, or any other party for failure to open or entertain any offer.

Property tours will be available to all bidders at scheduled times, and the properties may also be shown by appointment. The properties are being sold “as-is,” with all faults, as of the closing date. The winning bidder will be required to make an earnest money deposit in an amount equal to ten percent (10%) of the purchase price by wiring funds to a designated title company within three (3) business days after acceptance of the purchase and sale agreement. The closings will occur within fifteen (15) days after the receivership court grants the Receiver's motion to approve the corresponding sale, which motion will be filed as soon as practicable following the Receiver's acceptance of the purchase and sale contract submitted by the winning bidder. The closing will remain subject to the approval of the receivership court. The Receiver reserves the right to reject any and all offers to purchase any of the properties being offered for sale.

Bidders must comply with the “Sealed Bid Public Sale of Real Estate Terms and Conditions” approved by the receivership court, a copy of which may be obtained upon request to the Broker.

EXHIBIT B

**Sealed Bid Public Sale of Real Estate
Tranche 03C
Terms and Conditions**

Scheduled Tour Dates: [_____]

Offer Due Date: [_____]

1. Seller: The property is being sold by the Receiver for the EquityBuild Receivership Estate (the "Seller") created by that certain Order Appointing Receiver dated August 17, 2018, and entered in the action styled *U.S. Securities and Exchange Commission v. EquityBuild, Inc., et al.*, Civil Action No. 1:18-cv-05587, in the United States District Court for the Northern District of Illinois, Eastern Division (the "Receivership Court"). The Properties owned and controlled by the Receiver and being sold pursuant to these terms and conditions consist of the following:
 - a) 6949-59 South Merrill Avenue, Chicago, IL 60649;
 - b) 7450 South Luella, Chicago, IL 60649;
 - c) 7656 South Kingston, Chicago, IL 60649;
 - d) 7109 South Calumet Avenue, Chicago, IL 60619;
 - e) 7546-48 South Saginaw, Chicago, IL 60649;
 - f) 7749-59 South Yates, Chicago, IL 60649;
 - g) 8201 South Kingston, Chicago, IL 60617.
2. Offers: Offers may be made on a cash basis or subject to a financing contingency, in the latter case by completing Rider A to the form Purchase And Sale Agreement to be supplied by the Seller, accompanied in either case by a proof of funds, and delivered to Jeffrey Baasch (the "Broker"), SVN Chicago Commercial, 940 West Adams, Suite 200, Chicago, IL 60607, jeffrey.baasch@svn.com, by no later than 5:00 p.m. CST on [_____]. Offers must be transmitted to the Broker by e-mail or enclosed in a sealed envelope and delivered by U.S. mail, by nationally-recognized overnight courier, or by hand. Untimely and non-conforming offers may be rejected at the sole discretion of the Broker. The Seller strongly recommends that prospective purchasers pre-qualify for financing prior to submitting an offer. No liability shall attach to Seller, Broker, or any other party for failure to receive or open any offer.
3. Best and Final: Although bidders are encouraged to submit their best offer, at the Seller's sole discretion, a best and final round may be conducted. In that event, the Seller will select the most competitive bids and the corresponding bidders will be invited to participate in the best and final round to be conducted by the Broker. The best and final bidding process will be conducted by telephone and e-mail.
4. Earnest Money Deposit: The winning bidder will be required to make an earnest money

deposit in an amount equal to ten percent (10%) of the purchase price by wiring the funds to a designated title company within three (3) business days after acceptance by the Receiver of the purchase and sale agreement. The earnest money deposit shall become non-refundable at the expiration of the due diligence period (see Paragraph 6, below) and applied toward the purchase price at closing.

5. Property Tours: Property tours will be available to all bidders at scheduled times, and the Property may also be shown by appointment. The accuracy of the information contained in the bid materials cannot be guaranteed, and prospective bidders are therefore encouraged to complete any desired and non-invasive due diligence at their own expense.
6. Due Diligence: The winning bidder will be entitled to conduct a second due diligence review of the Property within ten days following acceptance of its offer.
7. As-Is Sale: The Property is being sold “as-is,” with all faults, as of the closing date. Neither the Seller, the Broker, nor any of their respective agents, contractors, attorneys, officers, or directors (“Agents”) makes any representation or warranty with respect to the physical condition of the Property, nor any of the personalty, fixtures, machinery, or equipment located thereon, including any warranty of merchantability or fitness for a particular purpose, or any type of other warranty, express or implied. The Seller, the Broker, and their Agents specifically disclaim any warranty, guaranty, or representation, oral or written, past or present, express or implied, concerning the physical condition of the Property or any of the personalty, fixtures, machinery, or equipment located thereon. Neither the Seller, the Broker, nor any of their respective agents possesses any authority to make any oral or written representation regarding the condition of the Property or its contents, other than as may be set forth in the purchase and sale contract, and no bidder may rely upon any such oral or written representation. The bidders shall conduct their own independent physical inspections of the Property and its contents, shall be charged with full knowledge of all documents made available for inspection, and shall submit offers based solely upon their own independent judgment and conclusions and not in reliance on any information provided by the Seller, the Broker, or their respective Agents.
8. Broker Participation Invited: A cooperating commission will be paid to a qualified, licensed real estate broker that procures the bidder who closes on the Property, provided that (1) said cooperating real estate broker is not prohibited by law from being paid such commission and, additionally, is not a principal or affiliate of the bidder and (2) no commission shall be considered earned or payable unless the broker registers its client on the Buyer broker registration form prior to the client's submission of a bid. Oral registrations will not be accepted. Under no circumstances shall any commission be paid if the sale does not close.
9. Closing: The closing shall be held within fifteen (15) days after the Receivership Court grants the Receiver's motion to approve the sale, which motion will be filed as soon as practicable following the Seller's acceptance of the contract submitted by the winning bidder. The Property will be conveyed by judicial deed, subject to any and all covenants, conditions, and restrictions of record, public utility easements, building lines, if any, real estate taxes not yet due and payable, housing court proceedings, building code violations, and acts suffered or permitted by the grantee. All closing costs, including the cost of the closing escrow, shall be paid by the winning bidder. In addition, the winning bidder will pay any earnest money escrow fee charged by the designated title company.

10. Other Terms and Conditions:

- a) The Closing shall remain subject to the approval of the Receivership Court.
- b) The Seller and the Broker reserve the right, in their sole and absolute discretion, to postpone or cancel the sealed-bid public sale of real estate with or without notice or to amend, modify, or add any terms and conditions to these general terms and conditions of sale and to announce such modifications or additional terms and conditions on or before the submission deadline. To the extent of any conflict between these terms and conditions and the purchase and sale agreement, the terms of the purchase and sale agreement shall control.
- c) These terms and conditions do not create any legal obligation on the part of the Seller or the Broker. If the sale fails to comply with any of these terms and conditions for any reason, the Seller and the Broker shall have no liability to any unsuccessful bidder.

EXHIBIT C

South Yates, Chicago, IL 60649; and (vii) 8201 South Kingston, Chicago, IL 60617, with each sale to be free and clear of all mortgages, liens, claims, and encumbrances.

ENTERED:

Date: _____