

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

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

**RECEIVER’S MOTION, RELATING TO REAL ESTATE AT
1102 BINGHAM, HOUSTON, TEXAS TO APPOINT APPRAISERS
AND LIST PROPERTY FOR SALE**

Kevin B. Duff, as the receiver (“Receiver”) for the Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), and pursuant to the powers vested in him by the Order of this Court entered on August 17, 2018, intends to sell the real property located at 1102 Bingham, Houston, Texas (the “Houston Property”) and in connection with the sale, seeks Court approval to appoint appraisers and list the property for sale. In support of his Motion, the Receiver states as follows:

BACKGROUND

1. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, the Securities and Exchange Commission sought and obtained the appointment of Receiver. Under the order appointing the Receiver, the Receiver has authority in equity, as well as under 28 U.S.C.

§§ 754, 959, and 1692, and Fed. R. Civ. P. 66, and was given broad powers to investigate and safeguard the assets of Receivership Defendants.

2. The Court has directed and authorized the Receiver to, *inter alia*, do the following:

- Use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Defendants (Docket No. 16, Order ¶ 8(A));
- Manage, control, operate, and maintain the Receivership Estate and hold in his possession, custody, and control all Receivership Assets, pending further Order of this Court (*Id.* ¶ 8(C));
- Use Receivership Assets for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver (*Id.* ¶ 8(H));
- Take such action as necessary and appropriate for the preservation of Receivership Assets (*Id.* ¶ 8(K));
- Take immediate possession of all real property of the Receivership Defendants, wherever located, including but not limited to all ownership and leasehold interests and fixtures (*Id.* ¶ 19); and
- Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estate (*Id.* ¶ 39).

3. Thus, the Order authorizes the Receiver to take necessary and reasonable actions to cause the sale of all real property in the Receivership Estate either at public or private sale. (*See* Docket No. 16, Order ¶ 38)

4. The sale is to comport with procedures as may be required by the Court and statutes such as 28 U.S.C. § 2001. (*Id.* ¶ 39) By way of this motion, the Receiver seeks Court approval for the sale process set forth below, including a finding that the private sale of the Houston Property discussed below is consistent with the requirements of Section 2001.

5. At this time, the Receiver has determined in his business judgment it is appropriate to dispose of the real property located to 1102 Bingham Street, Houston, TX 77007.

6. The Houston Property includes a plot of land and a single-family home. The property appears to be encumbered with EquityBuild affiliate debt. EquityBuild acquired the property on March 21, 2014.

7. The Receiver is asking this Court to confirm his retention of a listing agent and managing broker – SVN/AVR Commercial Real Estate Services (“Broker”) – to list for sale and market the Houston Property. The Broker also agreed to perform asset management services at no additional cost to the Receiver. These include but are not limited to property management, maintenance, upkeep, and repair of the Houston Property.

SALE BY PRIVATE SALE

8. 28 U.S.C. § 2001(b) allows the Receiver to sell the Houston Property through a private sale and provides a procedure the Receiver must adhere to. Section 2001(b) states:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale. 28 U.S.C. § 2001(b).

Appointment of Three Disinterested Appraisers

9. The Receiver is asking for Court approval to appoint three appraisers – Integra Realty Resources, Southwest Realty Consultants, and Greenbriar Appraisal Company – as described herein.

10. Each appraiser will be providing a market value appraisal, of highest and best use, as of the present date and with supporting bases for the valuation.

11. The fee associated with Integra Realty Resources’ appraisal will be \$1,500 and the report will be delivered approximately three weeks after the date of authorization. Integra Realty Resources requests payment prior to commencement of the project (engagement agreement attached as **Exhibit A**).

12. The fee associated with Southwest Realty Consultants’ appraisal is \$1,500 where half (\$750) is paid upon engagement and the other half (\$750) is paid upon delivery of the report. The appraisal is expected to be completed three weeks after the date of engagement (engagement agreement is attached as **Exhibit B**).

13. The fee associated with Greenbriar Appraisal Company’s appraisal is \$1,500 upon delivery of the report, which is approximately 2.5 weeks following execution of the engagement agreement (engagement agreement is attached as **Exhibit C**).

Notice to All Interested Parties

14. The Receiver will provide notice of the private sale process to all interested parties including without limitation the following known interested parties: (a) all creditors of the Receivership Entities known to the Receiver who have asserted a lien (including any security interest), claim, right, interest, or encumbrance of record against all or any portion of the Houston Property, including all mortgagees with EBF affiliate debt as identified by a recorded mortgage or

proof of claim form identifying the property; (b) counsel to all parties who have filed an appearance in this case; and (c) all applicable federal and state taxing authorities of the Receivership Entities that, as a result of the sale of the Houston Property, may have claims, contingent or otherwise, in connection with the Receivership Entities' ownership of the Houston Property or have any known interest in the relief requested by the Motion.

15. A copy of this motion and notice will also be published on the Receiver's webpage.

16. Any offer that is accepted by the Receiver after completion of the private sale process will be subject to and presented to the Court for approval. Any compensation to the Broker associated with the sale also will be subject to and presented to the Court for approval.

17. As part of the sale process, and consistent with the Order, the Receiver requests authorization to sell, and transfer clear title to, these properties free and clear of all liens, claims, and encumbrances. (Docket No. 16, Order ¶ 39)

WHEREFORE, the Receiver respectfully requests that this Court grant this Motion, allow the Receiver to list the property at 1102 Bingham, Houston, Texas for sale and appoint three appraisers as described herein, and grant such other relief as the Court deems just and proper.

Dated: September 13, 2019

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis

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

Exhibit A

Integra Realty Resources
Houston

9225 Katy Freeway
Suite 206
Houston, Texas 77024

T 713-973-0212
F 713-973-2028
www.irr.com



June 5, 2019

Mr. Kevin B. Duff, Federal Equity Receiver
Rachlis Duff Peel & Kaplan, LLC
542 S. Dearborn Street, Suite 900
Chicago, IL 60605

Re: The appraisal of an effectively vacant tract of land located at 1102 Bingham,
Houston, TX 77007

Dear Mr. Duff,

Integra Realty Resources – Houston, subject to your authorization, will prepare an appraisal report of the above referenced property. The purpose of the appraisal will be to determine the current “As Is” market value of the property.

Our opinions will be strictly expressed and reported in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), and the professional ethics and standards of professional appraisal practice of The Appraisal Institute.

The fee for completion of the appraisal report will be **\$1,500**, and the report will be delivered within approximately **Three Weeks** of the date of your authorization. We request payment prior commencement of this project.

Our fee specifically covers completion of the initial appraisal report. Any subsequent consultations, updates, or expert testimony relating to this matter will be billed separately at our standard hourly billing rates, which are as follows:

	<u>Hourly Rate</u>
Todd A. Rotholz:	\$275.00
Staff Appraiser:	\$150.00
Research Staff:	\$85.00
Administrative Staff:	\$75.00

In order to engage the appraisal services of Integra - Houston, based on the terms and conditions described above, we ask that you sign one copy of this letter and return it to our office.

Integra Realty Resources
Houston

9225 Katy Freeway
Suite 206
Houston, Texas 77024

T 713-973-0212
F 713-973-2028
www.irr.com

June 5, 2019
Mr. Kevin B. Duff, Federal Equity Receiver
Rachlis Duff Peel & Kaplan, LLC

We look forward to working with you on this assignment. Should you have any questions regarding this matter, please feel free to contact me.

Yours truly,

A handwritten signature in blue ink, appearing to read "T. Rotholz", is written over a light blue rectangular background.

Todd Rotholz, MAI

AGREED AND ACCEPTED:

By: _____

Date: _____

Exhibit B

SRC
SOUTHWEST REALTY CONSULTANTS

September 12, 2019

Justyna G. Rak
Paralegal
Rachlis Duff Peel & Kaplan, LLC
542 S. Dearborn Street, Suite 900
Chicago, IL 60605

Reference: Appraisal of 0.6887 acre of land located at 1102 Bingham St., Houston, Harris County, Texas as described by HCAD account #005-067-0000-001

Dear Ms. Rak:

This letter will serve as our proposal, and upon your acceptance, our letter of engagement to provide an estimate of market value on the above referenced property. It is our understanding that you are the client in this assignment; therefore, we will address the report to you. The appraisal will state our opinion of market value as of September / October 2019 (based on date of engagement). Our analysis will consider the physical aspects of the property which are apparent during the inspection, as well as any information you are able to provide us. Our appraisal report will be prepared in conformity with the requirements of the Code of Ethics and the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Institute. An appraisal with one approach (land only) will be conducted.

The fee for this appraisal assignment will be \$1,500. We request one half (\$750) of the fee to be paid at the time of engagement, and the remainder to be paid at the time of delivery. Our estimated completion date for the assignment is three weeks from the date of engagement. It is understood that as a result of the execution of this agreement, the payment of the appraisal fee is not contingent upon the appraised value, a loan closing, or any other pre-arranged condition.

You acknowledge that we are being retained as an independent contractor to perform the services described, and nothing in this agreement shall be deemed to create any other relationship between us. This assignment is complete upon delivery of the appraisal report to you.

Thank you for calling on us to render these services, and we look forward to working with you. Please sign below to authorize the assignment and return one copy to our firm and retain a copy for your files.

Sincerely,

Agreed and accepted:



Steven H. Clegg

By: _____

Title: _____

Date: _____

Exhibit C



GREENBRIAR
APPRAISAL COMPANY
Real Estate Appraisers-Consultants

BRAD KANGIESER, MAI, SRA



June 5, 2019

Mr. Kevin B. Duff
c/o Ms. Justyna G. Rak
Rachlis Duff Peel & Kaplan, LLC
542 S. Dearborn Street, Suite 900
Chicago, IL 60605

Reference: Appraisal of effectively vacant land located at 1102 Bingham Street, Houston, Harris County, Texas 77007.

Dear Mr. Duff,

Per your request, we will be pleased to appraise the fee simple interest in the above referenced property for internal auditing procedures in compliance with the requirements of FIRREA and USPAP. Our fee, inclusive of expenses, is \$1,500 for a bound appraisal report as well as an electronic copy. The fee is payable upon delivery of our reports. All payments shall be made at 14780 Memorial Drive, Suite 123, Houston, Texas 77079.

In order to complete the assignment, you will provide a survey, if available and a property contact for access. The appraisal will commence the date this retainer letter is executed with our delivery date being approximately 2.5 weeks. Our report will contain our usual contingent and limiting conditions, which are attached to this agreement. If you have any questions regarding this assignment please call Brad Kangieser, MAI, SRA.

It is understood that this assignment and the payment of our fee is not dependent or contingent upon any loan commitment, sale, trial outcome, receipt of funds by you, or any other condition or contingency. So we may proceed with this assignment, please indicate your acceptance by signing, dating and returning a copy of this letter.

Thank you for your consideration of our firm and your business, which is appreciated.

Sincerely,

Brad Kangieser, MAI, SRA
President

By: _____

Name:

Title:

Date: _____

CONTINGENT AND LIMITING CONDITIONS

This appraisal is subject to the following limiting conditions.

The legal description furnished to us is assumed to be correct. We assume no responsibility for matters legal in character, nor do we render any opinion as to the title, which is assumed to be good and marketable unless otherwise stated.. Any existing liens and encumbrances have been disregarded and the property appraised as though free and clear under responsible ownership and competent management, unless otherwise indicated.

We have made no survey and assume no responsibility in connection with such matters. We believe the information in this report furnished by others to be reliable, but no warranty is given for its accuracy. This includes, but is not limited to, information obtained in regard to operating statements, rent rolls, flood plains, wetlands, geological fault lines, sufficiency of public utilities, and land or surface subsidence. The construction and condition of the improvements mentioned in the body of this report is based on observation and no engineering study has been made, unless previously noted, which would discover latent defects. No certification as to construction or any of the physical aspects could be given unless a proper engineering study were made.

No fault line, flood plain, or subsidence study has been made by the appraisal firm and could be undertaken only by a qualified engineering firm.

It is assumed that the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.

It is assumed that the property conforms to all applicable zoning and use regulations and restrictions unless a nonconformity has been identified, described and considered in the appraisal report.

It is assumed that all required licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

The distribution of the total valuation between land and improvements in this report applies only under the existing program of utilization. The separate valuations for land and improvements must not be used in conjunction with any other appraisal, and are invalid if so used.

Any value estimates provided in the report apply to the entire property, and any proration or division of the total into fractional interest will invalidate the value estimate, unless such prorations or division of interests has been set forth in the report.

The appraiser, by reason of this appraisal, is not required to give further consultation or testimony or to be in attendance in court with reference to the property in question, unless arrangements have been previously made.

Possession of this report or a copy thereof does not carry with it the right of publication. It may not be used for any purpose by anyone other than the addressee without the previous written consent of the appraiser.

CONTINGENT AND LIMITING CONDITIONS - CONTINUED

Neither all, nor any part of the contents of this report shall be conveyed to the public through advertising, public relations, news, sales or other media, without the consent and approval of the author, particularly as to valuation conclusions, and identity of the appraiser or firm with which he/she is connected, or any reference to the Appraisal Institute, or the MAI designation, or the SRA designation.

This report is written in conformity with the professional standards of practice and code of ethics of the Appraisal Institute, the Uniform Standards of Professional Appraisal Practice and the rules of the Texas Appraisal Licensing & Certification Board unless otherwise stated.

Unless otherwise stated in this report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyls, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, or other environmental conditions, were not called to the attention of nor did the appraiser become aware of such during the appraiser's site visit. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraiser, however, is not qualified to test such substances or conditions. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation, or other hazardous substances or environmental conditions, may affect the value of the property, the value estimated is predicated on the assumption that there is no such condition on or in the property or in such proximity thereto that it would cause a loss in value. No responsibility is assumed for any such conditions, nor for any expertise or engineering knowledge required to discover them.

The appraiser represents that he/she is not an expert to appraise insulation or other products banned by the Consumer Products Safety Commission which might render the property more or less valuable. In connection with this appraisal, the appraiser has not inspected or tested for, nor taken into consideration in any respect the presence or absence of insulation or other said products increase or decrease in the value of the property from the value placed thereon by the opinion of the appraiser.

The Americans with Disabilities Act (ADA) became effective January 26, 1992. I (we) have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative impact upon the value of the property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider possible noncompliance with the requirements of ADA in estimating the value of the property.

It is understood that this assignment and the payment of our fee is not dependent or contingent upon any loan commitment, sale, trial outcome, receipts of funds by you, or any other condition or contingency.

If this report is placed in the hands of anyone other than Client, the Client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The Appraiser is in no way to be responsible for any costs incurred to discover or correct any deficiencies of any type present in the property; physically, financially, and/or legally.

This report may be relied upon by "CLIENT" in determining whether to make a loan evidenced by a note (the "Property Note") which is further secured by the Property. The report may be relied upon by any purchaser or assignee of the Property Note in determining whether to acquire the Property Note or an interest

CONTINGENT AND LIMITING CONDITIONS - CONTINUED

therein. In addition, the report may be relied upon by any rating agency involved in rating securities secured by, or representing an interest in the Property Note. This report may be used in connection with materials offering for sale the Property Note, or an interest in the Property Note, and in presentations to any rating agency. With respect to the foregoing, the report speaks only as of the origination date of the report unless specifically updated through a supplemental report.

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2019, I electronically filed the foregoing **Notice** and the accompanying **Receiver's Motion, Relating to Real Estate at 1102 Bingham, Houston, Texas to Appoint Appraisers and List Property for Sale** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. Copies of the foregoing pleadings were served upon counsel of record via the CM/ECF system.

I further certify that I will cause to be served the following persons and/or entities via electronic mail (if known) or via U.S. mail at the recipient's last known address (if e-mail unknown):

Jerome Cohen
1050 8th Avenue N
Naples, FL 34102
jerryc@reagan.com
Defendant

All known investor-lenders and equity investors of any Receivership Defendant, including, but not limited to, the following investor-lenders identified as mortgagees in connection with the property at 1102 Bingham Street, Houston, Texas 77007:

1839 Fund I, LLC

Alan Schankman

Alan Walker

Alton Motes

AMark Investment Trust

American Estate & Trust, LC FBO Bruce Klingman's IRA

Anatoly Naritsin

iPlanGroup Agent for Custodian FBO Barry Armstrong

Clifford Lasky or Sandra Weisman

iPlanGroup Agent for Custodian FBO Dennis McCoy IRA

Fireshark Enterprises LLC

Flying Point Investment Group, LLC

Frank Bingham

Knickerbocker LLC

Manuel Camacho

Penny Adams, Inc. Solo 401K Trust

EquityTrust Company Custodian FBO Ramanan Ramadoss Case (.90%)

Robert Motes

Spectra Investments LLC c/o Deborah Mullica

Vicki Schankman

Yaron Fisher

Additionally, all known claimants who identified the property at 1102 Bingham Street, Houston, Texas 77007 in connection with a proof of claim submission:

Russell Waite

Millcreek Holdings LLC c/o Robert Karlsson

iPlanGroup Agent for Custodian FBO Charles Michael Anglin

Arbor Ventures Overseas Limited, LLC

Debbie Lasley

Michael Warner, Trustee of Warner Chiropractic Care Center, PC PSP

Other Interested Parties & Counsel Of Record

Jason D. Kraus (jdk@krausattorneys.com)
The Kraus Law Firm
5625 Cyprus Creek Pathway, Suite 308
Houston, TX 77069

Alan Padfield (abp@padfieldstout.com)
Matthew B. Fronda (mfronda@padfieldstout.com)
Padfield & Stout, LLP
420 Throckmorton St. Suite 1210
Fort Worth, Texas 76102

Adrianna Dean (Adrianna.Dean@lgbs.com)
Linebarger Goggan Blair & Sampson, LLP
P.O. Box 1519
Houston, TX 77251

Texas Comptroller of Accounts
P.O. Box 13528
Austin, TX 78711
bankruptcysection@cpa.texas.gov

Harris County Clerk
201 Caroline Street, Third Floor
Houston, TX 77002

Harris County Appraisal District
Information & Assistance Division
P.O. Box 992010
Houston, TX 77292-2010

Ann Harris Bennett, Tax County Assessor
Harris County
P.O. Box 4576
Houston, TX 77210-4576

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