



§§ 754, 959, and 1692, and Fed. R. Civ. Pro. 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 Naples Property 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 1050 8th Ave, N, Naples, FL 34103.

6. The Naples property is a single-family home in the name of Jerome Cohen and his wife. The Receiver filed a motion to confirm the Naples Property is a Receivership Asset asserting that the Naples Property was purchased and maintained with investor funds. (Docket No. 265) Following briefing and an evidentiary hearing on the Receiver's motion, the Court confirmed and determined the Naples Property is a Receivership Asset. (See Docket Nos. 492 & 512)

### **Retained Professionals**

7. The Receiver is asking this Court to confirm his retention of a listing agent and managing broker – Engel & Voelkers Naples Bonita Estero (“Broker”) – to list for sale and market the Naples Property.

8. The Receiver is also asking this Court to approve the rates to be charged by the Receiver's Florida real estate counsel, Paul Heuerman, a partner in the law firm of Roetzel & Address which is located in Naples, Florida. Heuerman has been practicing law for approximately 35 years and specializes in real estate, banking, and commercial law.

9. Heuerman has agreed to act on behalf of the Receiver, Kevin B. Duff with the assistance of a paralegal at his firm.

10. Heuerman has agreed to charge the receivership at a rate of \$390.00 per hour for his time and \$140.00 an hour for his paralegal's time which represents a discount of their standard hourly rates.<sup>1</sup>

11. The Receiver believes that Heuerman proposed rate is reasonable, appropriate, and in the best interest of the efficient and economical administration of this Receivership.

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<sup>1</sup> The regular rate Heuerman charges is \$460.00 per hour and \$155.00 per hour for his paralegal.

## II. SALE BY PRIVATE SALE

12. 28 U.S.C. § 2001(b) allows the Receiver to sell the Naples Property through a private sale and provides the following procedures relative to such a sale:

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) (emphasis supplied)

### Appointment of Three Disinterested Appraisers

13. The Receiver is asking for Court approval to appoint three appraisers – Wayne & Dudley Appraisers, Appraisal Source, LLC, and the Appraisal Shoppe, Inc. – as described herein.

14. 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 for property at issue.

15. The fee associated with Wayne & Dudley Appraisers appraisal will be \$600 and the report will be delivered approximately three weeks after the date of engagement (engagement agreement attached as **Exhibit A**).

16. The fee associated with Appraisal Source, LLC appraisal is \$500 and the report will be delivered approximately three weeks after the date of engagement (engagement agreement is attached as **Exhibit B**).

17. The fee associated with Appraisal Shoppe, Inc. appraisal is \$450 and the report will be delivered approximately three weeks after the date of engagement (engagement agreement is attached as **Exhibit C**).

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

19. 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.

20. 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 1050 8th Ave N, Naples, Florida for sale, appoint three appraisers as described herein, confirm his retention of a real estate broker, approve the rates to be charged by his Florida real estate counsel, and grant such other relief as the Court deems just and proper.

Dated: November 25, 2019

Kevin B. Duff, Receiver

By: /s/ Nicole Mirjanich

Michael Rachlis  
Nicole Mirjanich  
Rachlis Duff & Peel, 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**

EquityBuild, Inc.  
EquityBuild Finance, LLC  
*In Receivership*

Kevin B. Duff  
(312) 733-3390  
kduff@rdaplax.net

c/o Rachlis Duff Peel & Kaplan, LLC  
542 South Dearborn Street, Suite 900  
Chicago, Illinois 60605

September 30, 2019

**Via Email: appraisers@wayne-dudley.net**

Kerry R. Wayne, Jr.  
Wayne & Dudley Appraisers  
10176 Boca Court  
Naples, FL 34109

**Re: *Real Estate Appraisal for 1050 8th Avenue, N., Naples, Florida 34102***

Dear Kerry:

This confirms that Wayne & Dudley Appraisers will prepare a single-family form report appraisal for the purpose of estimating market value of the above referenced property. Your opinion will be strictly expressed and reported in compliance with the Uniform Standards of Professional Appraisal Practice, and the professional ethics and standards of professional appraisal practice of the Appraisal Institute. Your report may be used in connection with the action pending in the United States District Court for the Northern District of Illinois, titled, *SEC v. EquityBuild, Inc., et al.*, No. 18-cv-5587.

The fee for completion of the appraisal report will be \$600.00, and the report will be delivered within 3 weeks from the date of engagement.

If you agree to the terms stated above, please provide your signature below and return this letter to us at your earliest convenience.

Sincerely,

Agreed:

Kevin B. Duff

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name / Title

\_\_\_\_\_  
Date of Signature

# **EXHIBIT B**



EquityBuild, Inc.  
EquityBuild Finance, LLC  
*In Receivership*

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Kevin B. Duff  
(312) 733-3390  
kduff@rdaplaw.net

c/o Rachlis Duff Peel & Kaplan, LLC  
542 South Dearborn Street, Suite 900  
Chicago, Illinois 60605

September 30, 2019

**Via Email: anthony@appraisalsource.biz**

Anthony G. Heintz  
Appraisal Source, LLC  
6017 Pine Ridge Road, Suite 70  
Naples, FL 34119

**Re: *Real Estate Appraisal for 1050 8th Avenue, N., Naples, Florida 34102***

Dear Anthony:

This confirms that Appraisal Source, LLC will prepare a single-family form report appraisal for the purpose of estimating market value of the above referenced property. Your opinion will be strictly expressed and reported in compliance with the Uniform Standards of Professional Appraisal Practice, and the professional ethics and standards of professional appraisal practice of the Appraisal Institute. Your report may be used in connection with the action pending in the United States District Court for the Northern District of Illinois, titled, *SEC v. EquityBuild, Inc., et al.*, No. 18-cv-5587.

The fee for completion of the appraisal report will be \$500.00, and the report will be delivered within 3 weeks from the date of engagement.

If you agree to the terms stated above, please provide your signature below and return this letter to us at your earliest convenience.

Sincerely,

Agreed:

Kevin B. Duff

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Authorized Signature

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Printed Name / Title

---

Date of Signature

# **EXHIBIT C**

September 26, 2019

**The Appraisal Shoppe, Inc.**

2335 Tamiami Trail N., Suite 201  
Naples, FL 34103  
239-435-1111

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

Re: Proposal for appraisal of 1050 8<sup>th</sup> Ave N, Naples, FL 34102  
Property ID #14052400000, Collier County, Florida  
Lots 6&7, Block 29, Plan of Naples Tier 11  
Cohen, Jerome H & Schroyer, Patricia

Dear Ms. Rak,

At your request, I am presenting this proposal and letter for formal engagement to provide a current market value appraisal on the property referenced above. I am proposing to provide the finished report in an industry standard form appraisal format with standard narrative addenda and supporting documents. This proposal is presented with the understanding that this appraisal is being produced to estimate the market value of the subject property in order to assist in establishing a potential selling price for the property as ordered by a court proceeding.

Our standard form appraisal package for individual single family appraisals includes the "alamode" branded "RESIDENTIAL APPRAISAL REPORT" along with supporting data including a building sketch, location maps, and photos of the subject property as well as the comparable properties used in the report. The Appraiser will deliver the final appraisal report in a PDF format electronically via email unless other arrangements have been made. The quoted fee for performing the above appraisal to these specifications will be \$450. This fee does not include any court testimony or deposition time. If the Appraiser is required to provide depositions or court testimony, travel and court time will be billed at \$200/hour.

Please review this agreement and if you accept the terms of this proposal, sign the acknowledgment below and return to indicate your acceptance. It is requested that the full fee shall be paid in advance prior to delivery of the final report. The report will be delivered within 3 weeks from the date of engagement.

Thank you for the opportunity to submit this proposal. If you have any further questions, please do not hesitate to call me.

Sincerely,

**The Appraisal Shoppe, Inc.**

Lawrence G. LaCroix, SRA,  
State-Certified Residential Real Estate Appraiser #RD1112

**ACCEPTANCE OF PROPOSAL**

*By signing below I, \_\_\_\_\_, declare that I am the property owner, or that I am authorized to contract for appraisal services on the above referenced property. I accept this proposal as presented and in addition I affirm that I have been advised that the appraisal report will be prepared in conformity with USPAP (Uniform Standards of Professional Appraisal Practice) and the Statement of Limiting Conditions and Appraiser's Certification (which will be attached to the report). **As stated above, it is requested that the fee is to be paid in advance prior to delivery of the final report.***

Signed: X \_\_\_\_\_ Date: \_\_\_\_\_

Email Address for delivery of report (please print legibly): \_\_\_\_\_