

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
)	
Plaintiff,)	
)	Case No. 18 C 5587
v.)	
)	Judge John Z. Lee
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,)	
)	
)	
Defendants.)	

ORDER

For the following reasons, the Receiver's seventh and eighth interim applications and motions for Court approval of payment of fees and expenses of the Receiver and his retained professionals [755] [778] are granted.

I. Background

The Receiver's seventh interim application, ECF No. 755, covers the period from January 1, 2020, through March 31, 2020. The Receiver requests:

- **\$79,092.00** for the Receiver;
- **\$277,478.16** for Rachlis Duff & Peel, LLC ("RDP");
- **\$6,975.50** for BrookWeiner, LLC;
- **\$3,031.25** for Axos Fiduciary Services;
- **\$577.50** for Prometheum;
- **\$1,050.00** for Kraus Law Firm.

The Receiver's eighth interim application, ECF No. 778, covers the period from April 1, 2020, through June 30, 2020. The Receiver requests:

- **\$98,982.00** for the Receiver;
- **\$378,388.47** for RDP;

- **\$7,067.50** for BrookWeiner;
- **\$4,507.50** for Axos;
- **\$577.50** for Prometheus.

II. Legal Standard

“In securities law receiverships, . . . the awarding of fees rests in the district judge’s discretion, which will not be disturbed unless he has abused it.” *S.E.C. v. First Secs. Co. of Chi.*, 528 F.2d 449, 451 (7th Cir 1976). “[T]he court may consider all of the factors involved in a particular receivership in determining an appropriate fee.” *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994). In making this determination, courts consider that the benefits provided by a receivership “may take more subtle forms than a bare increase in monetary value.” *Id.* (quoting *S.E.C. v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992)). Accordingly, “[e]ven though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation.” *Id.* (quoting *Elliott*, 953 F.2d at 1577). Courts also look to the position of the SEC, which is given “great weight” in determining whether fees should be awarded. *First Secs. Co.*, 528 F.2d at 451 (citation omitted).

III. Analysis

The Court grants the fee applications at issue, overruling the objections made by certain lenders. *See* Resp. to Receiver’s Seventh Interim Fee App., ECF No. 777; Resp. to Receiver’s Eighth Interim Fee App., ECF No. 792. The Court’s position with respect to these applications is influenced by, and consistent with, that of the SEC. *See* SEC’s Reply in Support of Receiver’s Seventh Interim Fee App. at 1, ECF No. 797

(“The SEC confirms that it has reviewed the Receiver’s invoices, they substantially comply with the SEC’s billing guidelines, and the SEC approves of their payment.”); SEC’s Reply in Support of Receiver’s Eighth Interim Fee App. at 1, ECF No. 803 (same); *First Secs. Co.*, 528 F.2d at 451.

In reaching this conclusion, the Court once again reaffirms both that there is a significant need for the Receivership Assets to be managed by a neutral party until an orderly claims process is concluded, and that the Receiver’s efforts have benefitted and will continue to benefit the Receivership Estate. *See, e.g.*, 1/7/20 Order at 3, ECF No. 614; 6/9/20 Order at 3, ECF No. 710.

Furthermore, and setting conclusory assertions aside, the objecting lenders have failed to show that the Receiver’s requested fees are excessive. *See* Resp. to Receiver’s Seventh Interim Fee App. at 19–23; Resp. to Receiver’s Eighth Interim Fee App. at 3–6. As the SEC notes, and as this Court has observed before, the Receiver and his legal professionals have devoted significant resources responding to various motions, objections, and inquiries made by lenders, with these efforts increasing the amount of fees to which the Receiver is reasonably entitled. *See* SEC’s Reply in Support of Receiver’s Seventh Interim Fee App. at 2 (“In less than two years, the lenders have filed more than fifty substantive motions, objections, and appeals that were adversarial to the Receiver.”). The Court also notes that, commensurate with the level of activity in this case, the Receiver’s average billing rates for the first and second quarters of 2020 were the lowest since the inception of the Receivership, and

his quarterly expenses are lower than certain earlier periods.¹ See Receiver's Combined Resp. to Obj. to Fee Apps. at 14, ECF No. 800; SEC's Reply in Support of Receiver's Seventh Interim Fee App. at 6–7; SEC's Reply in Support of Receiver's Eighth Interim Fee App. at 2.

Relatedly, the Court grants the Receiver's request for a lien on the estate assets and their proceeds to cover the Receiver's fees and other approved Receivership expenses that may exceed the Estate's unencumbered funds. See Receiver's Seventh Interim Fee App. at 18–25; Receiver's Eighth Interim Fee App. at 18–25. A court may “impose a lien on property in a receivership to satisfy the receivership expenses” and “in its discretion, determine who shall be charged with the costs of the receivership.” *Gaskill*, 27 F.3d at 251. Furthermore, “liens for receivership expenses [may] take priority over secured creditors interests in the property when the receiver's acts have benefited the property.” *Id.*

As the SEC observes, the Receiver's efforts have benefitted the Receivership Estate, including through maintaining, marketing, and liquidating properties; representing those properties in adverse litigation; bringing new assets into the Receivership; and designing a claims process by which property sales proceeds will be distributed to senior secured claimants. See SEC's Reply in Support of Receiver's Seventh Interim Fee App. at 4. The Receiver has managed a substantial portfolio of residential real estate, worked to ensure the health and safety of its residents,

¹ Because the objecting lenders have not shown that the Receiver's requested fees are excessive, the Court agrees with the SEC that the lenders' request for a 20% holdback of those fees is not warranted at this time. SEC's Reply in Support of Receiver's Seventh Interim Fee App. at 7; SEC's Reply in Support of Receiver's Eighth Interim Fee App. at 1.

prepared the properties for sale, and helped formulate a process whereby claims will be evaluated in an orderly fashion. *Id.*

Additionally, the Receiver's proposed methodology to allocate fees and expenses to individual properties is reasonable. Under the Receiver's proposal, the only claimants that would pay for his work would be those the Court ultimately finds to have priority. *See, e.g., Elliott*, 953 F.2d at 1577 ("Although the prevailing secured claimant had to fight the Receiver's opposition to his claim, he reaped benefits when the Receiver defeated competing claims. By combatting competing claims, the Receiver became his ally. We find that, with these type of activities, the Receiver conferred a benefit on the secured creditors and merits fees from their collateral."). Moreover, expenses relating directly to a property will be allocated to that property; billing pertaining to the recovery of unsecured funds will not be allocated to any properties; and remaining fees and expenses will be allocated to the properties as a percentage of their gross sales price, once that value is determined for each. *See* Seventh Interim Fee App. at 22–24; Eighth Interim Fee App. at 23–25. Given this framework, the Court agrees with the SEC that the Receiver's proposed lien is reasonable and appropriate. *See* SEC's Reply in Support of Receiver's Seventh Interim Fee App. at 6; SEC's Reply in Support of Receiver's Eighth Interim Fee App. at 2.

Accordingly, the Court grants the Receiver's request for a lien on the estate assets and their proceeds to cover the Receiver's fees and other approved Receivership expenses that may exceed the Estate's unencumbered funds in accordance with the

framework described by the Receiver and approved by the SEC. The priority of the Receiver's lien as to any particular property or properties, however, will be determined by the Court as part of the claims approval process.

In sum, the Court determines that an award of the fees requested is appropriate, based on the complexity of the Receivership, the quality of the work performed, the benefit to the Receivership Estate, and the records presented with the applications. The lenders' objections are overruled, and the Receiver's motions are granted as described herein.

IT IS SO ORDERED.

ENTERED: 10/26/20



John Z. Lee
United States District Judge