

**UNITED STATES DISTRICT COURT
FOR THE 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-005587

**CAPITAL INVESTORS, LLC’S RESPONSE
TO THE RECEIVER’S GROUP 2 POSITION STATEMENT**

NOW COMES claimants Capital Investors, LLC; 5001 South Drexel Blvd Fund II, LLC; 6951 S. Merrill I LLC, and Capital Partners (collectively “CI”), by and through their attorneys, Gardiner Koch Weisberg & Wrona, and for their response to the Receiver’s Submission on Group 2 Claims (ECF 1571), CI states as follows:

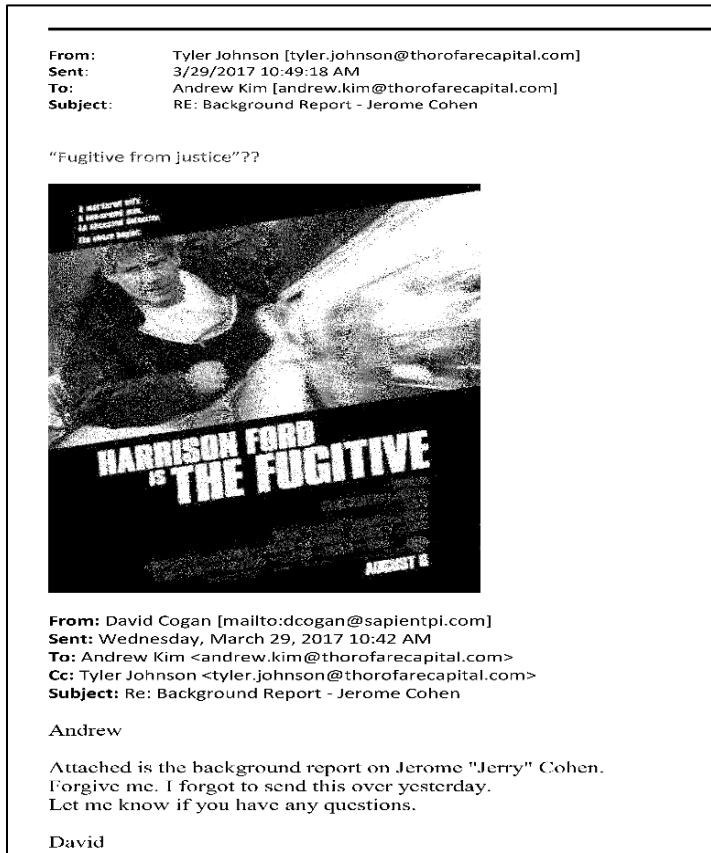
1. By way of background, in relation to the Group 2 properties at issue, CI invested \$1,550,000.00 in relation to the 6949-59 S Merrill Avenue property (“Merrill”) during the time period of 2017-2018, and \$250,000 in relation to the 1700- 08 Juneway Terrace (“Juneway”) on April 4, 2017. CI’s interest in the Juneway property is in relation to a mortgage loan. In relation to Merrill, CI’s interest was characterized as an equity interest.

2. In relation to the Receiver’s position statement pertaining to both Juneway and Merrill, the Receiver notes that the sole institutional lender for said properties was Thorofare Asset Based Lending REIT Fund IV, LLC (hereinafter “Thorofare”). Regarding Thorofare, the Receiver importantly noted in his position statement that “they were clearly aware that EquityBuild’s business was sketchy and run by a ‘fugitive from justice,’ as disclosed by a Thorofare employee

working on the loan.” (ECF 1571). The Receiver also stated the following in his filing, which CI believes should be considered by the Court in relation to the distribution of funds:

There is a strong argument that more could (indeed, should) have been done by Thorofare, consistent with principles of inquiry notice, that would have uncovered additional issues associated with the Cohens’ fraud, including, e.g., that EquityBuild’s business model was to crowdfund its investments through largely unsophisticated investor-lenders. who lent their money to EquityBuild in exchange for a promised first lien secured interest, and that EquityBuild was doing so at the same time and on the same property that Thorofare was financing. (ECF 1571, pg. 9-10).

3. Page 59 of the Receiver’s Position Statement specifically shows the correspondence among Thorofare employees regarding the 18-page background report prepared for Thorofare relating to Jerome Cohen, which shows various lawsuits, bankruptcies, arrests, and other concerning issues. (ECF 1571, pg. 59). Rather than taking the concerns contained within the report seriously, Thorofare employee Tyler Johnson sent a photo of a movie poster for Harrison Ford’s “The Fugitive film:



4. CI's position is and has been that Thorofare clearly had at least some knowledge that EB was running a "sketchy" business, and they should have done more to investigate the Equitybuild and the Cohens before providing funding. They should have taken the following matters seriously:

- Jerome Cohen was a fugitive from justice in Pennsylvania in November 1993.
- American Home Rentals, a company operated by Jerome Cohen and Steve Cohen, was sued by the Preate's Bureau of Consumer Protection in February 1993 for defrauding customers of about \$350,000 over a period of two years.
- In June 1993, the Deputy Attorney General of Pennsylvania sued American Home Rentals for violating an injunction by operating under a different name.
- In September 1994, American Home Rentals was sued by the Commonwealth of Pennsylvania for systematically violating the state Unfair Trade Practice and Consumer Protection Law.
- More than 100 real estate tax lien petitions were filed against Jerome Cohen by the City of Philadelphia.

Because Thorofare failed to do their due diligence in relation to the above issues, their claim should be voided or reduced accordingly.

5. The Receiver properly highlighted said issue in his Position statement where also he stated the following:

[T]he Court has also before it evidence of inequitable conduct including but not limited to the lack of diligence in regards to the underwriting of the loans whether it be from knowing in detail EquityBuild's business model (i.e., Shatar) or a situation where the claimant knows very much who they are doing business with (i.e., Thorofare). Those equitable concerns should not be ignored. (ECF 1571, pgs. 14-15).

6. In relation to CI and Thorofare's claim for Juneway, the Receiver noted that the investor lenders' mortgage was executed the same day as Thorofare's, but EB intentionally waited two months to record the former. (ECF 1571, pg. 9). Here, CI invested \$250,000 in relation to Juneway on April 4, 2017. Thorofare's investment was not made until April 6, 2017. The Receiver properly recognized that it would be inequitable to allow Thorofare to obtain a recovery to the

exclusion of other creditors “merely by virtue of EquityBuild’s manipulation of recording dates.” (ECF 1571, pg. 9).

7. In the event that Thorofare’s claims are not voided, given the conduct of Thorofare described herein and in the Receiver’s position statement regarding same, CI agrees with the recommendation of the Receiver regarding Thorofare not being entitled to any distribution in excess of its principal investment. In relation to same, the Court should take note of one of the facts highlighted by the Receiver in relation to Thorofare’s claims – specifically that Thorofare falsely stated on its claim forms that it had received no interest payments in relation to the Thorofare and Juneway loans, despite the fact that they had received approximately \$171,754.40 in relation Merrill, and \$291,750.62 in relation to Juneway, per the Receiver’s calculations attached hereto as Exhibit A.

8. Finally, in relation to the Merrill property, where CI’s \$1,550,000 investment was categorized as an equity investment, the Receiver wrote in his position statement that “Receiver recommends that any remaining amount in the 6949 Merrill account be transferred to the Receiver’s account” after Thorofare’s distribution was accounted for, if such a distribution is approved. (ECF 1571, pg. 9). If Thorofare is determined to have a priority position, CI respectfully requests that it be entitled to its share of the remaining proceeds from the sale of Merrill. The funds should therefore not be transferred to the Receiver’s account, but instead distributed to the equity investors in the Merrill property – CI and Doron Reichenberg.

9. Based on the foregoing, Capital Investors requests a distribution of the Merrill and Juneway sales proceeds as described herein.

Dated: January 10, 2024

Respectfully submitted,

GARDINER KOCH WEISBERG & WRONA

By: /s/Thomas G. Gardiner
One of Capital Investors' attorneys

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Claimant Thorofare Asset Based Lending REIT Fund IV, LLC

Claim Number: 1-1188

Properties in which asserting security interest:

1 - 1700-08 Juneway Terrace

Claim:

Principal	\$	2,175,000.00
Contract interest accrued pre-8/18/18	\$	11,279.92
Contract Interest Accrued after 8/18/18	\$	210,672.90
Default rate interest accrued before August 18, 2018	\$	7,189.58
Default Rate Interest Accrued on or after August 18, 2018	\$	134,064.61
Other Amounts Claimed	\$	159,926.50
Total	\$	2,698,133.51

Receiver's recommendation:

Principal Balance	\$	2,175,000.00
Less origination fee	\$	(54,375.00)
Less processing fee	\$	(5,000.00)
Less prepaid interest (4/6/2017 - 4/30/2017)	\$	(10,937.50)
Less interest reserve	\$	(160,000.00)
Less remaining capital expenditure reserve	\$	(113,538.13)
Less remaining repair reserves	\$	(14,375.00)
Less remaining tax escrow	\$	(23.46)
Less remaining insurance escrow	\$	(1,740.00)
Less lockbox funds	\$	(5,000.00)
Less loan payments 5/1/17 - 7/31/18 @\$470.56 per diem*	\$	(291,750.62)
Maximum amount available for distribution from proceeds of sale	\$	1,518,260.29

**In its proof of claim, Thorofare responded "no" to the question "Have you received any payment of monies including interest, principal, fees, or other sums from any Receivership Defendant", despite offering other evidence that payments were received through August 1, 2018. Thorofare's POC indicates a non-default per-diem interest owed rate of \$664.58. Accordingly, the Receiver has calculated the interest paid by EquityBuild by multiplying the 439 days between 5/1/2017 and 7/31/2018 by this per diem rate.*



Claimant Thorofare Asset Based Lending REIT Fund IV, LLC

Claim Number: 101-1188

Properties in which asserting security interest:

101 - 6949-59 S Merrill Avenue

Claim:

Principal	\$	1,540,000.00
Contract interest accrued pre-8/18/18	\$	7,999.44
Contract Interest Accrued after 8/18/18	\$	149,166.12
Default rate interest accrued before August 18, 2018	\$	5,090.56
Default Rate Interest Accrued on or after August 18, 2018	\$	94,923.88
Other Amounts Claimed	\$	118,526.50
Total	\$	1,915,706.50

Receiver's recommendation:

Principal Balance	\$	1,540,000.00
Less origination fee	\$	(23,700.00)
Less processing fee	\$	(5,000.00)
Less prepaid interest (7/21/17 - 7/31/17)	\$	(3,068.25)
Less capital expenditure reserve	\$	(535,845.00)
Less interest reserve	\$	(60,000.00)
Less tax reserves	\$	(11,300.00)
Less insurance reserve	\$	(1,200.00)
Less reserves - miscellaneous	\$	(125,000.00)
Total Amount Funded	\$	774,886.75
Plus Draw #1 paid post-closing	\$	135,535.00
Plus Draw # 2 paid post-receivership	\$	111,200.00
Plus tax payments post-closing	\$	23,394.85
Plus Title Fee	\$	185.00
Less loan payments 8/1/17 - 7/31/18 @\$470.56 per diem*	\$	(171,754.40)
Maximum amount available for distribution from proceeds of sale**	\$	873,447.20

**In its proof of claim, Thorofare responded "no" to the question "Have you received any payment of monies including interest, principal, fees, or other sums from any Receivership Defendant", despite offering other evidence that payments were received through August 1, 2018. Thorofare's POC indicates a non-default per diem interest rate of \$470.56. Accordingly, the Receiver has calculated the interest paid by EquityBuild by multiplying the 365 days between 8/1/2017 and 7/31/2018 by this per diem rate.*