

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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U.S. SECURITIES AND EXCHANGE))	
COMMISSION,))	
))	Civil Action No. 18-CV-5587
Plaintiff,))	
v.))	Judge Hon. John Z. Lee
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EQUITYBUILD, INC., EQUITYBUILD))	Magistrate Judge Young B. Kim
FINANCE, LLC, JEROME H. COHEN,))	
and SHAUN D. COHEN,))	
))	
Defendants,))	
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MOTION TO CONTINUE JULY 10, 2019 EVIDENTIARY HEARING

Jerome H. Cohen (“Defendant”) respectfully files this Motion (“Motion”) to **CONTINUE JULY 10TH EVIDENTIARY HEARING** in Response to the Receiver’s **WITNESS AND EXHIBIT LIST FILED ON MAY 31ST 2019.** In support of its Motion, the Defendant states as follows:

BACKGROUND

On March 7, 2019 the Receiver filed a **Motion to Amend Order Appointing Receiver to Expressly Identify and Include Specific Receivership Assets** (Doc. 265) in an effort to bring the Naples home and bank account ending in 3641 into the Receivership Estate. Included in this Motion were three exhibits, two of which were in support of his Motion. On March 29, 2019 the Defendant filed in Opposition to the Motion (Doc. 301) to which the Receiver then responded with a Reply on April 16, 2019 (Doc. 321). The Reply did not include any additional exhibits than what had been used in support of Doc. 265. On May 7, 2019 the Defendant filed a Sur-Reply (Doc. 356) which was granted (Doc. 355) by the Honorable Judge Kim on that same

day. The following day, May 8, 2019, the Honorable Judge Kim ordered (Doc. 357) the Receiver to “send a copy of the underlying records he relies on in support of his motion to have a certain real property and bank account identified and included as Receivership Assets [265] to Defendant Jerome Cohen by May 17, 2019.” Nicole Mandrich sent such documents via electronic mail on May 17, 2019. On May 31, 2019 the Receiver filed a Witness and Evidentiary list for the July 10, 2019 hearing (Doc. 392) which included underlying records in support of Motion 265 far greater than what was transmitted by the Receiver to the Defendant on May 17, 2019. On June 12, 2019, the Defendant filed a Motion to Continue or Strike (Doc. 409) which was granted in part and denied in part (Doc. 413) on that very same day. An extension to produce the Defendant’s Witness and Evidentiary list to June 26, 2019 was granted.

The Defendant respectfully requests a continuance of the June 10, 2019 hearing and a striking of Exhibit 16 of the Receiver’s Witness and Evidentiary list for the following reasons: First, as of the filing of this Motion, the Receiver has still not produced the remaining underlying documents in support of his Motion 265 as is listed in the Witness and Evidentiary list filed on May 31, 2019. Second, included in the Receiver’s exhibit list is Exhibit 16, Complaint in *SEC v. Slowinski*, Case No. 19-cv-03552 (N.D. Ill. May 29, 2019) yet the Defendant has received none of the SEC’s underlying documentation nor the benefit of the time both the SEC and Receiver have had in examining that case and its relationship to the Receiver’s Motion 265.

ARGUMENT

I. THE RECEIVER HAS STILL NOT PRODUCED THE REMAINING UNDERLYING DOCUMENTS IN SUPPORT OF HIS MOTION 265 AS IS LISTED IN THE WITNESS AND EVIDENTIARY LIST FILED ON MAY 31, 2019.

The Receiver's Witness and Evidence List includes many evidentiary exhibits and the Defendant, having been expecting receipt of them in accordance with the court's order, still does not have in its possession all of the records the Receiver is relying on in support of his Motion (Doc. 265) even after the Honorable Judge Kim in Document 357 ordered the receiver to supply them. The Receiver has not delivered any of the Exhibits in the Receiver's Witness and Evidentiary list from and including Exhibit 16 through and including 54.

II. INCLUDED IN THE EXHIBIT LIST IS COMPLAINT IN SEC V. SLOWINSKI, CASE NO. 19-CV-03552 (N.D. I11. MAY 29, 2019) YET THE DEFENDANT HAS NONE OF THE UNDERLYING DOCUMENTATION NOR THE BENEFIT OF THE TIME BOTH THE SEC AND RECEIVER HAVE HAD IN EXAMINING THAT CASE AND ITS RELATIONSHIP TO THE RECEIVER'S MOTION 265

The SEC invested over two years investigating and gathering documents and depositions for case 19-cv-03552. Despite the time and resources spent on case 19-cv-03552, the case contains a number of factual misrepresentations that, if accepted as fact by the court, would unjustly prejudice the defendant. The Receiver has now had an extended timeline during which to examine the case, testimony and exhibits attached to it. The Defendant has been given no documents, testimony or exhibits from this case the Receiver is introducing. The Defendant should be entitled to the underlying material the SEC has procured to prove the factual misrepresentations and prevent an unjust finding. It is unreasonable to expect the Defendant to be able to defend himself against any arguments brought by the Receiver with respect to the relationship between 19-cv-03552 and the Motion 265 unless given access to the document and

deposition collection and sufficient time to review that material and to organize a proper response. The Defendant would need an extended continuance reflective of his lack of human capital and expertise. In order to avoid an extended continuance, the Defendant respectfully requests the introduction of SEC v Slowinski piece of evidence and all testimony and exhibits related to it be stricken. If the court chooses not to strike the introduction of the case and all related testimony and exhibits, the Defendant respectfully urges the Court to order the Receiver and SEC to immediately turn over all documents, transcripts and exhibits that are the product of case 19-cv-03552 and continue the July 10th evidentiary hearing for 3 months beyond the receipt of said documents, transcripts and exhibits to afford the Defendant time to review and organize a defense.

CONCLUSION

The Receiver has not fully complied with the order (Doc. 357) to turn over the underlying documents in support of his Motion 265. The Receiver has not delivered Exhibits 16-54 of the Receiver's Witness and Evidentiary list filed on May 31, 2019. Even if the Defendant were to receive the missing documents as of the filing of this motion, he does not have sufficient time to review them and formulate a defense. With respect to this matter, the Defendant respectfully requests the court continue the hearing to August 12, 2019 or 30 days from the date the Receiver delivers the underlying documentation to the Defendant, whichever comes later. Additionally, the introduction of Exhibit number 16 in the Receiver's Witness nad Evidentiary list presents a new set of research and underlying documents and transcripts for a case which the Defendant has had no exposure and no access to any such research, documents or transcripts and exhibits. The Defendant cannot possibly become knowledgeable enough to formulate a defense in any reasonable amount of time for a hearing to occur on July 10, 2019. As such, the Defendant

respectfully requests the Exhibit be stricken as evidence. Should the court wish to allow the Exhibit as evidence then the Defendant respectfully requests the court continue the hearing date to 3 months after the receipt of said research, documents and transcripts. In summary, the Defendant requests the hearing to be continued to Aug 12, 2019 with the striking of Exhibit 16 and all related research, documentation, transcripts and exhibits or the continuance to 3 months after the receipt of all underlying research, documentation, transcripts and exhibits to 19-cv-03552 should the court choose not to strike Exhibit 16 and all related testimony and exhibits.

June 27th, 2019

Respectfully submitted,

DEFENDANT JEROME H. COHEN

By:


Jerome H. Cohen



CERTIFICATE OF SERVICE

I hereby certify that on June 27th, 2019, a copy of the foregoing **MOTION TO CONTINUE JULY 10, 2019 EVIDENTIARY HEARING** was served by filing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

Shaun D. Cohen



Jerome H. Cohen

