

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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U.S. SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
	Plaintiff,)	Civil Action No. 18-CV-5587
)	
	v.)	Judge John Z. Lee
)	
EQUITYBUILD, INC., <i>et al.</i> ,)	Magistrate Judge Young B. Kim
)	
	Defendants.)	
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**SEC’S RESPONSE IN OPPOSITION TO
JEROME COHEN’S MOTION TO CONTINUE EVIDENTIARY HEARING**

The SEC hereby responds to Section II of Jerome Cohen’s motion to continue the evidentiary hearing scheduled for July 10, 2019 (ECF No. 425). That section of Cohen’s motion claims that Cohen has been provided no documents related to a lawsuit, *SEC v. Slowinski*, the complaint in which the Receiver included on his Exhibit List (ECF No. 392, p. 2, Ex. 16). As discussed below, the inclusion of the *Slowinski* complaint as a potential exhibit does not justify delaying the hearing. Moreover, Cohen’s claim that he has not received the relevant documents are untrue. For these reasons, the Court should deny Cohen’s motion.

A. Background

The July 10 hearing will address whether Jerome Cohen’s home in Naples, Florida should be made part of the receivership estate. The Receiver contends, and the SEC agrees, that the Naples home was purchased with the funds of investors who were the victims of Cohen’s Equitybuild Ponzi scheme. Not until his sur-reply did Cohen first claim that he purchased the Naples home with funds he received from an unrelated “joint venture.” (ECF No. 356, p. 3).

While Cohen does not identify the joint venture he claims funded the purchase of his home, Cohen does not dispute that the entity at issue is Rebuilding America, LLC. On May 29, 2019, the SEC filed a lawsuit alleging that Rebuilding America was a fraudulent securities offering. *SEC v. Slowinski*, Case No. 19-cv-3552 (N.D. Ill.).¹ The *Slowinski* complaint provides context to Cohen's claim that funds he received from another business venture, as opposed to the Equitybuild investors, paid for the purchase of his home.

B. The Merits of *SEC v. Slowinski* Are Irrelevant to the Receiver's Motion

At the July 10 hearing, SEC accountant Ann Tushaus will testify that, consistent with the Receiver's motion, the bank records she reviewed show that Equitybuild investors, not money Cohen received from Rebuilding America, paid for Cohen's Naples home. Specifically, Ms. Tushaus will testify that Cohen spent all of the money he received from Rebuilding America well before he purchased the Naples home. Ms. Tushaus will further testify that, having already spent the Rebuilding America money, the only way Cohen could afford the Naples house was by virtue of Equitybuild and, in turn, the defrauded Equitybuild investors.

Simply put, because the Receiver will establish that Cohen did not purchase his home with Rebuilding America money, whether Rebuilding America engaged in securities fraud is irrelevant to the Receiver's motion. To that end, there is no need to present evidence addressing the merits of *Slowinski* at the July 10 hearing, and the Receiver did not include any such evidence on his Exhibit List. Thus, there is no reason to grant Cohen additional time so he can address the allegations in the *Slowinski* complaint.

¹ While Cohen was a principal of Rebuilding America, he is not named as a defendant in *Slowinski*. Before *Slowinski* was filed, the SEC had already obtained in this case the same injunctive relief against Cohen it seeks against the *Slowinski* defendant, and had asked Judge Lee to impose significant financial remedies against Cohen. (ECF Nos. 40, 195).

C. Jerome Cohen's Claims that He Did Not Receive Documents Relating to *SEC v. Slowinski* Are Untrue

Given that the facts underlying the *SEC v. Slowinski* complaint have no bearing on the Receiver's motion, Cohen's assertion that he does not have relevant documents, even if true, would not justify delaying the hearing. However, Cohen's claim that he "has been given no documents, testimony or exhibits" relating to *SEC v. Slowinski* is patently false. Indeed, on August 17, 2018, at the very onset of this litigation, the SEC provided Cohen's attorney with all of the testimony transcripts and exhibits from the investigation that preceded this lawsuit. That investigation addressed both the Equitybuild and Rebuilding America securities offerings in which Cohen was a principal. While the Rebuilding America investigation continued after August 17, 2018, Cohen has had since then the key documents – the transcripts of nearly all of the testimonies (including Cohen's) and the exhibits introduced therein – from the SEC's investigation of Rebuilding America that form the basis for the *Slowinski* lawsuit.

D. Conclusion

Jerome Cohen opened the door to reference to the Rebuilding America securities offering by claiming on sur-reply that Rebuilding America, rather than Equitybuild and its victimized investors, paid for his Naples home. The Court is entitled to know that Rebuilding America likewise is the subject of a SEC securities fraud action. However, the merits of that lawsuit are irrelevant to the Receiver's motion because the Receiver will establish that Cohen spent all of his Rebuilding America money before purchasing the Naples home. Even if the facts surrounding the Rebuilding America offering were relevant, Cohen received nearly all of the relevant documents in August 2018. For these reasons, there is no need to delay the evidentiary hearing and Cohen's motion should be denied.

Dated: June 27, 2019

Respectfully submitted,

/s/ Benjamin Hanauer

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CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing Response, via ECF filing, to all counsel of record and Defendant Shaun Cohen, on June 27, 2019. I further certify that I caused the foregoing Response to be served on Defendant Jerome Cohen, via email delivery, at jerryc@reagan.com.

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