

**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 |
| EQUITYBUILD, INC., EQUITYBUILD |) | |
| FINANCE, LLC, JEROME H. COHEN, |) | Magistrate Judge Young B. Kim |
| and SHAUN D. COHEN, |) | |
| |) | |
| Defendants, |) | |

MOTION To CONTINUE JULY 10, 2019 EVIDENTIARY HEARING

The Defendant mistakenly filed a motion to be heard in front of Judge John Z. Lee not knowing it should have been filed to be heard by Judge Young B. Kim. The errant filing was accidental and due to the Defendants lack of knowledge of the legal process. The Defendant’s motion for a continuance of the July 10th hearing asserted the Receiver did not deliver the exhibits listed in his Evidentiary and Witness list. The SEC and the Receiver filed Docs. 427 and 428 respectively in response. The Receiver asserted that he had, in fact, transmitted all of the exhibits. The SEC asserts the underlying evidence supporting SEC v. Slowinski (Exhibit 16 on the Receiver’s list) was generated prior to August 17, 2018 and delivered to the Defendant. After seeing the response of both the Receiver and the SEC, the Defendant carefully reexamined everything received from both parties. Late Friday, May 17th 2019, the Defendant did receive an email from the Receiver’s counsel containing 15 attachments and 17,625 pages of documents. It is now clear that the Defendant, having no experience or background in law and never having been exposed to the Bates numbering system, did not understand the Bates numbering and did

not see that the delivery of exhibits was complete. The defendant began the process of reviewing these almost 18,000 pages in an effort to understand the argument the Receiver intended to make and to prepare a defense. 9 business days later, a new email was received by the defendant containing 9 attachments and 109 more pages and the introduction of a new case. In response to the introduction of the new case, the Defendant shifted his focus from the review of the almost 18,000 pages received a mere 9 business days prior to the new case and research into any documents the Defendant had and make an effort to understand why this new case was being introduced and how it was intended to be used. It is important to reiterate the Defendant has no law background or experience and does not employ lawyers or paralegals and despite those disadvantages is charged with defending himself requiring him to read, understand and respond to these thousands and thousands of documents alone and to understand a numbering system he has never seen before this case. Consequently, the Defendant was not aware he had received all of the exhibits and has certainly not had adequate time to review, understand and prepare a defense in response to them

Regarding Exhibit 16, the SEC and Receiver both claim the case is relevant only to the extent the Defendant introduced it in his sur-reply. The claim the Defendant introduced SEC v. Slowinski in his Sur-reply is false and at no time did the defendant introduce a case which was not even filed until May 29th, 2019. The Defendant has claimed that the money used for the down payment and much of the improvements on the Naples house was earned as a result of a Joint Venture but did not identify that Joint Venture. If the SEC and the Receiver are arguing they only introduced the case to add color, the “color” they are attempting to add is in fact, an attempt to prejudice without giving the Defendant the benefit of a defense. The SEC’s claims in the Slowinski case may be wholly or partially manufactured or mistaken and the Defendant is

being offered no opportunity to determine which and make a demonstration of that determination.

The SEC asserts that it turned over all material generated in its investigation prior to 8/17/18. Is the SEC saying no additional testimony or documents were generated in the succeeding more than 9 months until the SEC filed the case on 5/29/19? If the case is ruled relevant, the SEC should be ordered to produce the evidence and testimony collected from 8/17/18 until 5/29/19. If the case is not relevant to the question of how the Naples house was purchased, the case and the related transcripts and anticipated testimony of Ann Tushaus should be stricken. As discussed below, if there is no connection between Exhibit 16 and the case at hand then there is no reason for its introduction.

A. Exhibit 16 Should Be Disallowed as Evidence and No Related Continuance Would Then Be Necessary

The SEC and Receiver have both argued Exhibit 16 and its underlying evidence will not be used to advance the Receiver's argument the Naples home was purchased with Investor Monies.

If the SEC and Receiver do not intend to use Exhibit 16 to advance the argument the Naples house was purchased with Investor Monies, Exhibit 16 is irrelevant and its introduction should be denied and no testimony, evidence or transcripts relating to it should be allowed by the Court.

If, despite the SEC and Receiver's admission the case is not being introduced to advance their argument, the Court chooses to allow the introduction of the case, the SEC should be required to produce all underlying testimony and evidence collected since 8/17/18 along with any evidence and testimony collected prior to 8/17/18 that has not already been turned over to

the Defendant and the July 10th evidentiary should be continued for 3 months to allow a reasonable time for the Defendant to review, understand and organize a defense to this new matter.

B. The Defendant has no experience with the Bates numbering system and did not realize he had received all Exhibits. Additionally, the Defendant has no background in law and has not had adequate time to read, review or understand more than 18,000 pages of documents particularly since the introduction of a new case catalyzed a shift in focus to that new case and away from the review of the 18,000 plus pages.

As was stated above, the Defendant, being unfamiliar with the Bates numbering system, was under the belief that he had not received all of the documentation relating to the exhibits in the Receiver's Witness and Evidentiary List. After reading the response of both the SEC and Receiver and looking again, both the SEC and Receiver did in fact submit all of the referred to underlying documents. That fact, however, is separate and apart from the need to continue the July 10th hearing. It was unreasonable enough for the Defendant to thoroughly work through almost 18,000 pages between May 17th and July 10th in order to craft a sound defense let alone have only 9 business days to do so prior to being redirected to a focus on a newly filed case being introduced as having relevance to advancing the Receivers argument in this case.. In the SEC's response, counsel argues that the Slowinski case was not introduced in an effort to show a connection between the Slowinski case and the Naples property but simply to add color and background. If the SEC had simply stated that at the time of introduction then the Defendant would not have had to be redirected in any great manner. Being as though the SEC did not, the Defendant was in fact redirected as any Defendant in any case would seek to understand why a

new case is being introduced, its relevance and what needs to be done to defend against such an introduction. Only on June 27th, 9 days before the hearing, does the Defendant learn of the lack of relevance the SEC and Receiver believe the Slowinski case has to this case. At this time the Defendant must shift his focus back to the near 18,000 pages of documents and work to build a meaningful defense solely from those documents.

It is important to be reminded of the fact that the Defendant signed a consent agreement neither admitting to nor denying the allegations in the SEC's complaint. That agreement was very clear that only for the purposes of calculating disgorgement and other penalties was the court to assume the allegations to be true. The Defendant should be given a reasonable amount of time to build a meaningful defense just as the SEC and Receiver have had more than ample time, especially considering the human capital at their disposal. The manner and sheer volume in which documents were transmitted and filed since May 17th has made it impossible for the Defendant to be able to do so.

CONCLUSION

The Defendant respectfully requests a continuance of the July 10, 2019 hearing and a striking of Exhibit 16 of the Receiver's Witness and Evidentiary list for the reasons detailed above.

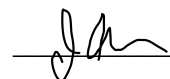
July 2nd, 2019

Respectfully submitted,

DEFENDANT JEROME H. COHEN

By:

Jerome H. Cohen

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CERTIFICATE OF SERVICE

I hereby certify that on July 2nd, 2019, a copy of the foregoing **DEFENDANT'S REPLY IN SUPPORT OF HIS 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 as well as to the below entity via electronic email.

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Shaun D. Cohen



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