

**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., et al.,)	Magistrate Judge Young B. Kim
)	
Defendants.)	
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SEC’S RESPONSE TO LIBERTY’S OBJECTIONS

Despite its previous agreement to credit bidding procedures, Liberty is attempting to slow down the sale process and harm the Receiver by insisting on additional procedures that were not part of its original agreement. Because Liberty and the Receiver already reached agreement on credit bidding procedures, Liberty should not be allowed to impose new impediments to the sales process. Moreover, the various categories of information that Liberty now demands be prerequisites of any sale are wholly inconsistent with the “courthouse steps” auction which Liberty has long argued should govern the sales process.

Liberty’s continued attempts to stall the sales process appear to be part of a concerted effort to force the receivership into dissolution. To that end, Liberty and the other lenders are harming the Receiver by being forcing him to pay for the upkeep of underperforming properties and to respond to countless motions and objections, using funds that could otherwise compensate the victims of the Cohens’ fraud. At the same time, Liberty and the other lenders seek to prevent the Receiver from being compensated for his efforts on behalf of all creditors. The Court should accordingly overrule Liberty’s objections and allow the sales process to proceed.

A. Liberty Previously Agreed to Credit Bidding Procedures that Do Not Contain the Additional Requirements Liberty Now Demands

As Liberty concedes, it already reached agreement with the Receiver on credit bid procedures. (*See*, ECF No. 415). Despite its current complaints that the Receiver is not providing certain information – items 1, and 3 through 10, on page 6 of Liberty’s objections – Liberty did not insist on that information as part of its prior agreement. (*See*, Aug. 19, 2019 Hearing Tr. (ECF 502-1, at 24:23-25:4 (Liberty conceded that its agreed credit bid procedures do “not specifically require” the information sought in its present objections)).¹ Because Liberty already agreed to procedures that do not call for the provision of the additional information, Liberty should not be allowed to “move the goalposts” and demand that new impediments be imposed on the sales process. Rather, Liberty should be bound by the procedures to which it previously agreed.

B. The Information Liberty Now Demands is Inconsistent with its Repeated Requests for a Public Auction on the Courthouse Steps

Liberty has long advocated for the properties to be sold at a public auction “on the courthouse steps.” (*See, e.g.*, ECF Nos. 359 at 2-4, 398 at 2-3).² Even though the Court has already ruled on the issue, Liberty continues to complain that the sales are not proceeding on the courthouse steps. (ECF No. 502 at 12). However, were the sales to proceed via live public auction, the information Liberty demands the Receiver now disclose would likely be unavailable. Indeed, it is hard to see how Liberty would be entitled to receive or inspect the following

¹ Magistrate Judge Kim has ordered the Receiver to provide the information sought in item 2 on Liberty’s list of requested information. (ECF No. 483).

² As the SEC noted in response to Liberty’s earlier objections, Liberty fails to acknowledge that the statute governing a court-sanctioned sale of real estate, 28 U.S.C. § 2001(a), contains a receiver-specific provision that allows sales to proceed anywhere in the district where the receiver was appointed. (*See*, ECF No. 376 at 1-2).

information at a live public auction: (a) the winning bidder's Asset Purchase Agreement (Liberty request No. 1), (b) information relating to the Receiver's marketing efforts (Liberty request Nos. 3-5), (c) due diligence efforts performed by other bidders (Liberty request No. 6), (d) the Receiver's internal decision making process for selecting the most appealing bids (Liberty request Nos. 8-9), and (e) the relationships of the other bidders to the receivership defendants or the Receiver's management company. (Liberty request No. 10).³

Because Liberty continues to advocate for sale via public auction, Liberty can hardly claim prejudice by excluding credit bidding procedures that would not be available in a live public auction on the courthouse steps. Any prejudice to Liberty is further minimized by the fact that before any sales are consummated, the Receiver will be required to seek Court approval and Liberty, along with the other lenders, will be given additional opportunity to object. (*See, e.g.*, Aug. 19, 2019 Hearing Tr. (ECF No. 502-1), at 46:25-47:5).

C. Liberty is Attempting to Delay and Deplete Receivership Assets

By their own conduct, Liberty and the other institutional lenders have shown their refusal to accept the Court's decision to impose a Receiver. The lenders are now explicit in their position that "the receivership should not be continued" and instead should be "dissolved." (ECF No. 509, at 2, 10). The lenders have repeatedly advocated that – rather than being sold through an orderly receivership process – the Receiver should abandon the properties and allow their ownership to be adjudicated in state court. (*See, e.g.*, July 2, 2019, Hearing Tr. at 25:12-25, 28:8-29:8). In other words, the lenders want the properties funneled into a state court foreclosure process where the victimized investors are forced to fend for themselves against the well-funded lenders. (*Id.*). While the SEC and the Receiver have been fighting these efforts, the lenders'

³ The Receiver should be entitled to exercise his reasonable business judgment in terms of what competitive information to share with bidders as part of the sales process.

conduct is placing significant constraints on the Receiver's ability to perform his Court-imposed mandates.

By filing motions objecting to nearly every decision made by the Receiver, and objecting to virtually each of Magistrate Judge Kim's rulings allowing the sales process to proceed, the lenders are forcing the Receiver to incur significant legal fees. Compounding the problem, the never-ending stream of objections are likewise preventing the Receiver from selling money-losing properties whose operating income does not cover their expenses. (*See, e.g.*, ECF No. 467, at 2-3; July 2, 2019 Hearing Tr. at 17-19, 22). And, to make matters worse, the lenders have objected to the Receiver's fee petitions – preventing him and his attorneys from being reimbursed for their work and leaving the Receiver uncertain whether he will be paid for services going forward.⁴ The lenders' efforts to impose unnecessary costs on the Receiver, while preventing him from selling properties and being compensated for his services, is a disservice to the defrauded investors who have already suffered tremendously.

As Magistrate Judge Kim has correctly observed, the institutional lenders' conduct has “in fact delayed the case.” (ECF No. 483). Granting Liberty's objections will only lead to additional delays, more expenses for the Receiver, and less money available for the victimized investors. Accordingly, the Court should overrule Liberty's objections and allow the sales process to proceed.⁵

⁴ Denying the Receiver's fee petitions in this case would set terrible precedent. It would discourage well-qualified receiver candidates from volunteering to perform a valuable public service to the Court. And it would encourage future efforts to thwart other receiverships through tactics of the sort employed by the institutional lenders in this case.

⁵ In further response to Liberty's objections, the SEC hereby incorporates by reference its response to the other institutional lenders' objections regarding the credit bid process. (ECF No. 474).

Dated: September 11, 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 September 11, 2019. I further certify that I caused the foregoing Response to be served on Defendant Jerome Cohen, via email at jerryc@reagan.com.

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