

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>UNITED STATES SECURITIES AND</b>	)	
<b>EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>EQUITYBUILD, INC., EQUITYBUILD</b>	)	
<b>FINANCE, LLC, JEROME H. COHEN, and</b>	)	
<b>SHAUN D. COHEN,</b>	)	
	)	
<b>Defendants.</b>	)	

**Case No. 18 C 5587**

**Judge John Z. Lee**

**ORDER**

Before the Court is Mark L. Rosenberg’s motion for allowance of compensation [57]. For the reasons provided herein, the motion is denied.

**STATEMENT**

On August 15, 2018, the United States Securities and Exchange Commission (“SEC”) filed a complaint against Defendants, Equitybuild, Inc. (“Equitybuild”); Equitybuild Finance, LLC (“Equitybuild Finance”); Jerome H. Cohen; and Shaun D. Cohen. *See* Compl., ECF No. 1. According to the complaint, Defendants operated a Ponzi scheme through which they fraudulently induced more than 900 investors to invest at least \$135 million in residential properties on the south side of Chicago. *Id.* ¶¶ 1–2. Shortly after the filing of the complaint, the Court appointed a Receiver to marshal and preserve Defendants’ assets. *See* Receivership Order, ECF No. 16.

Attorney Mark Rosenberg appeared on behalf of the Cohens on August 21, 2018. *See* ECF Nos. 23, 24. Several weeks later, on September 7, 2018, Rosenberg filed a motion for allowance of compensation. *See* Rosenberg Fee Appl., ECF No. 57. Rosenberg requests \$12,177.08 in attorneys’ fees for representing Equitybuild and Equitybuild Finance from July 16 to August 15, 2018, and for representing all Defendants from August 15 to August 17, 2018. *Id.* at 1. Rosenberg subsequently withdrew as counsel for the Cohens on October 17, 2018. *See* ECF No. 89.

Separately, attorney Celiza Bragança—who also previously represented the Cohens—filed a motion for allowance of compensation on August 20, 2018. *See* Bragança Fee Appl., ECF No. 21. The Court granted the motion on August 31, 2018. *See* ECF No. 51.

The SEC and the Receiver both oppose an award of attorneys’ fees to Rosenberg at this time. The SEC argues that Rosenberg’s fee petition is “substantially more objectionable” than Bragança’s, for several reasons. *See* SEC’s Resp. at 2, ECF No. 68. For one, the SEC points out

that, while Bragança began representing the Cohens after this lawsuit was filed, Rosenberg has been representing the corporate defendants since 2017. Accordingly, the SEC argues, “Rosenberg should be treated no differently than any other creditor of the corporate defendants under receivership.” *Id.* at 2. Relatedly, the SEC notes that Rosenberg—unlike Bragança—seeks payment for services rendered prior to the filing of this lawsuit. And, the SEC notes, Rosenberg’s motion reflects that Equitybuild Finance has already paid him over \$79,000.00. *See* Rosenberg Fee Appl., Ex. A (“Rosenberg Invoice”) at 2, ECF No. 57-1.

The SEC’s final argument is that Rosenberg “may have contributed to” Defendants’ fraud by “providing pre-lawsuit legal services” to Equitybuild and Equitybuild Finance. SEC’s Resp. at 3. Thus, the SEC contends, Rosenberg should not be entitled to additional payments. The Receiver takes the same position, arguing that Rosenberg has “unclean hands[,] which acts to defeat his request for equitable relief in the form of a request for fees.” Receiver’s Resp. at 9, ECF No. 75. He points to various emails showing that Rosenberg assisted in drafting and editing certain “private placement memoranda” that were “used to assist the Cohens in furthering the fraud and Ponzi scheme.” *Id.*; *see also id.*, Ex. A (“Duff Aff.”), ECF No. 75-1.

In addition, the Receiver contends, Rosenberg has no basis to be put ahead of any other Equitybuild unsecured creditor. According to the Receiver, granting Rosenberg’s request will set an “improper and unworkable precedent” with other creditors, and will upset “all efforts to implement a fair and orderly claims process.” Receiver’s Resp. at 8.

Rosenberg denies involvement in any improper activities and argues that the SEC and the Receiver have improperly raised this issue in opposition to a fee petition. He points out that the Court has discretion to supervise the distribution of assets in an SEC enforcement action and urges the Court to grant his motion so that the Cohens are not deprived of their choice of counsel.

As an initial matter, the Court agrees that raising allegations of fraud—and, indeed, completely unsupported allegations, in the SEC’s case—in response to a fee petition is not appropriate. But, even setting aside those concerns, an award of fees to Rosenberg is not warranted at this time. Rosenberg’s motion is based on the argument that the Court should exercise its discretion to award fees so that the Cohens may proceed with their chosen counsel. To be sure, a district court has broad discretion to ensure that the distribution of receivership assets is fair and reasonable. *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 332 (7th Cir. 2010). But the Court notes that less than a month after Rosenberg’s motion was fully briefed, he withdrew as counsel for the Cohens. Accordingly, his argument is no longer persuasive. What is more, Rosenberg articulates no other reason as to why he should be put ahead of the numerous other unsecured creditors who are waiting to be paid. Accordingly, the motion is denied.

Date: September 24, 2019

/s John Z. Lee