

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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.)	
)	

SEC’S REPLY IN SUPPORT OF RECEIVER’S FIFTH FEE APPLICATION

The SEC hereby supports the Receiver’s Fifth Fee Application (ECF No. 608). The SEC confirms that it has reviewed the Receiver’s invoices, they substantially comply with the SEC’s billing guidelines, and the SEC approves of their payment. The SEC additionally incorporates its arguments in support of the Receiver’s earlier fee applications. (*See* ECF Nos. 526, 606). For these reasons, and those stated below, the Court should grant the Receiver’s fee application.

A. The Receiver Has Performed Valuable Services

From the onset, the Receiver has performed valuable services for the benefit of various constituencies, including investors, other creditors, and the Court. In granting the Receiver’s earlier fee applications, the Court recognized the Receiver’s important work and the need for that work to continue:

As the Court has repeatedly recognized, there is a significant need for the Receivership Assets to be managed by a neutral party until an orderly claims process is concluded. Moreover, the Court continues to find that the Receiver’s efforts have benefitted and will benefit the Receivership Estate.

(ECF No. 614, p. 3, *see also*, Oct. 8, 2019 Hearing Tr. at 7:2-8). The Court likewise recognizes that a receiver is entitled to compensation even in situations where the receiver's work leads to a decline in the value of the estate. (ECF No. 614, p. 2 (quoting *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994) ("Even though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation." (citations omitted))). Even the lenders acknowledge that the Receiver and his attorneys "are entitled to fair, reasonable, and moderate compensation." (ECF No. 617, p. 2).

The Receiver's efforts are all the more notable given the constant stream of objections and motions filed by the institutional lenders seeking to thwart the liquidation of properties and implementation of a claims process. As reflected in the Receiver's fee applications and invoices, the lenders' conduct has distracted the Receiver from his core work and forced him to devote considerable time and resources that would otherwise be spent fulfilling his Court-imposed mandates. Indeed, the Court has correctly observed that "the Receiver and his legal professionals have devoted significant resources responding to various motions, objections, and inquiries made by lenders, with these efforts increasing the amount of fees the Receiver is reasonably entitled to." (ECF No. 614, p. 3)

B. The Lenders' Objections are Unavailing

The lenders object to the Receiver's fee applications on two primary grounds, arguing that: (1) the Receiver has billed too much money and (2) the Receivership's liquidation and distribution efforts have proceeded too slowly. (*See* ECF No. 617). Those arguments fail, in the first instance, because the lenders themselves are a primary cause behind much of the Receiver's fees and the delays in the Receiver's liquidation and distribution efforts.

A review of the Receiver's invoices shows that the Receiver and his legal professionals have been forced to devote a large amount of time responding to the institutional lenders' voluminous motions, objections, and other filings. The Receiver similarly has expended significant resources preparing property reports requested by the lenders and otherwise responding to lender inquiries.

The Receiver should not be punished for incurring fees responding to the motions, objections, and inquiries lodged by the institutional lenders. Rather, stripping out the fees incurred as a result of the lenders' litigious conduct would surely and substantially lower the "burn rate" that the lenders cite as a ground for denying the Receiver's fee petitions.¹ Indeed, the Court has previously considered the lenders' arguments about the reasonableness of the Receiver's fees, and determined that "the lenders have failed to show that those fees are unreasonable." (ECF No. 614, p. 3). To that end, the lenders cite no evidence to suggest that \$6,100 per day is an unreasonable expense for a team of professionals performing the complex legal, accounting, real estate, and tax work necessary to unwind a massive Ponzi scheme such as the one perpetrated by the Cohens.

Moreover, the lenders should not be able to use any delay in liquidations, claims resolution, or distributions as grounds for denying the Receiver payment for his work. Any past or future delay is greatly attributable to the motions and objections repeatedly filed by the lenders at each step of the process. Absent the lenders' conduct, the Receiver would

¹ The lenders' arguments about the Receiver's "burn rate" are incomplete. Specifically, the Receiver's fee application shows that for Q3 2019, his professional fees were \$485,094.92, reflecting a daily expense of \$5,272.7 for that 92-day quarter. (ECF No. 608, pp. 18-19). Thus, his more recent "burn rate" is substantially lower than the \$6,100 figure cited in the lenders' objections, and even more lower than the \$6,500 figure cited in its prior objections (ECF No. 581, p. 2), a figure the Court determined was reasonable. Accordingly, the lenders' references to the Receiver's burn rate merely show that the Receiver's quarterly expenses have decreased over time and are continuing to do so.

undoubtedly have sold more properties and be further along in the claims and distribution process. Again, the Court has recognized that the Receiver should not be punished for the delays imposed on him by the lenders' conduct. (ECF No. 614, p. 3 (“while the objecting lenders contend that the Receiver’s liquidation and distribution efforts have proceeded too slowly...the Court notes that those efforts have been delayed in part by time spent responding to various motions and objections made by lenders.”)).

Finally, the lenders renew their arguments that the Receiver should hold back 20% of his fees. This is another argument that the Court has already rejected. (ECF No. 614, p. 4). As the Court held previously, because the Receiver has represented that the estate has sufficient funds to pay the Receiver and his professionals, there is no need for any holdback. (*Id.*)

C. Conclusion

The Receiver seeks compensation for work he performed and directed, using his reasonable business judgment. His bills reflect his efforts to both fulfill his Court-imposed mandates and to respond to voluminous motions and objections by the institutional lenders. The Court should allow the Receiver to be paid for his efforts, and to continue working for the benefit of the victimized investors and other creditors.

Dated: January 27, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing Reply, via ECF filing, to all counsel of record and Defendant Shaun Cohen, on January 27, 2020. I further certify that I caused the foregoing Response to be served on Defendant Jerome Cohen, via email at jerryc@reagan.com.

/s/ Benjamin Hanauer

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