

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**EQUITYBUILD, INC., EQUITYBUILD
FINANCE, LLC, JEROME H. COHEN,
and SHAUN D. COHEN,**

Defendants.

Civil Action No. 18-cv-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

**RECEIVER’S COMBINED MOTION FOR EXTENSION AND MOTION
FOR COURT APPROVAL TO RETAIN COUNSEL ON CONTINGENCY BASIS**

Kevin B. Duff, as the receiver (“Receiver”) for the Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), respectfully moves the court as follows:

**I. RECEIVER’S MOTION FOR EXTENSION OF TIME TO FILE MOTION
REGARDING THE ALLOCATION OF FEES TO PROPERTIES**

The Receiver respectfully requests that this Court enter an order granting him an additional fourteen days to file his motion for the approval of his proposed allocations of fees to specific properties. Counsel for the SEC, counsel for certain of the institutional lenders, and counsel for certain of the investor lenders have advised that they have no objection to the extension sought in this Motion. In support of his Motion, the Receiver states as follows:

1. On August 17, 2021, this Court granted in part the Receiver’s motion for approval to pay certain fees and costs pursuant to the receiver’s lien. (Dkt. No. 1030). In its Order, the

Court instructed the Receiver to file a separate motion for the approval of his specific line-by-line and property-by-property fee allocations by September 7, 2021, and indicated that the motion would be referred to Magistrate Judge Kim.

2. The schedules outlining the Receiver's proposed allocation of fees to specific properties that were submitted in support of the Receiver's motion related to fees that the Court had approved as of the date the schedules were filed (*i.e.*, for the period through 6/30/2020). (Dkt. No. 981-1 through 981-6)

3. Since that time, the Court has granted the Receiver's Ninth, Tenth, and Eleventh Fee Applications, for the period from 7/1/2020 through 3/31/2021 (Dkt. No. 1031) and the Receiver has filed his Twelfth Fee Application (for the quarter ending 6/30/21) (Dkt. No. 1026).

4. As a result, the Receiver is updating the schedules to allocate his and his counsel's fees for these later time periods according to the methodology approved by the Court, and intends to submit these additional schedules with the motion for referral to Judge Kim.

5. As there are in excess of 6,000 tasks in these subsequent billing invoices, the Receiver and his counsel require an additional fourteen days to complete their preparation of the updated schedules and file the motion.

WHEREFORE, the Receiver requests a fourteen-day extension of time, from September 7, 2021 to September 21, 2021, to file his motion for the approval of his property-by-property fee allocations.

II. RECEIVER'S MOTION FOR COURT APPROVAL TO RETAIN COUNSEL ON CONTINGENCY BASIS

Pursuant to the powers vested in him by the Order of this Court entered on August 17, 2018, the Receiver intends to retain Rachlis Duff & Peel, LLC and Porter Law Office ("Counsel") to perform certain legal work, including investigation, advice, and representation in connection

with claims the Receiver may bring on behalf of the Receivership Estate or one or more entities within the Receivership Estate. The Receiver respectfully moves this Court for an order approving the retention of the Counsel. In support of his Motion, the Receiver states as follows:

1. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, the Securities and Exchange Commission sought and obtained the appointment of the Receiver. Under the order appointing the Receiver, the Receiver has authority in equity, as well as under 28 U.S.C. §§ 754, 959, and 1692, and Fed. R. Civ. P. 66, and was given broad powers to investigate and safeguard the assets of Receivership Defendants. Among other powers, the Receiver may engage attorneys as the Receiver deems advisable or necessary in the performance of the Receiver's duties and responsibilities under the Order Appointing Receiver. (*See* Dkt. No. 16, ¶ 54) The Receiver also is authorized to solicit persons and entities to assist him in carrying out the duties and responsibilities described in the Order Appointing Receiver. (*Id.* ¶ 68) The Order Appointing Receiver also provides that the Receiver shall not engage any Retained Personnel without first obtaining an order of the Court authorizing such engagement. (*Id.*)

2. The Receiver has determined that there is a substantial need to retain the Counsel to perform the following services, namely to perform certain legal work including investigation, advice, counsel, and representation in connection with claims the Receiver may bring on behalf of the Receivership Estate or one or more entities within the Receivership Estate. The Counsel will represent the Receiver in connection with potential claims against third parties that have aided and abetted, enabled, facilitated, and/or been unjustly enriched by the fraudulent scheme operated by EquityBuild. The Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgements of fees, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debt, and such other relief from the Court as may be necessary to enforce the Order. The potential claims that are the subject of this motion are not

against claimants who are institutional or investor lender claimants in this matter; nor are the potential claims the same as the prior claims for which the Receiver sought approval to retain additional counsel. (Dkt. No. 759)

3. The Counsel have represented that they do not have any conflicts of interest and do not hold or represent an interest materially adverse to the interests of the Receivership Estate.

4. The Order Appointing Receiver provides that the Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate and that such compensation shall require the prior approval of the Court. (Dkt. No. 16, ¶ 69) The Counsel will seek compensation from the Receivership Estate solely on a contingency basis and only subject to the review of the SEC and the approval of the Court prior to any payment of compensation. The Receiver and/or his existing counsel will also participate in the prosecution of such claims, and any fees and expenses associated therewith would also be contingency-based and subject to the review of the SEC and the approval of the Court prior to any payment of compensation.

5. The SEC does not object to this Motion.

WHEREFORE, the Receiver respectfully requests that this Court grant this Motion and enter the Order approving retention of Rachlis Duff & Peel, LLC and Porter Law Office on a contingency basis, and grant such other relief as the Court deems just and proper.

Dated: August 27, 2021

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis
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EXHIBIT A

- (2) The Court approves the Receiver's engagement of Rachlis Duff & Peel, LLC and Porter Law Office on a contingency, with any compensation due thereby being subject to SEC review and Court approval.

Entered:

Honorable John Z. Lee

Date: _____