

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.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

Magistrate Judge Young B. Kim

**JOINT MOTION TO APPROVE DISTRIBUTIONS OF
PROCEEDS FROM THE SALES OF PROPERTIES LOCATED
AT 3723 W 68TH PLACE, 61 E 92ND STREET AND 7953 S WOODLAWN AVENUE**

Kevin B. Duff, as the receiver for the Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (“Receiver”), and Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Colony American Finance 2015-1 (“Midland”), respectfully file this joint motion for approval of an agreed plan for the distribution of the proceeds from the sales of 3723 W 68th Place (Property 33), 61 E 92nd Street (Property 35), and 7953 S Woodlawn Avenue (Property 40) (hereinafter the “Subject Properties”). In support of this motion, movants state as follows:

1. With the Court’s approval, on May 26, 2021, the Receiver sold a portfolio of properties that included the Subject Properties free and clear of all mortgages and encumbrances. (Dkt. 979) Prior to the sale, the Court found that the Receiver gave fair, adequate, and sufficient notice to all interested parties, including all mortgagees affected by the Receiver’s 13th Motion to Confirm the Sale of these and other properties. *Id.* at 2. The net proceeds of sale for each of the

three Subject Properties were deposited into a separate interest-bearing account held by the Receiver pursuant to court order. See Exhibit A. Additional deposits have been made into these property accounts, as reported in the Receiver's quarterly status reports (Dkt. 1017, 1077, 1164, 1243, 1280, 1328) and summarized in Exhibit A, along with the balance as of the date of filing in each of the accounts.

2. In 2019, the Receiver initiated a claims process whereby he: (a) researched mortgagees of record and EquityBuild records to identify potential claimants; (b) served all known potential claimants by email and/or regular mail with notice of the bar date, procedures for submitting proofs of claim, and a link to a third-party portal to submit claims; (c) sent multiple follow-up emails reminding potential claimants of the bar date (and the extended bar date); and (d) established a webpage (<http://rdaplawnet.com/receivership-for-equitybuild>) for claimants and other interested parties which prominently displayed the claims bar date and provided copies of the claims notice, instructions, proof of claim forms, a link to the claims portal, and copies of certain court filings related to the claims process. Investors were notified that the failure to submit a claim verification form by the bar date would be a basis for denial of that claim. (Dkt. 241, 302, 349, 468, 548, 638, 693, 720) The Court's orders with respect to the claims process were also served upon claimants and potential claimants and posted on the Receiver's website. (Dkt. 349, 574, 940, 941)

3. In February 2021, following briefing and hearings, the Court entered two orders establishing a process for the resolution of disputed claims. (Dkt. 940, 941)

4. In February 2021, the Receiver moved to approve the payment of certain previously approved fees and costs pursuant to the Receiver's lien on the properties of the Estate that had been granted by the Court (Dkt. 947, 981) The Court granted the Receiver's motion (Dkt. 1030),

and referred subsequent proceedings on the Receiver's specific fee allocations to Magistrate Judge Kim, which are ongoing. (Dkt. 1107, 1113, 1230, 1312, 1321, 1323) Claimants and potential claimants have received notice of the motion practice relating to the receiver's lien, and the Receiver's fee applications, the foregoing motions, and the Court's orders have been posted to the Receiver's website.

5. Subsequently, settlement discussions occurred before Magistrate Judge Kim among and between the Receiver and each of the claimants asserting an interest in the Subject Properties, namely Midland, Celia Tong (on behalf of the Celia Tong Revocable Trust, Blessing Strategies, LLC, and Quantum Growth Holdings LLC), Dennis McCoy, Kathleen Martin (on behalf of the heirs of John Martin), Lorenzo Jaquias, and Jeffrey Lee Blankenship.

6. Claimant Tong subsequently conceded that she, Blessing Strategies, LLC, and Quantum Growth Holdings LLC had each rolled their secured interests to other EquityBuild properties, and were no longer asserting a claim against any of the Subject Properties. Likewise, claimants McCoy, Jaquias, and Blankenship have each confirmed that their investments were rolled to other properties and they also are no longer asserting claims against any of the Subject Properties.

7. Claimant Martin reached a negotiated agreement regarding the distribution of the funds in the account held for 3723 W 68th Place (Property 33), as set forth in Exhibit A (distribution plan). Claimant Martin does not oppose this motion, she and the estate of John Martin have accepted the distributions proposed in this motion with respect to any claim secured by Property 33, and agree that they will not seek appeal from any rulings associated with the Subject Properties.

8. The moving parties have reached agreement as to the distribution plan set forth in Exhibit A, which provides for: (i) payment to the Receiver's law firm for uncontested fees allocated to the property (constituting the allocation of fees submitted in approved fee applications through the Second Quarter of 2022, plus the 20% of fees held back from the payment of fees allocated to the Subject Properties in the Third Quarter of 2022 (see Dkt. 1366, 1371, 1372), plus fee allocations for the Fourth Quarter of 2022, minus a credit for agency fees paid to the Receiver's counsel); (ii) reimbursement to the Receiver's account for previously incurred expenses attributable to the Subject Properties; (iii) payments to claimant Martin of the amount negotiated for the settlement of her claim against Property 33; and (iv) distribution of the remaining balance in the separate property accounts to Midland or its nominee.

9. Midland agrees that with respect to the Subject Properties, Midland will withdraw its objections to the Receiver's lien entered by the Court (Dkt. 1030) and to the Receiver's pending fee allocation motions (Dkt. 1107, 1321), subject to the agreements reached by the movants as set forth in this Motion and the Court's granting of this Motion.

10. Midland and the Receiver further agree that their agreement resolves all disputes between the Receivership Estate and the Receiver and Midland with respect to the Subject Properties, and neither party will appeal from any rulings associated with the Subject Properties. Midland's agreement to the proposed distribution is without prejudice to any claim it may have against any applicable title insurer.

Legal authority

11. It is well-settled that the district courts have broad powers and are afforded wide discretion in approving a distribution plan of receivership funds. *SEC v. Forex Asset Mgmt.*, 242 F.3d 325, 331 (5th Cir. 2001); *SEC v. Enterprise Trust Co.*, 559 F.3d 649, 652 (7th Cir. 2009)

(“District judges possess discretion to classify claims sensibly in receivership proceedings.”); *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992).

12. Because the Receiver is a fiduciary and officer of this Court, the Court may give some weight to the “...Receiver’s judgment of the most fair and equitable method of distribution.” *CFTC v. Eustace*, No. 05-2973, 2008 WL 471574, at *5 (E.D. Pa. Feb. 19, 2008) (approving receiver’s pro-rata distribution plan and recognizing that the receiver does not represent a particular group of investors or claimants but rather proposes a plan that is fair to all investors).

13. Based on the facts and circumstances, the Receiver believes that the distribution plan with respect to the Subject Properties as described in this motion is fair and equitable. The recommended distribution amounts represent a substantial payment of the principal amount of the loans to secured lenders for the Subject Properties. The Receiver has further determined that there are no other issues that he is aware of that would necessitate any further holdback from the amounts set forth above.

14. There are also additional savings of time and resources achieved based on the agreements reached between the Receiver, Midland, Kathleen Martin (on behalf of herself and the heirs of John Martin’s estate), Celia Tong (on behalf of the Celia Tong Revocable Trust, Blessing Strategies, LLC, and Quantum Growth Holdings LLC), Dennis McCoy, Lorenzo Jaquias, and Jeffrey Lee Blankenship. As a result of the agreements set forth in this motion, there are no objections that remain associated with the Receiver’s lien or fees allocated to the Subject Properties. The claimants’ agreement to not seek appeal from any rulings associated with the Subject Properties will be a further saving time and resources for many involved in the Receivership. Effectively, as a result of the agreement and distribution, the claims and issues between the Receivership, Midland, Martin, Celia Tong Revocable Trust, Blessing Strategies,

LLC, Quantum Growth Holdings LLC, McCoy, Jaquias, and Blankenship with respect the Subject Properties have concluded.

15. Notice of this motion is being given to each of the claimants asserting a claim against any of the Subject Properties, as well as to each of the other claimants who have submitted claims in this matter. In addition, this motion will be made publicly available to all interested and potentially interested parties by posting a copy of it to the Receivership web site.

WHEREFORE, the movants seek the following relief:

- a) a finding that adequate and fair notice has been provided to all interested and potentially interested parties of the claims process, the Receiver's proposed fee allocations, and the current Motion, and that each interested or potentially interested party has had a full and fair opportunity to assert its interests and any objections;
- b) a finding that the agreement described herein is fair and reasonable;
- c) approval of the payment of the attorneys' fees the Receiver has allocated to the Subject Properties in his pending fee allocation motions (Dkt. 1107, 1321), and the Court's further approve the payment of fee allocations to the Subject Properties for the fourth quarter of 2022;
- d) approval of the distribution of funds as set forth in Exhibit A to this motion, with distributions to be made within ten (10) business days of the Court's approval of this motion; and

e) such other relief as the Court deems fair and equitable.

Dated: February 13, 2023

Respectfully submitted,

/s/ Michael D. Napoli

Thomas B. Fullerton (6296539)
Akerman LLP
71 S. Wacker Drive, 47th Floor
Chicago, IL 60606
(312) 634-5700
thomas.fullerton@akerman.com

Michael D. Napoli (TX 14803400)
Akerman LLP
2001 Ross Avenue, Suite 3600
Dallas, TX 75201
(214) 720-4360
michael.napoli@akerman.com

*Counsel for Midland Loan Services,
a Division of PNC Bank, National Association*

/s/ Michael Rachlis

Michael Rachlis
Jodi Rosen Wine
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
(312) 733-3950
mrachlis@rdaplawn.net
jwine@rdaplawn.net

Counsel for Kevin B. Duff, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing **Joint Motion To Approve Distributions Of Proceeds From The Sales Of Properties Located At 3723 W 68th Place, 61 E 92nd Street And 7953 S Woodlawn Avenue**, via CM/ECF system, to all counsel of record on February 13, 2023.

I further certify that I caused true and correct copy of the foregoing **Joint Motion** to be served upon all individuals or entities that submitted a proof of claim in this action with respect to the properties identified in the foregoing **Joint Motion**: Kathleen Martin (on behalf of herself and the heirs of John Martin's estate) <SMILE4MENOW222@msn.com>; Jeffrey Blankenship <jeff_blankenship99@yahoo.com>; Dennis McCoy dennismccoy@sbcglobal.net; Lorenzo Jaquias <hiloboy@live.com>; Celia Tong (on behalf of the Celia Tong Revocable Trust, Blessing Strategies, LLC, and Quantum Growth Holdings LLC) celiayt@hotmail.com; and upon all individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form) and their counsel.

I further certify that the **Joint Motion** will be posted to the Receivership webpage at: <http://rdaplaw.net/receivership-for-equitybuild>

/s/ Michael Rachlis _____

Michael Rachlis
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
Fax (312) 733-3952
mrachlis@rdaplaw.net

EXHIBIT A

Prop #	PROPERTY ADDRESS	Net proceeds of Sale	Transfers pursuant to 9/21/20 Court Order (Dkt. 796)	Post-Sale Reconciliations	17th Fee Application Payments (1/18/23)	Interest Paid	Balance of Receivership Account for Property (as of 1/31/23)
33	3723 W 68th Place	\$ 116,218.63	\$ -	\$ 7,813.54	\$ (1,479.33)	\$ 1,385.82	\$ 123,938.66
35	61 E 92nd Street	\$ 96,208.20	\$ -	\$ 7,032.18	\$ (1,346.04)	\$ 1,153.03	\$ 103,047.37
40	7953 S Woodlawn Avenue	\$ 116,712.51	\$ -	\$ 11,720.31	\$ (1,982.55)	\$ 1,432.22	\$ 127,882.49
	TOTALS	\$ 329,139.34	\$ -	\$ 26,566.03	\$ (4,807.92)	\$ 3,971.07	\$ 354,868.52

Prop #	Fee Allocations (thru Q2 2022)	Holdbacks (Q3 2022)	Fee Allocations (Q4 2022)	Credit for agency fees paid to Receiver's counsel	Net Distribution to Receiver for Fees
33	\$ 13,444.30	\$ 369.83	\$ 2,779.10	\$ (1,487.50)	\$ 15,105.73
35	\$ 12,741.00	\$ 336.51	\$ 2,629.48	\$ (1,487.50)	\$ 14,219.49
40	\$ 14,594.75	\$ 495.64	\$ 1,060.92	\$ (1,487.50)	\$ 14,663.81
	\$ 40,780.05	\$ 1,201.98	\$ 6,469.50	\$ (4,462.50)	\$ 43,989.03

Prop #	Balance of Receivership Account for Property (as of 1/31/23)	Net Distribution to Receiver for Fees	Net Distribution to Receiver's Account for Cost Reimbursements	Amount Available for Distribution to Claimants
33	\$ 123,938.66	\$ (15,105.73)	\$ (2,278.81)	\$ 106,554.12
35	\$ 103,047.37	\$ (14,219.49)	\$ (2,252.95)	\$ 86,574.93
40	\$ 127,882.49	\$ (14,663.81)	\$ (2,481.71)	\$ 110,736.97
	\$ 354,868.52	\$ (43,989.03)	\$ (7,013.47)	\$ 303,866.02

Prop #	Amount Available for Distribution to Claimants*	Distribution to Kathleen Martin	Distribution to Midland Loan Services*
33	\$ 106,554.12	\$ 19,000.00	\$ 87,554.12
35	\$ 86,574.93		\$ 86,574.93
40	\$ 110,736.97		\$ 110,736.97
	\$ 303,866.02	\$ 19,000.00	\$ 284,866.02

*The Receiver will pay any pro rata interest earned as of the date of distribution to Midland