

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

<p>U.S. SECURITIES AND EXCHANGE COMMISSION,</p>	<p>)</p>	
)	
Plaintiff,)	Civil Action No. 18-CV-5587
)	
v.)	Judge Manish S. Shah
)	
EQUITYBUILD, INC., et al.,)	Magistrate Judge Young B. Kim
)	
Defendants.)	

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

The SEC supports the Receiver’s Nineteenth Fee Application (ECF 1478). The SEC confirms 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 supporting the Receiver’s earlier fee petitions. *See* ECF 526, 606, 622, 705, 797, 803, 922, 970, 1002, 1220, 1254, 1307, 1350, 1408. Granting every previous petition, the Court has repeatedly approved the precise types of activities for which the Receiver now seeks payment. *See, e.g.,* ECF 1312, 1366, 1452; Apr. 26, 2023 Hearing Tr. at 19:21-21:5.

Like the most recent petition the Court granted, this petition addresses activities focused on the claims process and bringing actions against third parties to generate additional assets for unsecured claimants. The same rationale for granting the prior petition applies equally here: “The objections based on the categories being outside the categories previously approved for the lien are overruled for the same reasons those objections have been overruled before...the receiver has a handle on these categories that the Court has approved and is following that methodology.” Apr. 26, 2023 Hearing Tr. at 19:22-20:3.

The Court's ruling on the prior petition addressed various issues the Institutional Lenders again repeat here. The Court thus found that the task descriptions contained in the Receiver's bills "are sufficiently detailed." Apr. 26, 2023 Hearing Tr. at 20:1-6. The Court also determined that the Receiver's proposed allocations continued to follow "an approved methodology," including finding that claimant inquiries are properly the subject of the Receiver's lien. *Id.* at 20:10-15. The Court concluded by finding "the 20% holdback on fees is enough of a check against either unreasonable billing or overbilling or errors to serve that purpose." *Id.* at 20:20-22. To that end, the Court reiterated last month that it has yet to find material errors in the Receiver's fee petitions and allocations. May 25, 2023 Hearing Tr. at 5:22-6:1.

As with the previous petitions, the *only* objecting parties are the Institutional Lenders who continue to object to nearly every action by the Receiver. The Court has accurately observed that these Lenders "are the ones who are causing the receiver to generate" many of his fees. May 25, 2023 Hearing Tr. at 13:8-12.

The Institutional Lenders concede that most of their objections raise disputes that are "substantially the same as previously overruled objections." ECF 1486 at 4-8 (objecting to fees for providing notice to relevant parties, responding to creditor inquires and reviewing claims information, litigating Group 1 claims, and restoring funds that the Receiver had paid to benefit various properties; and objecting that billing entries purportedly lack detail); *id.* at 3 (objecting to allocating fees to properties due to availability of funds in Receiver's general account). Yet they offer no compelling reason to disturb the Court's prior rulings on the exact same issues.

The Lenders' primary "new" objection is that expenses related to Groups 2 and 3 are "premature," since the Court has not yet ruled on priority for those groups. ECF 1486 at 7-8. However, the Court previously approved the Receiver's Group 1 related fees, over the Lenders'

objections, *before* determining which Group 1 claimants had priority. *See, e.g.*, ECF 1366 at 2 (“The court’s forthcoming ruling on the priority dispute in the Group 1 bucket is not reason to delay payment”); ECF 1312 at 2 (approving Group 1 related fees prior to priority determination). Again, the Lenders do not and cannot show the Court’s earlier rulings were incorrect.

Finally, the Lenders again demand the imposition of an extra 20% holdback on payments to the Receiver, in addition to the existing 20% holdback the Court has long imposed. ECF 1486 at 8. Not only has the Court already ruled on this issue, it reaffirmed its ruling when denying the Lenders’ motion for reconsideration. ECF 1483; May 25, 2023 Hearing Tr. at 11:18-12:15. This continued briefing on an issue the Court recently and definitively resolved is but the latest example of the Lenders’ obstructive conduct that depletes the funds available to victims of the Cohens’ securities fraud. And it shows why the Court’s suggestion, to apportion the Receiver’s fees “to particular objectors who are the ones who are causing the receiver to generate [those] fees,” is the right idea. May 25 Hearing Tr. at 13:8-12.¹

Respectfully submitted,

Dated: June 20, 2023

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¹ The SEC takes no position on the specific objections lodged by Federal Housing Finance Agency. (ECF 1485).

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 June 20, 2023.

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