

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

United States Securities and Exchange Commission,)	
)	
Plaintiff,)	
)	No.: 18-cv-5587
v.)	Honorable Manish S. Shah
)	Magistrate Judge Young B. Kim
EquityBuild, Inc., EquityBuild Finance, LLC, Jerome H. Cohen, and Shaun D. Cohen,)	
)	
Defendants.)	

**FEDERAL HOUSING FINANCE AGENCY, FANNIE MAE, AND FREDDIE MAC’S
JOINT OBJECTION TO MR. DUFF’S TWENTIETH INTERIM APPLICATION AND
MOTION FOR COURT APPROVAL OF PAYMENT OF FEES AND EXPENSES OF
RECEIVER AND RECEIVER’S RETAINED PROFESSIONALS AS PERTAINS TO
THE ALLOCATION OF SUCH FEES AND EXPENSES TO THE FUNDS HELD
RELATING TO THE ENTERPRISE PROPERTIES**

The Federal Housing Finance Agency (“FHFA”), as Conservator for the Federal National Mortgage Association (“Fannie Mae”) and Federal Home Loan Mortgage Corporation (“Freddie Mac”) (together, “Enterprises”), object to Kevin B. Duff’s, in his capacity as receiver of Equitybuild Inc., et al. (“Mr. Duff”), Twentieth Interim Application and Motion for Court Approval of Payment of Fees and Expenses of Receiver and Receiver’s Retained Professionals, Dkt. 1517 (“Motion”), to the extent it seeks to allocate fees to funds controlled by this Court relating to Mr. Duff’s sale of 1131-41 East 79th Place or 7024-32 South Paxton Avenue (together, “Enterprise Properties”).¹

On March 4, 2022, FHFA filed an objection to Mr. Duff’s motion to allocate his fees and costs to the bank accounts associated with specific properties insofar as it would allocate any costs to the Enterprise Properties (“Initial Objection”). Dkts. 1107, 1209. FHFA objected on the

¹ FHFA joins the institutional lenders’ objections to Mr. Duff’s Motion. FHFA and the Enterprises file this separate objection because Mr. Duff’s Motion violates the Housing and Economic Recovery Act of 2008.

grounds that the allocation of fees and costs to the Enterprise Properties violates federal law, including the mandates that: (i) “no court may take any action to restrain or affect the exercise of powers or functions of [FHFA] as a conservator,” 12 U.S.C. § 4617(f); and that (ii) conservatorship property is not “subject to levy, attachment, garnishment, foreclosure, or sale without [FHFA’s] consent,” 12 U.S.C. § 4617(j)(3). *See* Dkt. 1209; *see also* Dkt. 1266. On June 22, 2022, Magistrate Judge Kim overruled FHFA’s objection, Dkts. 1257, 1258 (“First MJ Decision”). On July 7, 2022, FHFA objected to Magistrate Judge Kim’s decision under Rule 72. Dkt. 1266.

On October 17, 2022, the Court affirmed the First MJ Decision. Dkt. 1325 (“First Ruling”). FHFA timely moved for the Court to certify the First Ruling for immediate appeal under 28 U.S.C. § 1292(b) and filed a notice of appeal under 28 U.S.C. § 1292(a). Dkts. 1334, 1336. On December 21, 2022, the Court denied FHFA’s motion to certify, Dkt. 1358, leaving only the § 1292(a) appeal of right pending in the Seventh Circuit as to the First Ruling. That appeal remains pending, subject to a fully briefed motion to dismiss. *See* Case No. 22-3073 (7th Cir.).

On April 14, 2023, FHFA and the Enterprises filed an objection to Mr. Duff’s second motion to allocate his fees and costs to bank accounts associated with specific properties insofar as it would allocate any costs to the Enterprise Properties (“Second Objection”). Dkts. 1321, 1442. Magistrate Judge Kim overruled FHFA and the Enterprises’ objection and granted the motion. Dkts. 1490, 1491 (“Second MJ Decision”). FHFA and the Enterprises timely objected to this Court. Dkt. 1502. On July 21, 2023, the Court sustained the Second MJ Decision and overruled the Second Objection. Dkt. 1511 (“Second Ruling”). FHFA and the Enterprises timely moved for the Court to certify the Second Ruling for immediate appeal under 28 U.S.C. § 1292(b) and filed a notice of appeal under 28 U.S.C. § 1292(a). Dkts. 1519, 1522. The motion to certify remains pending in this Court, and the § 1292(a) appeal remains pending in the Seventh Circuit. *See* Case

No. 23-2668 (7th Cir.).

As explained in FHFA's Initial and Second Objections, in FHFA's subsequent briefing on its objections to the First and Second MJ Decisions, and the motions to certify the First and Second Rulings for immediate appeal under 28 U.S.C. § 1292(b), allocating fees and costs to the Enterprise Properties necessarily dissipates the collateral securing each Enterprise's loan, thereby depriving the Conservator of a property interest and impermissibly restraining the Conservator's federal powers to collect on obligations due the Enterprises and to preserve and conserve conservatorship property. And this Court, in several fee-related orders staying distributions of Mr. Duff's fees allocated to the Enterprise Properties, has aptly recognized the practical issues that may arise in the event Mr. Duff's fees are disbursed before the Seventh Circuit can resolve FHFA and the Enterprises' objections. *See, e.g.*, Dkts. 1366; 1452, 1469, 1510, 1511.

Accordingly, and to preserve FHFA and the Enterprises' position as to any further allocations of Mr. Duff's fees and costs to Enterprise Properties, FHFA and the Enterprises object to the Motion to the extent that it seeks to allocate fees and costs to the Enterprises' Properties. In that regard, FHFA and the Enterprises respectfully rely upon and incorporate herein by reference the arguments in FHFA's Initial and Second Objections, subsequent briefing on its objections to the First and Second MJ Decisions, and both motions to certify the First and Second Rulings for immediate appeal under 28 U.S.C. § 1292(b). *See* Dkts. 1209, 1266, 1279, 1334, 1335, 1442, 1502, 1519, 1520. To be clear, FHFA and the Enterprises' position is that the fees and costs set forth in the Motion cannot be allocated to or assessed against collateral representing the Enterprise Properties under governing federal law at 12 U.S.C. § 4617. FHFA and the Enterprises may have additional objections in the future to the fees and costs for their properties not included within this objection.

Further, in the event the Court overrules this objection, FHFA and the Enterprises request the Court again exercise its discretion to withhold payment to Mr. Duff of any fees and expenses allocated to the Enterprises' Properties. And if Mr. Duff subsequently moves for approval of property-by-property fee allocations against the Enterprise Properties, FHFA and the Enterprises reserve the right to assert (and intend to assert) their opposition to any future motion on the basis that doing so violates federal law.

FHFA and the Enterprises object to Mr. Duff's Motion to the extent its fees and costs are allocated to the Enterprise Properties, as such action is precluded by federal law. The Court should carve out the Enterprise Properties from the allocation request and deny Mr. Duff's Motion to the extent the fees and costs are allocated against Enterprises' Properties.

Dated: September 5, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2023, I caused the foregoing **Federal Housing Finance Agency, Fannie Mae, and Freddie Mac's Joint Objection to Mr. Duff's Twentieth Interim Application and Motion for Court Approval of Payment of Fees and Expenses of Receiver and Receiver's Retained Professionals As Pertains to the Allocation of Such Fees and Expenses to the Funds Held Relating to the Enterprise Properties** to be electronically filed with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification of such filing to all parties of record.

/s/ Daniel E. Raymond