

**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 DISTRIBUTION OF PROCEEDS
FROM THE SALE OF PROPERTY 107 (1422-24 E. 68TH STREET)**

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”), UBS AG, Fixed Slice LLC, and Dan Behm, respectfully file this joint motion for approval of an agreed plan for the distribution of the proceeds from the sales of 1422-24 East 68th Street (hereinafter, the “Subject Property”). In support of this motion, movants state as follows:

1. With the Court’s approval, on June 23, 2021, the Receiver sold the property located at 1422-24 East 68th Street for \$400,000.00. (Dkt. 966.) Prior to the sale, the Court found that the Receiver gave fair, adequate, and sufficient notice to all interested parties, including all mortgagees and encumbrancers affected by the Receiver’s 10th Motion to Confirm the Sale of these and other properties. *Id.* at 3. The net proceeds of sale in the amount of \$365,372.11 were deposited into a separate interest-bearing account held by the Receiver pursuant to court order (account ending 0934). *See Exhibit A.* Additional deposits and disbursements have been made into and from this

property account, *e.g.*, as reported in the Receiver's quarterly status reports (Dkt. 839, 930, 985, 1017, 1077, 1164, 1243, 1280, 1328, 1379, 1448, 1516, 1535) and summarized in Exhibit A, along with the balance as of the date of filing in the account held for the Subject Property.

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://rdaplaw.net/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. All potential claimants 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. (*E.g.*, 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 and September 2022, 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, 1321.) After extensive briefing and hearings, rulings by Magistrate Judge Kim and objections to same, the Court granted the motions and approved the allocations of fees to the properties with respect to the Receiver's First through

Sixteenth Fee Applications. (Dkt. 1469, 1511.) Subsequently, the Court granted the allocations and payments sought in the Receiver's Seventeenth through Twentieth Fee Applications. (Dkt. 1372, 1452, 1510, 1539.) Claimants and potential claimants 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 Property, namely UBS AG, Dan Behm, Domenic Simone, and Fixed Slice LLC.

6. As evidenced by the email attached as **Exhibit B** hereto, Claimant Domenic Simone conceded that he has been repaid 100% of the principal of the loan secured by 1422-24 E 68th Street and notified the Receiver that he was withdrawing his claims against the property.

7. Claimants Dan Behm and Fixed Slice LLC reached a negotiated agreement with UBS AG regarding their priority dispute and the distribution of the funds in the account held for 1422-24 E 68th Street (Property 107), as set forth in Exhibit A (distribution plan).

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 contested and uncontested fees allocated to the property, constituting the allocation of fees submitted in the Receiver's Twenty-First Fee Application for the Third Quarter of 2023, which is pending before the Court, plus an estimate of fees incurred during the Fourth Quarter of 2023, plus the 20% of fees previously held back from payment pursuant to Court orders (Dkt. 1372, 1452, 1469, 1510, 1511, 1539), and (ii) distributions to claimants UBS AG, Dan Behm and Fixed Slice LLC of the amount negotiated for the settlement of their claims against Property 107, as specified in Exhibit A.

9. UBS AG, Dan Behm, Fixed Slice LLC, and the Receiver (each a “Party” and collectively “Parties”) further agree as follows:

(a) Their agreement resolves all disputes between and among them with respect to the Subject Property, and no Party will appeal from or collaterally attack any rulings associated with the Subject Property, and any and all other claims that might exist between or among the Parties or any of them to this Motion regarding the Subject Property are waived.

(b) The agreement is a compromise of disputes and disagreements among or between the various Parties, and it does not constitute an admission of the validity of any claim, defense, argument, or position made or taken by any Party. The agreement over the Subject Property will not prejudice, impair, or waive any Party’s position regarding any other property, and the agreement does not establish a precedent as to any other property.

(c) Provided that the Court grants this Motion and the property account is distributed in accordance with the Motion, UBS AG agrees that with respect to the Subject Property only, UBS AG withdraws its objections to the Receiver’s lien entered by the Court as to the Subject Property (Dkt. 1030) and to the Receiver’s pending fee application as to the Subject Property (Dkt. 1538).

Legal Authority

10. 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. LLC*, 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).

11. 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).

12. Based on the facts and circumstances, the Receiver believes that the distribution plan with respect to the Subject Property 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 those alleging to be secured lenders for the Subject Property. 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.

13. There are also additional savings of time and resources achieved based on the agreements reached between and among the Receiver, UBS AG, Dan Behm, Fixed Slice LLC, and Domenic Simone. 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 Property. The claimants’ agreement to not seek appeal from any rulings associated with the Subject Property will further save time and resources for many involved in the Receivership. Effectively, as a result of the agreement and distribution, the claims and issues with respect the Subject Property have concluded.

14. Notice of this motion is being given to each of the claimants asserting a claim against the Subject Property, 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 fees and proposed fee allocations, the agreed distributions, 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 receiver and attorneys' fees the Receiver has allocated to the Subject Property in his pending fee application (Dkt. 1538), the Court's further approval of the payment of fees allocated to the Subject Property for the fourth quarter of 2023, and the payment of fees previously held back for all previous fee applications;
- d) approval of the distribution of funds as set forth in Exhibit A to this motion, with distributions to be made within five (5) business days of the Court's approval of this motion, or as soon as such distributions can be reasonably achieved; and
- e) such other relief as the Court deems fair and equitable.

[signatures on next page]

Dated: December 18, 2023

/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@rdaplaw.net
jwine@rdaplaw.net
Counsel for Kevin B. Duff, Receiver

/s/ Al Vardya

Al Vardya
Fixed Slice LLC

Respectfully submitted,

/s/ Timothy J. Patenode

Timothy J. Patenode
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
Ph: (312) 902-5200
Fax: (312) 902-1061
timothy.patenode@katten.com
Counsel for UBS AG

/s/ Dan Behm

Dan Behm

CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing **Joint Motion To Approve Distribution Of Proceeds From The Sale Of Property 107 (1422-24 E. 68th Street)**, via CM/ECF system, to all counsel of record on December 18, 2023.

I further certify that I caused true and correct copy of the foregoing **Joint Motion** to be served upon UBS AG (timothy.patenode@katten.com); Al Vardya (avardya@umich.edu); Dan Behm (dbehm6@gmail.com) and Domenic Simone (texjack60@aol.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 or subsequently updated).

I further certify that the **Joint Motion** will be posted to the Receivership webpage at: <http://rdaplawnet.com/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@rdaplawnet.com

As of 12/4/2023

Prop #	107
Account #	0934
PROPERTY ADDRESS	1422-24 East 68th Street
Net proceeds of Sale	\$ 365,372.11
Forfeited earnest money	\$ 40,000.00
Post-Sale Reconciliations	\$ 41,534.67
Transfer of expenses pursuant to 9/21/20 Court Order (Dkt. 796)	\$ 1,822.00
Transfer of expenses pursuant to 3/27/23 Court Order (Dkt. 1433)	\$ (22,389.09)
8/27/21 Com Ed Refund	\$ 390.06
Fees paid pursuant to Court Orders (Dkt. 1372, 1452, 1469, 1510, 1511, 1539) Fee applications 1-20	(\$30,097.81)
Cumulative Interest Paid	\$ 20,469.25
Balance of Receivership Account for Property	\$ 417,101.19
Fee Allocations 21st Fee Application (Dkt. 1538) (Q3 2023)	\$ 115.22
Estimated Fee Allocations (Q4 2023)	\$ 1,500.00
Cumulative Fees Held Back pursuant to Court Orders (Dkt. 1372, 1452, 1469, 1510, 1511, 1539) Fee applications 1-20	\$ 7,524.44
Receiver's Fees	\$ 9,139.66

Dan Behm	\$ 25,334.00
Fixed Slice LLC	\$ 14,666.00
UBS AG	\$ 342,000.00
Receiver for payment of fees	\$ 9,139.66
Total distributions	\$ 391,139.66

Account Balance	\$ 417,101.19
Total Distributions	\$ (391,139.66)
Remaining balance to Receiver's Account	\$ 25,961.53

Exhibit

A

exhibitmaker.com



Jodi Wine <jwine@rdaplawn.net>

Re: EquityBuild case

1 message

texjack60@aol.com <texjack60@aol.com>
Reply-To: texjack60@aol.com
To: "jwine@rdaplawn.net" <jwine@rdaplawn.net>

Mon, May 1, 2023 at 8:06 PM

Hello Ms. Wine,

I am confirming my withdrawal of the claim against 1422-24 East 68th Street only.

Thank you,
Domenic Simone

-----Original Message-----

From: Jodi Wine <jwine@rdaplawn.net>
To: texjack60@aol.comCc: EquityBuild Receiver <equitybuildreceiver@rdaplawn.net>
Sent: Fri, Apr 28, 2023 1:26 pm
Subject: EquityBuild case

Hi Mr. Simone:

I am the lawyer that represents the Receiver in the *SEC v. EquityBuild* matter who spoke to you by telephone on September 13, 2022 and again on December 28, 2022 along with the Judge and other claimants who invested in the property located at 1422-24 East 68th Street.

On the December call, you informed us that you had been repaid 100% of the principal of your loan secured by 1422-24 East 68th Street and are withdrawing your claim against that property, which is consistent with the proof of claim form that you submitted.

Can you please confirm that you are withdrawing you claim against 1422-24 East 68th Street by responding to this email? Please be assured that this will not impact your claim against 7701-03 S Essex Avenue, or your unsecured claim from your investment in the former EquityBuild property Campo-Mar in Puerto Rico.

Thank you,
Jodi

Jodi Rosen Wine
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, Illinois 60605
jwine@rdaplawn.net
mobile 312-351-3231
direct 312-275-5108

