

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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 18-cv-5587
)	
v.)	Hon. Manish S. Shah
)	
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,)	Magistrate Judge Young B. Kim
)	
Defendants.)	
)	

**RECEIVER’S MOTION TO APPROVE SETTLEMENT AND RELEASE
AGREEMENT WITH MARK L. ROSENBERG AND THE LAW OFFICES
OF MARK L. ROSENBERG AND TO AUTHORIZE PAYMENT
OF CONTINGENCY FEE AND COSTS TO RECEIVER’S COUNSEL**

Kevin B. Duff, as receiver (“Receiver”) for the Estate of Defendants EquityBuild, Inc. (“EquityBuild”), EquityBuild Finance, LLC (“EquityBuild Finance”), their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), respectfully moves for approval of a \$350,000 settlement reached with the Law Offices of Mark L. Rosenberg (“Rosenberg Law Offices”) and its agent Mark L. Rosenberg (“Rosenberg”) (collectively the “Rosenberg Defendants”) and to authorize payment of fees and costs to counsel for the Receiver. In support of this Motion, the Receiver states as follows:

Background and Receiver’s Power to Settle Claims

1. On August 15, 2018, the United States Securities and Exchange Commission (the “SEC”) filed the lawsuit styled *United States Securities and Exchange Commission v.*

EquityBuild, Inc., EquityBuild Finance, LLC, Jerome H. Cohen, and Shaun D. Cohen; Civil Action No. 18-CV-5587 in the United States District Court for the Eastern District of Illinois (the “**SEC Action**”) which, among other requests for relief, sought the appointment of a receiver to marshal and preserve all assets of the Receivership Defendants and to handle all related claims.

2. The Court in the SEC Action entered an Order on August 17, 2018 (Docket No. 16) (the “**Order Appointing Receiver**”) assuming exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Receivership Defendants, as defined by Paragraph 1 of the Order Appointing Receiver and by two subsequent Orders (Docket Nos. 290, 624). The settlement agreements refer to the Receivership Defendants identified in the three Orders (Docket Nos. 16, 290, and 634), collectively, as “**EquityBuild.**”

3. In the Order Appointing Receiver, the Court conferred upon the Receiver (1) “all powers, authorities, rights and privileges” theretofore possessed by the principals of the Receivership Defendants under applicable state and federal law, as well as by the governing operating and shareholders’ agreements, and (2) all powers and authority of a receiver at equity, as well as all powers conferred upon a receiver under 28 U.S.C. §§ 754, 959, and 1692, and FRCP 66. (Docket No. 16, ¶ 4)

4. The Order Appointing Receiver authorizes the Receiver to take custody, control, and possession of all assets which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Assets”), to issue subpoenas for documents and testimony, and to sue for, collect, recover, receive, and take into possession from third parties all Receivership Assets. (*Id.* ¶ 8) The Court further authorized Receiver to investigate, prosecute, and compromise claims related to Receivership Assets. (*Id.* ¶¶ 37, 42)

Factual Background

5. Rosenberg was affiliated with the law firm of Bregman, Berbert, Schwartz & Gilday, LLC, who performed legal services for EquityBuild, Inc., EquityBuild Finance, LLC and its affiliates from February 7, 2017 through January 3, 2018. After January 3, 2018, Rosenberg established the Rosenberg Law Offices and continued to provide services to EquityBuild Inc., EquityBuild Finance, LLC and its affiliates until the appointment of the Receiver.

6. On September 28, 2021, the Receiver filed a Complaint against the Rosenberg Defendants in that certain action styled *Kevin B. Duff, Receiver for the Estate of EquityBuild Inc., etc. v Mark L. Rosenberg and Law Offices of Mark L. Rosenberg*, Cook County Illinois, Case No. 2021 L 9608, in connection with legal services provided to EquityBuild, Inc., EquityBuild Finance, LLC and their affiliated individuals and entities. The action was removed to the United States District Court for the Northern District of Illinois, Civil Action No. 21-cv-6756.

7. The Receiver learned that the Rosenberg Defendants' only insurance for this matter is an AXA XL Lawyers Professional Liability Insurance Policy No. LPP903624302, which has a policy period from January 1, 2020 to January 1, 2021 and policy limits of \$500,000 for each claim and in the aggregate. Pursuant to the AXA XL Policy, the Rosenberg Defendants' defense costs eroded the policy limit.

8. The parties began discussion of resolution back in January 2022. Specifically, on January 24, 2022, Judge Gary Feinerman referred the matter to Magistrate Judge Jeffrey Cole for Settlement Conference.

9. The parties subsequently submitted settlement offers, and Magistrate Judge Cole conducted a settlement conference on April 4, 2022, which was unsuccessful.

10. The parties next engaged the mediation services of the Honorable Stuart Nudelman (retired) in further efforts to resolve their disputes. The mediation took place on May 4, 2022. Those efforts also were unsuccessful.

11. In the meantime, on June 22, 2022, the District Court denied the Rosenberg Defendants' motion for summary judgment based on statute of limitations. (*See* Dkt. 41, Order Denying Motion for Summary Judgment.) After the denial of that motion, efforts at settlement continued.

12. Subsequently, a separate settlement conference was held on July 18, 2023 before Judge Patrick Sherlock of the Illinois state court in Cook County, in conjunction with a pending matter against Rosenberg's prior firm, captioned *Kevin B. Duff, Receiver, etc. v. Rock Fusco & Connelly, Ioana Salajanu and Bregman, Berbert, Schwartz & Gilday, LLC*, Cook County, Illinois, Case No. 2020 L 8843. That effort also was unsuccessful. Thereafter, the parties continued their discussions and additional settlement conferences were, again, held with Magistrate Judge Cole.

13. The parties, each represented by counsel, negotiated in good faith in efforts to resolve the Receiver's claims and any and all other disputes by and between them.

14. Those efforts culminated on January 23, 2024 as the Receiver and the Rosenberg Defendants were able to reach agreements in principle, which were then documented over the coming weeks and completed on or about February 23, 2024. Specifically, due to the continued efforts of the parties, and the assistance and recommendations of Magistrate Judge Cole, the Receiver and the Rosenberg Defendants achieved a settlement, pursuant to which the Rosenberg Defendants will pay the remaining amount of their policy limits totaling Three Hundred and Fifty Thousand Dollars (\$350,000.00) (USD) (the "Rosenberg Settlement Amount"), subject to the

approval of this Court and as confirmed by the settlement agreement attached hereto as **Exhibit A** (the “Rosenberg Settlement Agreement”).

15. The Rosenberg Settlement Agreement also contains mutual general releases, but expressly does not release any claim against Rosenberg’s prior law firm that is the subject of the pending Cook County action referenced in Paragraph 10, *supra*. This limitation on the parties’ agreement is also reflected in a stipulation executed by the Receiver and BBS&G, which is also incorporated in the Rosenberg Settlement Agreement.

16. The Receiver respectfully submits that the settlement agreement is fair and reasonable for the Receivership Estate and respectfully requests the Court’s approval.

The Court Has Broad Authority to Approve the Settlements

17. In a federal equity receivership, the Court retains broad discretion in deciding whether to approve a settlement. *See Gordon v. Dadante*, 336 Fed. Appx. 540, 551 (6th Cir. 2009) (citing *Liberte Capital Group, LLC v Capwill*, 462 F.3d 543, 551 (6th Cir. 2006)); *see also Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998) (the determination of fairness of a settlement in an equity receivership will not be overturned absent a clear showing of abuse of discretion).

18. Courts in receivership proceedings have been guided by decisions in other legal contexts, such as bankruptcy or class actions. In that vein, the bankruptcy court in *SEC v. Capital Cove Bancorp LLC* noted that, in approving a settlement, it should consider the “fairness, reasonableness and adequacy” of the agreement in light of “(a) the probability of success in the litigation, (b) the difficulties to be encountered in the matter of collection, (c) the complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it, and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the

premises.” 2016 WL 6156198 *1 (C.D. Cal. April 7, 2016) (citing *U.S. v. Edwards*, 595 F.3d 1004, 1012 (9th Cir. 2010)).

The Settlement Agreement Is in the Receivership Estate’s Best Interest

19. Over the course of more than four years, the Receiver and the law firms representing the Receiver have devoted thousands of hours investigating, researching, and evaluating issues related to the various activities of the law firms working with EquityBuild, including Rosenberg and the Rosenberg Law Offices.

20. Upon advice of counsel, and supplemented by the meaningful efforts of and recommendation by Magistrate Judge Jeffrey Cole, the Receiver concluded that settling his claims upon the terms negotiated by the parties would be in the best interests of the Receivership Estate, particularly because continued litigation against the Rosenberg Defendants would be unduly time consuming and costly, given the limited assets of Rosenberg and the Rosenberg Law Offices, the unavailability of any further insurance and concerns about the collectability of any judgment, as well as the complexity of preparing the case for trial.

21. Moreover, entry of the Rosenberg Settlement Agreement does not preclude the Receiver from continuing to prosecute claims against anyone else, including but not limited to the BBS&G and other law firms who provided legal advice and services to EquityBuild and/or its affiliates.

22. For all the foregoing reasons, the Receiver believes that the Settlement Agreement is fair, reasonable, and in the best interests of Receivership Estate.

23. The Receiver will provide fair, adequate, and sufficient notice of this motion to all interested parties. In addition to service through the Court’s electronic case filing system, the

Receiver will serve a copy of this motion (and the accompanying notice of motion) to all claimants by electronic mail (to the extent he possesses an e-mail address) or by regular mail if he only possesses a mailing address. A copy of this motion will also be posted on the Receiver's webpage at <http://rdaplawnet.com/receivership-for-equitybuild>.

24. The Receiver has conferred with counsel for the SEC which consents to the relief requested in this motion.

Request to Pay Contingency Fees and Costs to Receiver's Counsel

25. As noted above, the Receiver and his counsel have invested considerable time investigating, analyzing, preparing, and pursuing claims against these defendants.

26. Pursuant to the Court's September 23, 2020 Order Granting Receiver's Motion for Retention of Counsel (Docket No. 801), and with respect to the Settlement Agreement, the Receiver requests that the Court authorize and approve payment to the Receiver's counsel in a total payment of \$154,720.32, representing the total of the approved contingency fee plus expenses (comprising \$122,500.00 in fees and \$32,220.32 in out-of-pocket expenses (*see Exhibit B*)) from the \$350,000 settlement amount.¹

27. In particular, the Receiver requests that the Court approve that: (i) the settlement payment in the amount of \$350,000 to be made by the Rosenberg Defendants is to be deposited

¹ The engagement letter by which the Receiver retained counsel to pursue the claims at issue provides for the Receivership Estate to pay for filing fees, electronic storage vendors, expert witnesses, and other out-of-pocket expenses directly associated with the prosecution of the litigation. The expenses for which reimbursement is sought by this motion include: (i) court filing fee for initiating the state court lawsuit; mediation fees paid to ADR Systems for Judge Nudelman's services; (ii) expert fees for an undisclosed expert; (iii) database fees to maintain over 2.7 million documents related to the Receiver's law firm claims; and (iv) online research related to the Receiver's law firm claims. As the Receiver brought actions against three law firms, and claims against two of them remain pending, this motion only seeks one-third of the costs associated with the latter two categories above. The Receiver believes that the expenses sought by this motion are fair and reasonable.

into the Receiver's account, and (ii) upon receipt of the settlement payment the Receiver will transfer \$122,500 representing the total of the approved contingency fee plus expenses in the amount \$32,220.32, from the Receiver's Account to the client fund account of Spellmire Bruck LLP to be thereafter split between the engaged counsel in accordance with their agreement as set forth in the engagement letter.

WHEREFORE, for the foregoing reasons, the Receiver respectfully requests that the Court: (A) enter the proposed order attached hereto as **Exhibit C** approving both the Rosenberg Settlement Agreement and authorizing the Receiver to pay counsel the corresponding contingency fees and to reimburse counsel for the out-of-pocket expenses described above and (B) grant such other and further relief as the Court deems just and proper.

Dated: March 14, 2024

KEVIN B. DUFF, RECEIVER

/s/ Michael Rachlis

Michael Rachlis
Jodi Rosen Wine
Rachlis Duff & Peel LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Telephone: (312) 733-3950

Counsel for Plaintiff, Kevin B. Duff, as Receiver

Exhibit A

AGREEMENT

This Agreement (the “Agreement”) is entered into and effective this 26th day of February, 2024 (the “Effective Date”), by and among Kevin B. Duff, Receiver for the Estate of EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Jerome Cohen and Shaun Cohen (the “**Receiver**”), on the one hand, and Law Offices of Mark L. Rosenberg and its agent, Mark L. Rosenberg (“**Rosenberg**”) (collectively “**Rosenberg Law Offices**”), on the other hand (the Receiver and Rosenberg Law Offices are hereinafter collectively referred to as the “**Parties**” and each of them as a “**Party**”), to settle any and all disputed related to the civil action entitled, *Kevin B. Duff, Receiver, etc. v. Mark L. Rosenberg and Law Offices Of Mark L. Rosenberg*, United States District Court for the Northern District of Illinois, Civil Action No. 1:21-cv-6756.

WHEREAS, on August 15, 2018, the United States Securities and Exchange Commission (the “**SEC**”) filed the lawsuit styled *United States Securities and Exchange Commission v. EquityBuild, Inc., EquityBuild Finance, LLC, Jerome H. Cohen, and Shaun D. Cohen*, Civil Action No. 18-CV-5587 in the United States District Court for the Eastern District of Illinois (the “**SEC Action**”), which among other requests for relief sought the appointment of a receiver to marshal and preserve all assets of the defendant businesses and their affiliates and handle all related claims.

WHEREAS, the Court in the SEC Action (the “Receivership Court”) entered an Order on August 17, 2018 (Docket #16) (the “**Order Appointing Receiver**”) taking exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of EquityBuild, Inc., EquityBuild Finance, LLC, and affiliates, and the affiliate entities of Jerome Cohen and Shaun Cohen. The Order Appointing Receiver was supplemented by two subsequent Orders, identifying additional affiliate entities as Receivership Defendants in the SEC Action, on (i) March 14, 2019 (Docket #290), and (ii) February 21, 2020 (Docket #634). This Agreement refers to the estate of the Receivership Defendants identified in those three Orders, collectively, as the “**Estate of EquityBuild.**”

WHEREAS, Kevin B. Duff was appointed by the Court in the SEC Action, pursuant to the Order Appointing Receiver, as amended, to act as the Receiver for the Estate of EquityBuild. The Receiver was directed, among other things, to “assume control and operation of [EquityBuild] and preserve all of [its] claims or interests.” Under the Order Appointing Receiver, the Receiver has “all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, members, and general and limited partners of the Receivership Defendants under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959, and 1692, Fed. R. Civ. P. 66, and this Order.” Among his powers, the Receivership is authorized to (i) “bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver,” (ii) “pursue, resist and defend all suits, actions, claims, and demands which may now be pending or which may be brought by or asserted against the Receivership Estate,” (iii) “investigate, prosecute, institute, defend . . . compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may

in his discretion, and in consultation with [SEC] counsel, be advisable or proper to recover and/or conserve Receivership Assets,” and (iv) “institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary.”

WHEREAS, on August 17, 2020, Receiver brought an action against Bregman, Berbert, Schwartz & Gilday, LLC (“**BBS&G**”) entitled, *Kevin B. Duff, Receiver, etc. v. Rock Fusco & Connelly, Ioana Salajanu and Bregman, Berbert, Schwartz & Gilday, LLC*, Cook County, Illinois, Case No. 2020 L 8843 (collectively, the “**BBS&G Case**”), in connection with, among other things, legal services provided by BBS&G while Rosenberg was affiliated with and an agent of BBS&G as of counsel, to EquityBuild, Inc., EquityBuild Finance, LLC, and their affiliated individuals and entities (collectively, the “**BBS&G Claims**”).

WHEREAS, on September 28, 2021, the Receiver brought an action against Mark L. Rosenberg and Law Offices of Mark L. Rosenberg entitled, *Kevin B. Duff, Receiver, et. al. v. Mark L. Rosenberg and Law Offices Of Mark L. Rosenberg*, Cook County, Illinois, Case No. 2021 L 9608 (collectively, the “**Rosenberg Case**”), in connection with, among other things, legal services provided by Law Offices of Mark L. Rosenberg and its agent, Mark Rosenberg, to EquityBuild, Inc., EquityBuild Finance, LLC and their affiliated individuals and entities (collectively, the “**Rosenberg Law Offices Claims**”).

WHEREAS, in relation to legal services provided to the Estate of EquityBuild, any principal-agent relationship between Rosenberg and BBS&G terminated upon Rosenberg’s departure from BBS&G which occurred no later than January 2, 2018. On and after January 3, 2018, all legal services performed by Mark Rosenberg for the Estate of EquityBuild were in his capacity as agent of Law Offices of Mark Rosenberg and not as agent of BBS&G.

WHEREAS, following their initial filings, the Receiver subsequently moved to Consolidate the BBS&G Case and the Rosenberg Case.

WHEREAS, before the two cases could be consolidated, Rosenberg Law Offices removed the Rosenberg Case, which is now pending in the United States District Court for the Northern District of Illinois, as a civil action entitled, *Kevin B. Duff, Receiver, etc. v. Mark L. Rosenberg and Law Offices Of Mark L. Rosenberg*, Civil Action No. 1:21-cv-6756 (the “**Action**”).

WHEREAS, on February 13, 2023, BBS&G filed a Motion for Leave to file to a third-party contribution action against Rosenberg Law Offices in the BBS&G Case, the motion was granted in an order dated March 9, 2023, and the third-party contribution complaint was filed by BBS&G on March 13, 2023 (the “**Third-Party Action**”).

WHEREAS, Rosenberg denied and continues to deny any liability or unlawful conduct asserted or alleged by Receiver in the Action or by BBS&G in the Third-Party Action, or any other matter.

WHEREAS, the Receiver and BBSG have negotiated a stipulation addressing the impact of this Agreement in the BBS&G Case which includes an agreement by BBS&G to dismiss the Third-Party Action with prejudice and an agreement by the Receiver to not bring or file any future claim, lawsuit, or demand against Rosenberg individually or Rosenberg Law Offices (the “*BBSG Stipulation*”). A copy of the BBSG Stipulation shall be attached to this Agreement as Addendum A, and its terms shall be incorporated herein.

WHEREAS, contingent on entry of an Order by the Court in the SEC Action approving this Agreement, and the entry of the BBSG Stipulation, as set forth herein, the Parties to this Agreement wish to settle and compromise claims, causes of action, controversies, obligations and/or liabilities that may exist between the Receiver and Rosenberg Law Offices, including any and all potential claims which could have been asserted against Rosenberg Law Offices by the Receiver in the Action, as well as any and all claims and potential counterclaims and claims of contribution that were or could have been asserted against the Estate of EquityBuild or the Receiver by Rosenberg Law Offices in the Action or elsewhere, without any admission of liability by any of the Parties and solely for the purpose of avoiding what would otherwise be continued, expensive, and protracted litigation.

WHEREAS, by entering into this Agreement, the Parties intend to release only each other and do not intend to and do not in any way release or in any way release BBS&G for its actions or for the actions of Rosenberg as an agent of BBS&G, or otherwise affect the Receiver’s BBS&G Claims or the Receiver’s ability to continue to pursue and recover on the BBS&G Claims in the BBS&G Case.

WHEREAS, the conduct alleged and damages sought by the Receiver in the Action are different from the conduct alleged and damages sought by the Receiver in the BBS&G Case. The release provided in this Agreement by the Receiver relates only to the conduct alleged and damages sought by the Receiver against Rosenberg Law Offices in the Action and does not in any way relate to the conduct alleged and damages sought by the Receiver against BBS&G in the BBS&G Case.

NOW THEREFORE, in consideration of the promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the Parties agree as follows:

- 1. Approval and BBSG Stipulation.** The Parties acknowledge and agree that this Agreement is subject to the approval of the Receivership Court and contingent upon the entry of the BBSG Stipulation, therefore, will not be binding until such approval has been granted by the Receivership Court (the “Approval”) and entry of the BBSG Stipulation. The Parties will jointly submit or otherwise approve a motion to the Receivership Court for the Approval of this Agreement.
- 2. Release by Receiver.** In exchange for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Receiver, the Receiver and the Estate of EquityBuild hereby release, discharge and forever acquit Rosenberg Law Offices and their shareholders, members, partners, officers, managers, directors,

fiduciaries, employees, representatives, attorneys (including the law firm of Gordon Rees Scully Mansukhani and GRSM partner Ryan T. Brown), and agents (collectively, the “**Rosenberg Law Offices parties**”) from liability for, and the Receiver and the Estate of EquityBuild hereby waive, any and all claims, damages, demands, or causes of action of any kind for acts or omissions occurring on and after January 3, 2018 that the Receiver or the Estate of EquityBuild have or could have, whether known or unknown, against any of the Rosenberg Law Offices parties, including any and all claims, damages, demands, or causes of action relating to any contract, tort, common law, statutory, or administrative claim, including without limitation: (i) claims for professional negligence, breach of fiduciary duty, aiding and abetting any act of another entity or individual, conspiracy, fraud, breach of implied or express contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, or tortious interference; (ii) any allegation for costs, fees, or other expenses including attorneys’ fees incurred in, or with respect to, a released claim; (iii) any claim for compensation, benefits, or damages of any kind not expressly set forth in this Agreement; or (iv) such other claims within the Receivership, including but not limited to any and all claims the Receiver has the authority to assert, including such claims that affect the Estate of EquityBuild (collectively, the “Receiver Released Claims”).

The provisions of this Agreement are not intended to, and do not in fact, release, waive, or discharge: the Receiver’s claims for acts or omissions by Rosenberg as an agent of BBS&G occurring on or prior to January 2, 2018; BBS&G; the BBS&G Claims; Jerome Cohen; Shaun Cohen; Patricia Cohen; Eldebran Cohen; the former attorneys (other than the Rosenberg Law Offices parties), accountants, and other professionals, employees, or independent contractors of the Estate of EquityBuild, from any type of claims, liabilities, or demands accruing to the Receiver or the Estate of EquityBuild; or any other claims not expressly released in this Agreement. Furthermore, this Agreement releases the Rosenberg Law Offices parties only for liability arising from conduct that occurred (i) outside of any principal-agent relationship between Rosenberg and BBS&G and (ii) after January 2, 2018.

3. Release by Rosenberg Law Offices. In exchange for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Rosenberg Law Offices parties hereby release, discharge, and forever acquit the Receiver and the Estate of EquityBuild and each of their shareholders, members, partners, officers, managers, directors, fiduciaries, employees, representatives, and agents (collectively, the “**Receiver parties**”) from liability for, and the Rosenberg Law Offices parties hereby waive, any and all claims, damages, demands, or causes of action of any kind for acts or omissions that the Rosenberg Law Offices parties have or could have, whether known or unknown, against any Receiver party, including any and all claims, damages, demands, or causes of action relating to any contract, tort, common law, statutory, or administrative claim, including without limitation: (i) any counterclaims, third-party claims or claims for contribution; (ii) claims for any fees, costs, or other expenses including attorneys’ fees incurred in, or with respect to, any Rosenberg Law Offices Released Claim claims; (iii) any claim for compensation, benefits, or damages of any kind not expressly set forth in this Agreement; or (iv) any claim or request for payment of any amount submitted or that could have been submitted by Rosenberg Law Offices parties in connection with the SEC Action (collectively, the “Rosenberg Law Offices Released Claims”).

4. **Payments.** Within 21 days following the Approval of this Agreement, and subsequent to delivery of a W-9 to Rosenberg Law Offices' counsel, Rosenberg Law Offices through their insurer, AXA XL, shall pay the total sum of Three Hundred and Fifty Thousand Dollars 00/100 (\$350,000.00) (the "***Settlement Sum***") in a single lump-sum payment in the form of wire transfer to the Receiver's fiduciary account for the Estate of EquityBuild.

5. **Representations and Warranties Regarding Insurance Policy Limits.** Rosenberg Law Offices represent and warrant that: (a) at the time of this settlement at least \$350,000 remained on the policy limits of AXA XL Lawyers Professional Liability Insurance Policy No. LPP903624302, (b) Markel Lawyers Professional Liability Policy No. LA308320 will not be eroded by the payment of the Settlement Sum; and (c) they are not aware of any other insurance coverage that would potentially indemnify or pay a judgment against Rosenberg Law Offices for the Receiver's claims made in the Action.

6. **BBS&G / Receiver Stipulations.** As a condition of this settlement and Agreement, BBS&G has agreed and stipulated, *inter alia*, this settlement Agreement, including its terms, conditions and payment will not and cannot be used in any way by BBS&G in respect to the Receiver's BBS&G Claims and does not create any additional defenses for the firm, including *res judicata*, collateral estoppel or otherwise. (the "***BBSG Stipulation***"). The Receiver, in turn has agreed and stipulated BBS&G does not lose any defense(s) or arguments that currently exist in the absence of this settlement and Agreement.

7. **Representation and Warranty Regarding Non-Agency.** Rosenberg Law Offices represent and warrant that any principal-agent relationship between Rosenberg and BBS&G terminated upon Rosenberg's departure from BBS&G, which occurred on or about January 2, 2018, such that on and after January 3, 2018, all legal services performed by Mark Rosenberg for the Estate of EquityBuild were solely in his capacity as agent of Law Offices of Mark Rosenberg and not as agent of BBS&G. This Agreement releases Rosenberg Law Offices from liability only for such conduct that occurred both outside the scope of any principal-agent relationship between Rosenberg and BBS&G and after January 2, 2018.

8. **Production of Documents and Testimony.** As a condition of this settlement and Agreement, Rosenberg Law Offices affirms that it has produced all documents in its possession and control responsive to the Receiver's written discovery requests. Rosenberg agrees to accept service of subpoenas and to make himself reasonably available and testify truthfully in a discovery and evidence deposition and at trial in the BBS&G Case.

9. **Assumption of Risk.** Except as otherwise represented or warranted in this Agreement each Party expressly acknowledges and agrees that it is assuming the risk that it may hereafter discover facts or laws in addition to, or different from, what it now knows or believes to be true at the time of execution of this Agreement. Any such discovery shall not be grounds to avoid or rescind this Agreement.

10. **No Admission.** The payments, covenants, promises, conditions, conveyances, and agreements contained in this Agreement are made pursuant to a settlement between and amongst the Parties and shall not be admissible in evidence in any suit or proceeding before any tribunal or agency as evidence or admission of wrongdoing by any Party. The Parties agree that this Agreement is entered into solely to compromise disputed claims, as set forth herein, and to avoid the expense of further litigation.

11. **No Duress.** Each Party agrees to sign this Agreement as its own voluntary act and deed and represents that such execution was not the result of any duress, coercion, or undue influence.

12. **Binding Effect.** This Agreement shall be binding upon the Parties hereto and their respective past, present and future partners, officers, directors, stockholders, attorneys, insurers, agents, servants, representatives, employees, subsidiaries, affiliates, predecessors and successors in interest, and assigns.

13. **No Third-Party Beneficiaries.** Except as expressly provided in this Agreement, no rights, privileges, or immunities, legal or equitable, of any party shall inure to the benefit of any third party; nor shall any third party be deemed to be a third-party beneficiary of any of the provisions contained herein.

14. **Warranty Regarding Non-assignment.** Except as otherwise provided in this Agreement, the Parties hereto hereby warrant and represent that neither has assigned, transferred, conveyed, or purported to assign, transfer, or convey to any third party any of the claims, demand, obligations, damages, losses, causes of action, costs, expenses, attorney fees, debts, liabilities, and indemnities released under this Agreement.

15. **Authority to Execute Agreement.** Each Party signing this Agreement warrants and represents that they have full authority to execute the same on behalf of the Parties and affiliated and related entities on whose behalf they so sign, and that they are acting within the scope of such authority.

16. **Dismissal of Litigation.** Based on the agreement memorialized herein, and subject to the contingencies described herein, the Parties agree to cause the Action to be dismissed in its entirety with prejudice, consistent with the terms recited herein.

17. **Attorneys' Fees and Costs.** Each Party to the matters now being resolved through this Agreement shall bear their own costs and fees.

18. **Representation by Counsel.** In connection with the negotiation and execution of this Agreement, each Party has had the benefit of representation by independent legal counsel and other professionals of their own choosing. Each Party further acknowledges that they and their counsel have had adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution hereof and the delivery and acceptance of the

consideration specified herein. If any portion of this Agreement is found to be invalid or unenforceable, it is the intention of the Parties that the balance of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

19. Preparation of Agreement and Construction. This Agreement has been prepared jointly by respective counsel for each of the Parties, with a full opportunity for the Parties to negotiate its terms. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that drafted it is not applicable and is hereby waived.

20. Severability. If any provision of this Agreement is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining portions. On the contrary, such remaining portions shall be fully severable, and this Agreement shall be construed and enforced as if such invalid provisions were deleted.

21. Recitals. The recitals above are incorporated into this Agreement.

22. Headings. The headings of this Agreement are used for convenience of reference only and are not intended to and shall not in any way enlarge or diminish the rights or obligations of the Parties or affect the meaning or construction of this document.

23. Governing Law. This Agreement and any other documents referred to herein shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Illinois applicable to instruments, persons and transactions which have legal contracts and relationships solely within the State of Illinois. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties.

24. Execution in Counterparts/by Fax. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. Any one or more of the Parties may execute and deliver the signature page to this Agreement by facsimile and/or other electronic transmission.

25. Integration. This Agreement represents the entire agreement between the Parties regarding the subject matter hereof and all prior understandings and agreements regarding the subject matter hereof have been incorporated herein. This Agreement may not be altered or amended except by an instrument in writing executed by the Parties and approval of the Receivership Court.

26. Modification. No provision of this Settlement Agreement may be amended, waived, or modified in any respect whatsoever except by written agreement signed by the Parties to this Agreement and approval of the Receivership Court.

27. Acknowledgment of Reading and Understanding Release. The undersigned expressly acknowledge that they have read and understand this Agreement. In entering into this Agreement, the releasing Parties represent that they have not relied upon any

statement or representation by any of the released Parties concerning the legal and tax consequences of this Agreement; that the terms of this Agreement have been completely read and explained to the Parties by their attorneys and that the terms of the Agreement are fully understood and voluntarily accepted by the Parties.

28. Additional Documents. Each Party agrees to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

29. Dispute Resolution. Any action, controversy, or claim between the parties arising out of or relating to this Agreement, including those relating to the validity, interpretation, construction, performance, and enforcement of this Agreement, shall be determined by the Receivership Court that granted the Approval of this Agreement.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed as of the date first written above.

**THIS AGREEMENT IS A RELEASE: READ BEFORE SIGNING
BY THE SIGNATURE BELOW, INTENDING TO BE LEGALLY BOUND:**

KEVIN B. DUFF, Receiver

By: 

LAW OFFICES OF MARK L.
ROSENBERG

By: _____

Its: _____

MARK L. ROSENBERG

By: _____

statement or representation by any of the released Parties concerning the legal and tax consequences of this Agreement: that the terms of this Agreement have been completely read and explained to the Parties by their attorneys and that the terms of the Agreement are fully understood and voluntarily accepted by the Parties.

28. **Additional Documents.** Each Party agrees to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

29. **Dispute Resolution.** Any action, controversy, or claim between the parties arising out of or relating to this Agreement, including those relating to the validity, interpretation, construction, performance, and enforcement of this Agreement, shall be determined by the Receivership Court that granted the Approval of this Agreement.

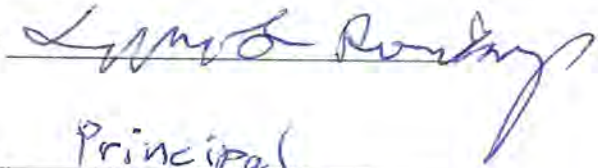
IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed as of the date first written above.

**THIS AGREEMENT IS A RELEASE: READ BEFORE SIGNING
BY THE SIGNATURE BELOW, INTENDING TO BE LEGALLY BOUND:**

KEVIN B. DUFF, Receiver

By: _____

LAW OFFICES OF MARK L.
ROSENBERG

By: 
Its: Principal

MARK L. ROSENBERG

By: 

Exhibit B

EXHIBIT B	
Description	Reimbursement Amount
Court filing fee	\$ 617.85
1st Mediation fee	\$ 3,930.00
2d Mediation fee	\$ 1,433.00
Expert fees	\$ 13,750.00
Database fees	\$ 11,011.51
Online research	\$ 1,477.96
TOTALS	\$ 32,220.32

Exhibit C

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

UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	No. 18-cv-5587
)	
v.)	Hon. Manish S. Shah
)	
EQUITYBUILD, INC., EQUITYBUILD)	Magistrate Judge Young B. Kim
FINANCE, LLC, JEROME H. COHEN,)	
and SHAUN D. COHEN,)	
)	
Defendants.)	

**[PROPOSED]
ORDER GRANTING RECEIVER’S MOTION TO
APPROVE SETTLEMENT AND RELEASE AGREEMENT
WITH MARK L. ROSENBERG AND THE LAW OFFICES OF MARK L. ROSENBERG
AND TO AUTHORIZE PAYMENT
OF CONTINGENCY FEE AND COSTS TO RECEIVER’S COUNSEL**

This matter came before the Court upon the Receiver’s Motion to Approve Settlement and Release Agreement with Mark L. Rosenberg and The Law Offices of Mark L. Rosenberg (collectively, the “Rosenberg Defendants”) and to Authorize Payment of Contingency Fee and Costs to Receiver’s Counsel [ECF No. ____] (the “Motion”). The Court, having considered the Motion and the record of this receivership action and being otherwise duly advised in the premises, hereby finds and orders as follows:

1. The Motion [ECF No. ____] is GRANTED.
2. The Court finds that the Settlement and Release Agreement, attached as Exhibit A to the Motion, is reasonable, fair, adequate, and in the best interest of the Receivership Estate.
3. The Court confirms the Receiver’s authority to enter into the Settlement and Release Agreement.

4. The Court finds that the contingency fee amount for the Receiver's counsel, Spellmire Bruck LLP, Roeder Law Offices LLC, and Rachlis Duff & Peel, LLC, is fair and reasonable and that they are entitled to a total payment of \$154,720.32, representing the total of the approved contingency fee plus expenses (comprising \$122,500.00 in fees and \$32,220.32 in costs) from the \$350,000 settlement amount.

5. The Court approves: (i) the settlement payment in the amount of \$350,000.00 to be made by the Rosenberg Defendants to the Receiver's Account; and (ii) upon receipt of the settlement payment by the Rosenberg Defendants, and without further order of the Court, the Receiver's immediate payment of \$154,720.32, representing the total of the approved contingency fee plus expenses, from the Receiver's Account to the client fund account of Spellmire Bruck LLP to be thereafter split between the engaged counsel in accordance with their agreement as set forth in the engagement letter.

6. The Court finds that the Receiver has given fair, adequate, and sufficient notice of the Motion to all interested parties.

7. The Court shall retain exclusive jurisdiction over all matters concerning the Settlement and Release Agreement, including without limitation the enforcement thereof.

ORDERED in the United States District Court
for Northern District of Illinois, Eastern Division,
on this ____ day of March, 2024.

UNITED STATES DISTRICT COURT JUDGE

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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 18-cv-5587
)	
v.)	Hon. Manish S. Shah
)	
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,)	Magistrate Judge Young B. Kim
)	
Defendants.)	
)	

NOTICE OF MOTION

Please take notice that on Wednesday, March 20, 2024 at 9:45 a.m., the undersigned will appear before the Honorable Manish S. Shah, or any judge sitting in his stead, in Courtroom 1919, and present **Receiver’s Motion To Approve Settlement And Release Agreement With Mark L. Rosenberg And The Law Offices Of Mark L. Rosenberg And To Authorize Payment Of Contingency Fee And Costs To Receiver’s Counsel.**

Dated: March 14, 2024

Kevin B. Duff, Receiver

By: /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

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2024, I electronically filed the foregoing **Notice of Motion and Receiver's Motion To Approve Settlement And Release Agreement With Mark L. Rosenberg And The Law Offices Of Mark L. Rosenberg And To Authorize Payment Of Contingency Fee And Costs To Receiver's Counsel** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system, which provided service to all counsel of record.

I further certify that I caused true and correct copies of the foregoing to be served 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 subsequently updated) and their counsel.

I further certify that the 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