

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

CASE NO. 8:20-cv-325-T-35AEP

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON,  
BARRY M. RYBICKI,  
EQUIALT LLC,  
EQUIALT FUND, LLC,  
EQUIALT FUND II, LLC,  
EQUIALT FUND III, LLC,  
and EA SIP, LLC,

Defendants,

and 128 E. DAVIS BLVD, LLC,  
310 78TH AVE, LLC,  
551 3D AVE S, LLC,  
604 WEST AZEELE, LLC,  
2101 W. CYPRESS, LLC,  
2112 W. KENNEDY BLVD, LLC,  
5123 E. BROADWAY AVE, LLC,  
BLUE WATERS TI, LLC,  
BNAZ, LLC,  
BR SUPPORT SERVICES, LLC,  
BUNGALOWS TI, LLC,  
CAPRI HAVEN, LLC,  
EA NY, LLC,  
EQUIALT 519 3RD AVE S., LLC,  
MCDONALD REVOCABLE LIVING TRUST,  
SILVER SANDS TI, LLC,  
and TB OLDEST HOUSE EST. 1842, LLC,

Relief Defendants.

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**DEFENDANT BARRY RYBICKI'S ANSWER AND  
AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT**

Defendant Barry Rybicki (“Rybicki”), through undersigned counsel, hereby files his Answer and Affirmative Defenses to the Securities and Exchange Commission’s (“the Commission’s”) Amended Complaint, dated July 9, 2020.

**I. INTRODUCTION**

1. Denied, except Rybicki admits that the Commission brought an emergency action against a private real estate investment company named EquiAlt LLC.

2. Denied.

3. Denied.

4. Denied, except Rybicki admits that Davison controlled the accounting, finances, bank accounts, and real estate strategy.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

**II. DEFENDANTS AND RELIEF DEFENDANTS**

**A. Defendants**

10. Rybicki admits that Davison is a resident of Tampa, Florida, and further admits during all relevant times Davison was EquiAlt’s owner and Chief Executive Officer, that Davison personally controlled the bank accounts, finances, and accounting for each of the Funds and was in control of *all* of the real estate activities and administrative activities of the Funds and the was in charge of the Funds’ strategic planning and administration, and that, through his ownership of EquiAlt, Davison owns Fund 1, Fund 2, and the EA SIP Fund. Rybicki denies that he maintained

control over the Funds together with Davison. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that Davison is not, and has never been, registered with the Commission, FINRA, or any state securities regulator.

11. Denied, except Rybicki admits that he is a resident of Phoenix, Arizona; held various titles at EquiAlt; is the owner of Relief Defendant BR Support Services, LLC

12. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, except Rybicki admits that during all relevant times, EquiAlt has been owned by Davison.

13. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

14. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

15. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

16. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

**B. Relief Defendants**

17. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

18. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

19. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

20. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

21. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

22. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

23. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

24. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

25. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

26. Denied, except Rybicki admits that he owns BR Support Services.

27. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

28. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

29. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

30. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

31. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

32. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

33. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

34. Admitted.

### **III. JURISDICTION AND VENUE**

35. Admitted.

36. Admitted that the Court has personal jurisdiction.

37. Denied.

### **IV. FACTS**

#### **A. EquiAlt and Its Control Persons**

38. Denied, except Rybicki admits that at all relevant times, Davison owned EquiAlt.

39. Admitted, except Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations that Davison signed numerous debentures and checks authorizing the use of new investor proceeds to make interest payments to old investors, and checks misappropriating money to himself and Rybicki.

40. Denied, except that the listing of Rybicki's position at EquiAlt on the Form D speaks for itself.

41. Denied, except Rybicki admits that he did advise some third-party sales agents that neither a license nor registration was required to sell certain EquiAlt securities after receiving advice from counsel to this effect.

42. Denied.

43. Denied.

**B. EquiAlt Offerings**

44. Denied, except the marketing materials, website and other documents referenced in paragraph 44 speak for themselves.

45. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, except Rybicki denies any allegation that he continued to market or raise funds from investors up until the time that the Commission filed its original Complaint on February 11, 2020.

46. Denied, except Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that many of the investors were attracted by any specific representations regarding the investments in the Funds.

47. Denied.

**C. Fraudulent Conduct**

**i. The Defendants Are Conducting a Ponzi Scheme**

48. Denied, except Rybicki admits that Fund 3 is now closed.

49. Denied.

50. Denied.

**ii. Misappropriation of Investor Funds**

51. Denied.

52. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding Davison's use of money. Rybicki admits that he purchased a Ferrari, Porsches, luxury watches, and an interest in a soccer team with money he received from EquiAlt and the Funds; however, he denies that any monies were misappropriated.

53. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph.

iii. **Misuse of Investor Funds**

54. Denied.

55. Denied, except the private placement memoranda referenced in paragraph 55 speak for themselves.

56. Denied.

**D. Misrepresentations and Omissions to Investors**

i. **False Claims About Use of Investor Funds**

57. Denied, except the private placement memoranda referenced in paragraph 57 speak for themselves.

58. Denied.

59. Denied, except Rybicki admits that Davison had knowledge of, or access to, specific information about the Funds' financial status or condition; specifically, that Davison had knowledge of the Funds bank accounts and access to the Funds' accounting software containing detailed information about the Funds' finances.

60. Denied that Rybicki failed to disclose various fees paid by the Funds to EquiAlt. The private placement memoranda referenced in paragraph 60 speak for themselves. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the remainder of the paragraph.

61. Denied that Rybicki knew or was reckless in not knowing that the Funds were paying undisclosed "discount fees" to EquiAlt and that Rybicki was privy to financial information about the nature and amount of undisclosed fees paid by the Funds to EquiAlt. The profit and loss

statement referenced in paragraph 61 speaks for itself. Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that Davison specifically directed that a discount fee be taken.

62. Denied.

63. Denied, except the documents referenced in paragraph 63 speak for themselves.

64. Denied, except the emails referenced in paragraph 64 speak for themselves.

65. Denied.

66. Denied, except the financial statements referenced in paragraph 66 speak for themselves.

67. Admitted that Davison had access to all the accounting records of EquiAlt and the Funds. The remainder of the allegations in paragraph 67 are denied, except the emails referenced in paragraph 67 speak for themselves.

68. Denied, except the email referenced in paragraph 68 speaks for itself.

69. Denied, except Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that EquiAlt's President of Business Development and Marketing stated to Fund 2 investors in writing that EquiAlt had no management fees.

70. Denied, except the private placement memoranda referenced in paragraph 70 speak for themselves.

71. Denied.

ii. **False Statements About Risk**

72. Denied.

73. Denied.



74. Denied that Rybicki exercised control over the drafting of marketing materials and “fact sheets” relating to the Funds.

75. Denied that Rybicki exercised control over the representations made to investors concerning the risk of investing in the Funds, knew that many of the representations were false or misleading at the time they were made to investors, and was well aware that the Funds were experiencing liquidity problems. The e-mails referenced in paragraph 75 speak for themselves.

76. Denied.

77. Denied, except the email referenced in paragraph 77 speaks for itself.

78. Denied, except the email referenced in paragraph 78 speaks for itself.

iii. **False Statements About Compliance with Applicable Laws, and Management**

79. Denied, except Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that EquiAlt falsely told investors in Fund 2 that it was registered with the Commission since 2009.

80. Denied, except the written sales materials referenced in paragraph 80 speak for themselves.

81. Denied.

82. Denied, except Rybicki is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that “DD” ever worked for EquiAlt. Also, the private placement memoranda referenced in paragraph 82 speak for themselves.

V. **CLAIMS FOR RELIEF**

**COUNT I**

**Violations of Sections 5(a) and 5(c) of the Securities Act**

83. Rybicki restates his admissions and denials as set forth in Paragraphs 1 through 82 of the Amended Complaint.

84. Denied.

85. Denied.

86. Denied.

## **COUNT II**

### **Violations of Section 17(a)(1) of the Securities Act**

87. Rybicki restates his admissions and denials as set forth in Paragraphs 1 through 82 of the Amended Complaint.

88. Denied.

89. Denied.

## **COUNT III**

### **Violations of Section 17(a)(2) of the Securities Act**

90. Rybicki restates his admissions and denials as set forth in Paragraphs 1 through 82 of the Amended Complaint.

91. Denied.

92. Denied.

## **COUNT IV**

### **Violations of Section 17(a)(3) of the Securities Act**

93. Rybicki restates his admissions and denials as set forth in Paragraphs 1 through 82 of the Amended Complaint.

94. Denied.

95. Denied.

**COUNT V**

**Violations of Section 10(b) and Rule 10b-5(a) of the Exchange Act**

96. Rybicki restates his admissions and denials as set forth in Paragraphs 1 through 82 of the Amended Complaint.

97. Denied.

98. Denied.

**COUNT VI**

**Violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act**

99. Rybicki restates his admissions and denials as set forth in Paragraphs 1 through 82 of the Amended Complaint.

100. Denied.

101. Denied.

**COUNT VII**

**Violations of Section 10(b) and Rule 10b-5(c) of the Exchange Act**

102. Rybicki restates his admissions and denials as set forth in Paragraphs 1 through 82 of the Amended Complaint.

103. Denied.

104. Denied.

**COUNT VIII**

**Section 20(a) of the Exchange Act – Control Person Liability**

105. Rybicki restates his admissions and denials as set forth in Paragraphs 1 through 82 of the Amended Complaint.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

**COUNT IX**

**Aiding and Abetting Violations of Section 15(a) of the Exchange Act**

110. Rybicki restates his admissions and denials as set forth in Paragraphs 1 through 82 of the Amended Complaint.

111. Denied.

112. Denied.

113. Denied.

**RELIEF REQUESTED**

Rybicki denies that the Commission is entitled to any relief set forth in this section.

**AFFIRMATIVE DEFENSES**

Rybicki asserts the following affirmative defense and reserves the right to amend his answer and affirmative defenses based upon information obtained in the course of litigation.

**FIRST AFFIRMATIVE DEFENSE  
(Advice of Counsel)**

Rybicki hereby provides notice that he intends to rely on a defense that he relied upon advice of counsel.

**JURY DEMAND**

Rybicki hereby requests a trial by jury on all claims and defenses in this action.

Dated: August 10, 2020

Respectfully submitted,

/s/ Adam S. Fels  
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Attorney for Defendant Barry Rybicki

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been filed via the Court's CM/ECF system, which will send an electronic copy of the foregoing and a notice of filing same to all counsel of record, on this 10<sup>th</sup> day of August, 2020.

s/Adam S. Fels