

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:20-CV-325-T-35AEP

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

Defendants, and

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

\_\_\_\_\_ /

**RECEIVER'S UNOPPOSED MOTION TO APPROVE  
SETTLEMENT WITH RYAN RYBICKI**

Burton W. Wiand, as Receiver over the assets of the Corporate and Relief Defendants,<sup>1</sup> moves the Court to approve the Receiver's settlement of his claims against Ryan Rybicki ("R. Rybicki"), son of defendant Barry

---

<sup>1</sup> The ("Receiver" and the "Receivership" or "Receivership Estate") has been expanded to include not only the Corporate and Relief Defendants but also the following entities: EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC [Doc. 184, at 6–7] and EquiAlt Fund I, LLC [Doc. 284].

Rybicki, specifically as it relates to 7407 E. Taylor Street, Scottsdale, Arizona (Lot 705, of New Papago Parkway Unit 12, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona) (“the Property”).

### **BACKGROUND**

On February 11, 2020, the Securities and Exchange Commission (“SEC”) filed a complaint (Doc. 1) against the above-captioned Defendants and Relief Defendants. On July 9, 2020, the SEC filed an amended complaint (Doc. 138) (the “Amended Complaint”) against the same Defendants and Relief Defendants.

On February 14, 2020, the Court entered an order (Doc. 11) appointing Burton W. Wiand as temporary Receiver. The Court directed him, in relevant part, to “[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants . . . and to administer such assets as is required in order to comply with the directions contained in this Order.” Doc. 11 at ¶1. The Court also entered a temporary restraining order (Doc. 10) imposing a temporary injunction against the Defendants and Relief Defendants, freezing their assets and granting other relief.

The Amended Complaint in this case asserts that the Defendants violated various federal securities laws and regulations for orchestrating a

real estate Ponzi scheme that raised more than \$170 million from approximately 1,100 victim investors (the “Scheme”). The SEC alleges that the Defendants misrepresented the use of the proceeds of the investments and that Davison and Rybicki, who controlled the operations of the Receivership Entities prior to the appointment of the Receiver, misappropriated monies from the investors.

Pursuant to this Court’s Order, the Receiver was to “[i]nvestigate the manner in which the affairs of the Corporate Defendants were conducted and institute such actions and legal proceedings for the benefit and on behalf of the Corporate Defendants and Relief Defendants and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, and EA SIP, LLC; provided such actions may include, but not be limited to . . . recovery and/or avoidance of fraudulent transfers . . . .” [Doc. 11 at ¶2]

In this case, the SEC entered into negotiations with defendant Barry Rybicki regarding a consent judgment against him. As part of that proposed judgment, the Receiver negotiated an Assignment with Barry Rybicki regarding the assignment of certain assets to the Receivership Estate. In the course of those discussions, issues were identified relating to the Property. Specifically, on or about July 5, 2017, Joseph Stubbe transferred title to the

Property to Barry Rybicki, Rosemary Rybicki and R. Rybicki. The purchase price of the Property was \$297,500. The Receiver asserts that the Property was purchased with funds Barry Rybicki received from the Scheme and therefore the Receiver has either a constructive trust and/or equitable lien on the Property.

On or about July 6, 2017, R. Rybicki, as Trustor, entered into a Deed of Trust and Assignment of Rents with American Title Service Agency, LLC as the Trustee and the beneficiary being Barry Rybicki and Rosemarie Rybicki, regarding the Property. On or about July 6, 2017, Barry Rybicki and Rosemary Rybicki transferred title to the Property to R. Rybicki. The following day, R. Rybicki entered into a Mortgage Agreement with Barry Rybicki related to the mortgage on the Property.

Thereafter, R. Rybicki made certain mortgage payments and improvements to the Property, exceeding \$60,000. On May 10, 2021, in violation of the Asset Freeze entered by this Court, Barry Rybicki and Rosemary Rybicki, as beneficiaries of the Deed of Trust, executed a Deed of Full Release and Reconveyance for the Property, releasing any claim to the Property and giving R. Rybicki free and clear title to the Property. As of the date of this motion, R. Rybicki confirms that the Property is free and clear of any liens and encumbrances. According to the Maricopa County Property

Assessor's website, the Property's current full cash value is \$353,700.<sup>2</sup> Zillow's "Zestimate" for the Property is \$557,500<sup>3</sup> and Redfin's estimate is \$582,593.<sup>4</sup>

Prior to the Receiver agreeing to an Assignment of assets with Barry Rybicki, he negotiated a settlement of his claims against the Property with Ryan Rybicki ("the Agreement").<sup>5</sup> According to the terms of the Agreement, attached as Exhibit 1, R. Rybicki agrees to transfer title to the Property to the Receiver within ten days of the execution of the Agreement.<sup>6</sup> In consideration for this transfer, the Receiver has agreed to allow R. Rybicki to continue to live at the Property for up to four months while he locates a new residence and will pay to him \$60,000 at the time he vacates the Property, subject to R. Rybicki leaving the Property in good condition.

The Receiver believes this settlement is a practical result that benefits the Receivership Estate. While having no doubt as to the merits of his claims to the Property, litigating such claims would be expensive and time-consuming. Timely settlement of these claims and the resulting transfer of

---

<sup>2</sup> <https://mcassessor.maricopa.gov/mcs/?q=13144095&mod=pd>

<sup>3</sup> [https://www.zillow.com/homes/7407-E-Taylor-St-Scottsdale,-AZ-85257\\_rb/7582304\\_zpid/](https://www.zillow.com/homes/7407-E-Taylor-St-Scottsdale,-AZ-85257_rb/7582304_zpid/)

<sup>4</sup> <https://www.redfin.com/AZ/Scottsdale/7407-E-Taylor-St-85257/home/28260603>

<sup>5</sup> It should be noted that Barry Rybicki released any potential claim he had to the Property in his Assignment with the Receiver.

<sup>6</sup> The Receiver has delayed executing the Agreement to obtain this Court's approval of the Agreement.

title will allow the Receiver to list the Property promptly and take advantage of the current real estate market in Arizona. As noted above, reputable real estate websites estimate the value of the Property at \$250,000 over the 2017 purchase price. Avoiding the expense of further litigation and gaining this asset for the Estate will result in an efficient and substantial recovery for the Receivership Estate.

### **ARGUMENT**

#### **I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SETTLEMENT OF THESE CLAIMS ARE IN THE RECEIVERSHIP ESTATE'S BEST INTEREST.**

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and

necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to defrauded investors and other creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

Based on these equitable principles, the Receiver believes that this Court should grant this motion. The Receiver has reviewed available information regarding the value and circumstances regarding the Property and has determined that this settlement is reasonable, practicable and in the Receivership Estate's best interests. Therefore, the Receiver requests that the Court approve the Receiver's settlement with R. Rybicki regarding the Property.

### **CONCLUSION**

Based on the foregoing, the Receiver moves the Court for entry of an order approving the Receiver's settlement of his claims against Ryan Rybicki regarding the Property located at 7407 E. Taylor Street, Scottsdale, Arizona as outlined in this motion and attached Exhibit 1.

### **LOCAL RULE 3.01(G) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the SEC and Barry Rybicki and they do not object to the relief sought.

Respectfully submitted,

**/s/ Katherine C. Donlon**

Katherine C. Donlon, FBN 0066941

[kdonlon@jclaw.com](mailto:kdonlon@jclaw.com)

JOHNSON, CASSIDY, NEWLON &  
DeCORT P.A.

2802 N. Howard Avenue

Tampa, FL 33607

Tel: (813) 291-3300

and

Jared J. Perez, FBN 0085192

[jperez@guerraking.com](mailto:jperez@guerraking.com)

R. Max McKinley, FBN 119556

[mmckinley@guerraking.com](mailto:mmckinley@guerraking.com)

GUERRA KING P.A.

The Towers at Westshore

1408 N. Westshore Blvd., Ste. 1010

Tampa, FL 33607

Tel: (813) 347-5100

*Attorneys for Burton W. Wiand Receiver*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 5, 2022, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system which will send notification of electronic filing to all counsel of record.

**/s/ Katherine C. Donlon**

Attorney

# **EXHIBIT 1**

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (this “Agreement”) is made by and between Receiver Burton W. Wiand (“the Receiver”) and Ryan Rybicki (“R. Rybicki”). Together, the Receiver and R. Rybicki will be collectively referred to herein as the “Parties,” and individually each of them may be referred to herein as a “Party.” This Agreement shall become effective on the date last signed by a Party hereto (the “Effective Date”).

### **RECITALS**

WHEREAS, on or about July 5, 2017, Joseph Stubbe transferred title to the property located at 7407 E. Taylor Street, Scottsdale, Arizona (Lot 705, of New Papago Parkway Unit 12, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona) (“the Property”) to Barry Rybicki, Rosemary Rybicki and R. Rybicki;

WHEREAS, on or about July 6, 2017, R. Rybicki, as Trustor, entered into a Deed of Trust and Assignment of Rents with American Title Service Agency, LLC as the Trustee and the beneficiary being Barry Rybicki and Rosemarie Rybicki, regarding the Property;

WHEREAS, on or about July 6, 2017, Barry Rybicki and Rosemary Rybicki transferred title to the Property to R. Rybicki;

WHEREAS, on or about July 7, 2017, R. Rybicki entered into a Mortgage Agreement with Barry Rybicki related to the mortgage on the Property;

WHEREAS, on May 10, 2021, Barry Rybicki and Rosemary Rybicki, as beneficiaries of the Deed of Trust, executed a Deed of Full Release and Reconveyance for the Property;

WHEREAS, R. Rybicki has made certain mortgage payments on the Property and made certain improvements to the Property since July 2017;

WHEREAS, R. Rybicki affirms that the Property is free and clear of any liens and encumbrances;

WHEREAS, the Receiver was appointed by the Court in the case *Securities and Exchange Commission v. Brian Davison, et al.*, Case No. 20-cv-00325-MSS-AEP (“Receivership Court”) to marshal the assets of the Receivership Entities and recover and liquidate assets for the benefit of defrauded investors of EquiAlt;

WHEREAS, the Receiver asserts that the Receivership has a constructive trust and/or an equitable lien over the Property;

WHEREAS, the Parties desire to settle, resolve and dispose of any and all allegations and claims asserted by either Party, or which ever could have been or could be asserted by either Party, relating to the Property;

WHEREAS, the Parties expressly deny any liability in connection with their dispute related to the rightful ownership of the Property, and this Agreement and the performances hereunder are made and assumed for the compromise and settlement of disputed claims and are not, and shall not be construed to be, an admission of liability, an admission of the truth of any fact, or a declaration against any interest on the part of either Party.

WHEREAS, the Parties desire to avoid incurring further legal fees and expenses and to resolve all disputes between them with respect to the Property.

### TERMS

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions to be performed by each of the Parties, and set forth in their entirety herein, the Parties expressly, knowingly, and voluntarily agree as follows:

1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

2. Adequate Consideration. The Parties expressly stipulate that the consideration set forth in this Agreement is adequate and ample consideration for the rights and claims they are waiving under this Agreement, and for the obligations imposed by virtue of this Agreement. The Parties further acknowledge that the benefits and consideration they have elected to receive by execution of this Agreement are fair and adequate.

3. Consideration. In consideration for the promises and covenants contained in this Agreement, the Parties agree and stipulate as follows:

- a. R. Rybicki agrees to transfer title of the Property to the Receiver within ten (10) days of the full execution of this Agreement.
- b. The Receiver agrees that R. Rybicki may continue to inhabit the Property up to four (4) months from the date of the full execution of this Agreement. During this time period, the Property will be listed for sale and R. Rybicki agrees to cooperate with the Receiver's efforts to show the Property to realtors, potential buyers, appraisers, etc.
- c. Upon transfer of title to the Property, R. Rybicki agrees that he will continue paying for all utilities and maintaining insurance until such time as he vacates the Property.
- d. R. Rybicki agrees to maintain the Property in good, clean and tenantable conditions until such time as he vacates the Property. R. Rybicki will be fully responsible for and agrees to maintain and repair the Property at his expense until such time as he vacates the Property.
- e. At the time R. Rybicki vacates the Property, the Property should be broom clean.
- f. The Receiver agrees to pay R. Rybicki, and R. Rybicki agrees to accept, the total amount of Sixty Thousand Dollars and Zero Cents (\$60,000.00) in full satisfaction of any claims that R. Rybicki has to the Property. The



Receiver will pay by check or wire at the time R. Rybicki vacates the Property. Payment will be made to Ryan Rybicki through attorney Alejandro Soto.

4. Mutual Releases. In consideration of the Parties' mutual promises and covenants contained in this Agreement, the adequacy of which are hereby acknowledged, the Parties do for themselves, their heirs, successors, assigns, trustees and legal representatives, including but not limited to their respective representatives, officers, managers, directors, subsidiary companies, independent contractors, affiliated companies, parent corporations, employees, partners, agents, principals, shareholders and attorneys, and each of them, past, present or future, hereby release and forever discharge the other Parties and all of their heirs, successors, assigns, trustees and legal representatives, including but not limited to their respective representatives, officers, managers, directors, subsidiary companies, independent contractors, affiliated companies, parent corporations, employees, partners, agents, principals, shareholders and attorneys, and each of them, past, present or future (together, the "Released Parties"), of and from any and all actions, claims, causes, causes of actions, suits, debts, dues, sums of monies, demands, rights, damages, costs, expenses, accounts, reckonings, covenants, contracts, controversies, agreements, promises, obligations or liabilities of any kind or nature and compensation whatsoever whether known or unknown, fixed or contingent, whether at law or in equity, or otherwise (including any claims for damages, interest, fees and/or attorneys' fees) which any of the Parties ever had, now has, or which any heirs, successors, assigns, trustees or legal representatives, including but not limited to any respective representatives, officers, managers, directors, subsidiary companies, independent contractors, affiliated companies, parent corporations, employees, partners, agents, principals, shareholders and attorneys, and each of them, past, present or future, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the Effective Date of this Agreement, arising out of or in any way related to ownership of the Property.

5. Intent of Agreement. This Agreement is intended to resolve forever the entire disagreement between the Parties relating to the claims alleged in the Property. Each Party agrees that all of the Released Parties are intended beneficiaries of this Agreement and entitled to enforce it.

6. Ownership/Authority. The Parties represent and warrant that: (i) the Parties are duly authorized to enter into this Agreement and may lawfully bind each other and all persons or entities on whose behalf the Parties have agreed herein; and (ii) the Parties have not sold, pledged, encumbered, or otherwise disposed of, in whole or in part, voluntarily or involuntarily, any of the claims released in the release above.

7. Continuing Obligations. The Parties agree to execute any further documents necessary to effectuate this Agreement or payment hereunder.

8. Default. In the event of a default by either Party hereunder, the other Party shall be entitled to avail itself of all rights and remedies at law or in equity. Each Party to this Agreement also agrees that nothing in this section is intended to limit any Party's right to obtain injunctive and other relief as may be appropriate.



9. Legal Advice. The Parties represent and warrant that they have had, or have had the opportunity to obtain, the advice of counsel of their choice and/or such other persons as they may have deemed appropriate, and that they have carefully read and fully understood all of the terms of this Agreement, including the release and the obligations contained herein and that they enter into this Agreement voluntarily.

10. Choice of Law and Waiver. This Agreement shall be governed by, and construed in accordance with the substantive law of the State of Florida and any disputes will be resolved before the Receivership Court in the Middle District of Florida.

11. Attorneys' Fees. Each Party will bear his or its own costs and attorneys' fees and costs associated with the Property, the negotiations which led to this Agreement, and preparation and execution of this Agreement itself. In the event of a default under or other breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs, including fees for paralegals, in any action or proceeding, including any appeal, and fees for determining both entitlement and amount of any such award.

12. Entire Agreement and Severability. The Parties hereby declare, warrant and represent that the consideration recited in this Agreement is the sole and only consideration and that there have been no promises, representations, inducements, or agreements made except as herein contained. This Agreement reflects the entire agreement by and between the Parties, and no statement, promise or inducement that is not contained herein shall be valid and binding. The invalidity or unenforceability of any provision of this Agreement, other than Sections 2, 3 and/or 4 thereof, shall not affect the validity or enforceability of any other provision of this Agreement.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original against any Party whose signature appears thereon, and all of which together shall constitute one and the same agreement. Facsimile and/or scanned signatures in PDF or other similar format shall have the same effect as original signatures. Each Party will be entitled to a fully executed photocopy of the original.

14. Interpretation. The terms, provisions and language of this Agreement have been jointly negotiated and drafted by the Parties and their respective counsel. Nothing in this Agreement should be construed or interpreted against any Party herein as the drafting Party or any other similar rules of construction.

15. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

16. Amendment. This Agreement may not be amended, except in a writing that is signed by both Parties.

**[THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them on the dates hereinafter subscribed.**

\_\_\_\_\_  
**Burton W. Wiand, Receiver**

Date: \_\_\_\_\_



\_\_\_\_\_  
**Ryan Rybicki**

Date: 3/4/2022