

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants.

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.

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**RECEIVER'S UNOPPOSED MOTION TO APPROVE
PUBLIC SALE OF UNENCUMBERED REAL PROPERTY
LOCATED IN THOMASVILLE, THOMAS COUNTY, GEORGIA**

Pursuant to 28 U.S.C. §§ 754, 2001, and 2002, Fed. R. Civ. P. 66, and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the “**Receiver**”), respectfully moves the Court for entry of an order in substantially the form

attached hereto as **Exhibit 1** allowing the Receiver to proceed with the public online auction of Receivership real properties located in Thomasville, Thomas County, Georgia (the “**Properties**”) to the highest bidder(s). Legal, equitable, and factual circumstances establish that a sale by public online auction is warranted and in the best interest of the Receivership estate in light of the already substantially reduced value of the Properties and the prospect of further significant reductions in its value.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (“**Commission**”) initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC and Scoop Management, Inc. and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P. (“**Valhalla Investment**”); Valhalla Management, Inc. (“**Valhalla**”); Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (“**Viking**”) (the “**Order Appointing Receiver**”). (*See generally* Order Appointing Receiver (Doc. 8).) The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“**Nadel**”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454, 911.) All of the entities in receivership are collectively referred to as the “**Receivership Entities.**”

Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of

the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors.” (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court

(*Id.* at 2.)

The Receivership’s Interests In The Properties

Shortly after his appointment, the Receiver learned that proceeds of Nadel’s fraud had been diverted to several entities in addition to the Receivership Entities. One of these entities was the Guy-Nadel Foundation, Inc. (the “**Foundation**”), a Florida non-profit corporation formed in December 2003 by Nadel for “charitable, educational and scientific purposes.” Nadel served as one of the Foundation’s directors, along with Mrs. Nadel, and Mrs. Nadel’s son and daughter, Geoff Quisenberry and Alexandra Quisenberry. The Receiver’s investigation revealed that the Foundation was funded with nearly \$3 million in proceeds from Nadel’s scheme that were either transferred directly from Receivership Entity Scoop Capital or indirectly through transfers from Nadel’s personal accounts. Those proceeds were subsequently used for various purposes, including the purchase of the Properties at or near

the height of the real estate boom. Upon this discovery, the Receiver successfully sought to expand the scope of the Receivership Entities to include the Foundation. (Doc. 68).

The Properties consist of two undeveloped lots in Thomasville, Thomas County, Georgia. The first lot is a .12 acre parcel located at 211 Church Street (the “**Church Street Lot**”) that was purchased by the Foundation in December 2006 for \$4,000.00. In 2012, the Thomas County Board of Tax Assessors appraised the Church Street Lot at \$2,224.00. The second lot is a 1.17 acre parcel located on North Stevens Street (the “**North Stevens Street Lot**”) that was purchased by the Foundation sometime in January 2008 for \$24,000. In 2012, the Thomas County Board of Tax Assessors appraised the North Stevens Street Lot at \$10,342.00. The purchase price and subsequent closing costs for the Properties were paid entirely by the Foundation with proceeds of Nadel’s fraud.

The Properties have received no improvements since being purchased, nor are they subject to any known liens or encumbrances. Further, no claims have been filed in the Receivership which are connected in any way to the Properties. Since taking possession of the Properties in 2009, the Receivership Estate has incurred approximately \$3,000.00 in various expenses related to the Properties, including insurance premiums, tax, lawn maintenance, and advertising expenses.

The Receiver’s Marketing Efforts

After taking possession of the Properties, the Receiver marketed the Properties through his website, www.nadelreceivership, in a specific “Assets for Sale” section. The Receiver also engaged the services of Tallahassee Land Company in September 2009 to list and market the Properties for sale. The Properties were listed for sale for the price of

\$5,000.00 and \$34,745.00, respectively. After the Receiver's listing agreement with Tallahassee Land Company expired, the Receiver continued to market the Properties on his own through posted advertisements in the local newspaper.

Since the Receiver began marketing the Properties in 2009, he has received one offer to purchase each property. After considering each offer, the Receiver determined that neither offer adequately represented the value of the Properties and declined to accept either offer. Given the lack of success in his previous marketing efforts, as well as the continuing obligation to pay maintenance, tax, and insurance obligations, the Receiver has determined that a public sale by online auction will provide the best opportunity to sell the Properties and is in the best interest of the Receivership Estate.

The Auctioneers and Terms Of Engagement

In June 2012 the Receiver's professionals met with representatives of several local auctioneer companies to determine whether it would be feasible to conduct a public sale of the Properties. Based on these discussions, the Receiver engaged the services of Iron Horse Auction Company ("**Iron Horse**") to assist him with the public sale of the Properties. Iron Horse is a full service auction company and brokerage firm with over forty years of combined expertise and experience. Iron Horse has also previously assisted the Receiver in the disposal of other real estate held by the Receivership. (*See* Docs. 780, 782, 817, 819). Iron Horse works extensively with The Swicegood Group, Inc. ("**Swicegood**"), another reputable auction firm and commercial property broker. Iron Horse and Swicegood are collectively referred to as the "**Marketing Companies**".

The Marketing Companies will work together to advertise and sell the Properties, and have agreed not to charge an engagement fee. Additionally, their commission and buyer's premiums are significantly less than that of national auctioneers. In a letter of engagement entered into between the Marketing Companies and the Receiver (the "**Engagement Letter**"), the Marketing Companies committed to "market and advertise the Properties in a 'Commercially Reasonable Manner' to ensure that the Properties are properly exposed to the buying public." A copy of the Engagement Letter is attached hereto as **Exhibit 2**. This includes a "direct mail blitz" to a list of known and potential buyers of similar assets, as well as the preparation and distribution of a press release advertising the auction in area newspapers and over 30 internet websites related to the sale of real estate at public auction. The advertising campaign is expected to cost no more than \$2,200, and will be satisfied out of the sale proceeds. The Marketing Companies will also be entitled to a commission of 10% payable from the sale proceeds, as well as a buyer's premium of 10% payable by the buyer(s). Given the nature, quality, and value of the Properties, as well as the local market in which the Properties are located, the Receiver believes that the terms and conditions of the Engagement Letter will result in the best possible outcome for the Receivership Estate.

The Receiver believes that the Marketing Companies are well-qualified to oversee a public online auction of the Properties due to their reputation and to Iron Horse's previous success working for the Receiver. Since their engagement, the Marketing Companies have evaluated the Properties and proposed a marketing plan to promote the public online auction. They have also advised the Receiver regarding an appropriate price that reasonably reflects the value of the Properties. While a sale is unlikely to generate any meaningful recovery for

the Receivership Estate, a sale of the Properties would relieve the Receivership Estate of its current obligation to expend assets to maintain the Properties. Because the Properties have no prospects for providing the Receivership with any additional benefit in the foreseeable future, and instead require Receivership funds for maintenance and upkeep, the Receiver believes that a sale of the Properties is in the best interests of the Receivership. Accordingly, the Receiver respectfully requests that this Court enter an order approving the public sale of the Properties in substantially the form of the proposed order attached hereto as **Exhibit 1**.

MEMORANDUM OF LAW

I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP'S ADMINISTRATION

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). The relief sought by the Receiver falls squarely within those powers. The Receiver believes that the proposed sale of the Properties, which is expected to result in the recovery of approximately \$5,000 for the benefit of defrauded investors, is in the best interests of and represents the best possible recovery for the Receivership Estate. The relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

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); *S.E.C. v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). The goal of a receiver charged with liquidating assets is to obtain the best value for the estate available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996), *citing Jackson v. Smith*, 254 U.S. 586 (1921). Further, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See e.g. Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

II. THE COURT HAS THE POWER TO DEVIATE FROM THE REQUIREMENTS OF 28 U.S.C. § 2001, AND THAT IS WARRANTED UNDER THE CIRCUMSTANCES HERE

Pursuant to 28 U.S.C. § 2001 (“**Section 2001**”), property in the possession of a receiver may be sold by public or private sale. 28 U.S.C. § 2001. Specifically, subsection (a) establishes the following procedures for a public sale of real property:

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the

county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

28 U.S.C. § 2001. Additionally, when real property is sold at public sale by order of a court, 28 U.S.C. § 2002 (“**Section 2002**”) requires that proper notice of the sale be provided through the publishing of a court-approved notice. It requires notice to be published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States where the real property is situated.

Here, the Receiver requests that the Court authorize a slight deviation from Section 2001(a) in allowing a sale of the Properties by public online auction. Notwithstanding the language of Section 2001(a), district courts are afforded wide discretion in overseeing the sale of real and personal property in equity receiverships. Any actions taken by the district court in the exercise of this discretion are 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. *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).

Consistent with this discretion, courts have allowed deviations from the requirements of Section 2001 to approve sales of real property in equity receiverships. *See S.E.C. v. Global*

Online Direct, Inc., Case No. 1:07-CV-0767-WSD, Order Granting Receiver's Mot. For Order Authorizing the Sale of Certain Property (N.D. Ga. 2009) ("The Court hereby relieves the Receiver from the provisions of 28 U.S.C. §§2001-2002"); *S.E.C. v. Billion Coupons, Inc.*, 2009 WL 2143531, *4 (D. Hawaii 2009) (authorizing receiver to deviate from requirements of 28 U.S.C. § 2001 where proposed plan contained sufficient safeguards for maximizing sales price, as well as efficient process to minimize costs and other expenses.).

After consulting with the Marketing Companies, the Receiver believes that a public sale of the Properties pursuant to Section 2001(a) would not be in the best interest of the Receivership Estate due to poor current economic conditions, the depressed real estate market, and a limited potential audience. Indeed, according to the United States Census Bureau, the population of Thomasville, Georgia, where the property is located, was less than 20,000 in 2010.¹ While the Marketing Companies have estimated that bids will likely fall below the original purchase prices and current county tax assessments of the Properties, the Receiver believes that a public online auction of the Properties, which would be open to bidders nationwide, is far more likely to result in the highest possible recovery for the Receivership Estate. Such deviation from Section 2001 is warranted, as compliance would likely result in a lower financial recovery to the Receivership Estate. The Receiver will also take steps to ensure that reasonable value is received for the Properties and that the final sale prices are in the best interest of the Receivership Estate. If the final bid prices do not represent the reasonable value of the Properties, the Receiver will open negotiations with the

¹ <http://quickfacts.census.gov/qfd/states/13/1376224.html>

highest bidder(s) to try and secure final sale prices which reasonably reflects the value of the Properties and are in the best interest of the Receivership Estate.

Section 2002 also requires the Receiver to publish notice of the sale on a weekly basis for at least four weeks prior to the sale. However, under the Engagement Letter, the Marketing Companies are already obligated to conduct a marketing and advertising campaign that will be satisfied out of any sales proceeds. The Receiver believes that full compliance with the statutory notice provisions of Section 2002 would result in the unwarranted depletion of funds and resources of the Receivership Estate. Thus, the Receiver requests that the Court either waive Section 2002's notice provision, or in the alternative find that the Marketing Companies' efforts are in compliance with Section 2002. Such deviation is warranted as compliance would result in a disproportionate financial cost to the Receivership Estate.

WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as **Exhibit 1** to (1) sell the Receivership's real property located in Thomasville, Thomas County, Georgia by public online auction in accordance with the terms and conditions of the Engagement Letter attached hereto as **Exhibit 2**, and (2) grant the Receiver authority to transfer the Properties free and clear of all claims, liens, and encumbrances upon the conclusion of the public online auction referenced herein.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

Undersigned counsel has conferred with counsel for the SEC and is authorized to represent that this motion is unopposed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 6, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

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