

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,

Case No: 8:09-cv-87-T-26TBM

v.

ARTHUR NADEL; SCOOP CAPITAL, LLC;
and SCOOP MANAGEMENT, INC.,
Defendants,

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.

MOTION TO INTERVENE AND MOTION FOR IMMEDIATE ACCOUNTING

COME NOW Paul Downey and Jeff Downey, by and through their undersigned counsel and move to intervene and for an immediate accounting and in support of this Motion state as follows:

1. On May 24, 2013, this Court approved the Receiver's Motion to Expand the Scope of Receivership to Include Quest Energy Management Group, Inc. The reason for granting that motion was to assist the Receiver in its efforts to recover certain proceeds from the Nadal Ponzi scheme that had been invested in Quest more than six years ago. The Company opposed that motion in part because of the Receiver's lack of experience and inability to operate the Company. Regrettably, the concerns initially raised by Quest appear to be well-founded, and the Receiver's inability to properly operate Quest jeopardizes any

recovery of all assets of the corporation, even those which are unrelated to the present matter in the amount of more than \$15,000,000.

2. The fundamental problem facing Quest, as with many companies, is a lack of capital. Former executives and owners of the Company, prior to the appointment of the Receiver, were in a position to provide capital. This request for accounting is to illustrate to the Court the urgency of the situation and the Receiver's inability to resolve it without severe damage to all investors. This request for accounting is made by Paul Downey and Jeff Downey as beneficiaries of the Company assets, as they have relinquished their shares to the Receiver. The Downeys estimate that they have invested virtually their entire net worth in Quest entities, an amount estimated to be approximately \$5,000,000, so they have a direct financial interest in the activities of the Receiver. Their status as shareholders of the Company is solely dependent upon the success of the Receiver, as their shares in Quest have been assigned to the Receiver. The Receiver's relationship to the Downeys and the other shareholders is a fiduciary relationship that establishes standing for this action.

MEMORANDUM OF LEGAL AUTHORITY AND ARGUMENT

A. Motion to Intervene

Rule 24, F.R.C.P. permits intervention either as a matter of right or on a permissive basis:

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the

movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Downeys believe that, because of their ownership interest and investment in the Company, they are entitled to intervene for this limited purpose because the assets of all investors are more at risk today than when the Receiver was appointed by this Court. The SEC commonly raises 15 USC 78u(g) relating to consolidating or coordinating actions for equitable relief as a defense in similar matters. That provision states:

Notwithstanding the provisions of section 1407(a) of Title 28, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, (emphasis added) even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.”

This action is brought to protect the interests of the investors, which is consistent with the objectives of the SEC. Other than this Court, there is not a defense to mismanagement by a Receiver. Accordingly, this limited motion should be approved in the interest of all parties.

B. Motion for Immediate Accounting

From the outset of the proceeding to appoint a receiver over Quest, the Downeys have asserted that the Receiver is ill-equipped to operate Quest without a cash infusion. Coincidentally, the Downeys were on the brink of providing that cash infusion through new investors at the time that the Court appointed the Receiver. The concern of the Downeys is that, rather than increasing the opportunity to make payments to Nadal investors and innocent third party investors, those investors will be deprived of the opportunity for repayment. Indications that this might be the case have surfaced. The value of Quest to all investors is based on the proven undeveloped oil and gas reserves underlying the Quest leases. The

Receiver was fully informed, based on documents subpoenaed from Quest in 2009, that the capital requirements for monetizing these reserves was potentially as much as \$40 million. The Receiver reported to the Court during many of its reports that it questioned the viability and value of the investment. The liquidation value of the company is limited. The failure to properly develop certain leases will result in their forfeiture without any benefit to the Nadal investors or the Company.

One tangible indication of the problems facing the Company is the potential loss of its Operating Permit (P-5). The attached Final Order from the Railroad Commission of Texas (Exhibit A) calls into question whether the Operating Permit will be renewed. Failure to secure the renewal of the permit will result in serious consequences for the Company in that the Company would no longer be able to legally operate oil and gas leases in the state of Texas. Even if the Operating Permit is renewed, most of the Oil and Gas leases held by the Company are in some form of default due to non-payment of royalties and/or taxes. Whether the Receiver has the capacity to move the Company forward is a serious question in the minds of the investors.

The step being requested is customary in any event for a receiver. For example, in *SEC v. Private Equity Management Group, LLC*, 2009 U.S. Dist. LEXIS 47811 (C.D. Cal., 2009), the court stated:

IT IS FURTHER ORDERED that MOSIER & COMPANY, INC. is appointed as temporary receiver of Private Equity Management Group, Inc. and Private [*8] Equity Management Group, LLC, and their subsidiaries and affiliates, with full powers of an equity receiver, . . . , and that such temporary receiver is immediately authorized, empowered and directed:

. . . E. to make an accounting, as soon as practicable, to this Court and the Commission of the assets and financial condition of Private Equity Management Group, Inc. and Private Equity Management Group, LLC and the assets under their management, including all notes, deeds of trust and other interests in real property, and to file the accounting with the Court and deliver copies thereof to all parties. *Id.* at p. 1251222. See also SEC v. ABS Manager., LLC, 2013 U.S. Dist. LEXIS 39098 (S.D. Cal. Mar. 20, 2013), SEC v. Khanna, 2010 U.S. Dist. LEXIS 42775 (S.D. Cal. Apr. 19, 2010).

In this matter, the Downeys believe that their interests, the investors' interests and the Receiver's interests are aligned. Accordingly, the Downeys respectfully request the Receiver to immediately provide an accounting of Quests assets and liabilities to this Court.

WHEREFORE, Jeff Downey and Paul Downey respectfully request this Court enter an order requiring the Receiver to immediately provide and account of Quests assets and liability and request such other and further relief as is deemed appropriate.

Respectfully submitted,
LEWIS BRISBOIS BISGAARD & SMITH LLP

s/John A. Rine

JOHN A. RINE

Florida Bar Number 989400

jrine@lbbslaw.com

DAVID A. BOULOS

Florida Bar Number 825131

dboulos@lbbslaw.com

3812 Coconut Palm Drive, Suite 200

Tampa, Florida 33619-1352

Phone: 813.739.1900; Fax: 813.739.1919

Attorneys for Quest Management Group, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2013, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

s/John A. Rine

Attorney