

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.

**RECEIVER'S UNOPPOSED VERIFIED MOTION FOR
APPROVAL OF SALE OF REAL PROPERTY LOCATED
IN EVERGREEN, JEFFERSON COUNTY, COLORADO**

Pursuant to 28 U.S.C. § 754, 28 U.S.C. § 2001, 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 an order, in substantially the form attached as

Exhibit 1, authorizing him to (i) sell certain real property and (ii) relieve the Receiver from certain provisions of 28 U.S.C. § 2001.

INTRODUCTION

The Receivership Estate holds title to real property located at 30393 Upper Bear Creek Road, Evergreen, Colorado 80439 (the “**Evergreen Property**”). Title to the Evergreen Property was obtained by the Receiver from the Sharon Gae Moody Trust Dated 7/23/90 by virtue of a settlement with Sharon G. Moody in her individual capacity and as Trustee of The Sharon Gae Moody Trust Dated 7/23/90 in the case styled *Burton W. Wiand, as Receiver v. Neil V. Moody Individually and as Trustee Of The Neil V. Moody Revocable Trust; Sharon G. Moody Individually and as Trustee of The Sharon G. Moody Revocable Trust; and The Neil V. Moody Charitable Foundation, Inc.*, Case No.: 8:10-cv-249-T-17MAP (M.D. Fla.), a “clawback” case brought by the Receiver. The Receiver has listed the Evergreen Property through a broker and has received an offer to purchase the Evergreen Property for \$750,000. This offer is consistent with appraisals obtained by the Receiver, which most recently valued the Evergreen Property at \$780,000. In light of the state of the real estate market, the Receiver believes the current offer represents a fair and reasonable price for the Evergreen Property and is in the best interests of the Receivership Estate.

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 Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (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, 916, 1024). All of the entities in receivership are hereinafter collectively referred to as the “**Receivership Entities**.” Pursuant to the Order Appointing Receiver, the Receiver was directed to, *inter alia*, administer and manage the business affairs, funds, assets, choses in action and any other property of the Receivership Entities.

The Evergreen Property

After his appointment and pursuant to the authority granted by the Order Appointing Receiver, in relevant part, the Receiver instituted “clawback” actions against investors who received more than they invested. One of these actions was brought, in part, against Sharon G. Moody Individually and as Trustee of The Sharon G. Moody Revocable Trust. On November 1, 2010, the Receiver and defendant Sharon G. Moody, in her individual capacity and as Trustee of The Sharon Gae Moody Trust Dated 7/23/90 (“**Sharon Moody**”), entered into a settlement agreement under which Sharon Moody would, in part, transfer title of the Evergreen Property to the Receiver. The settlement was approved by this Court on November 8, 2010 (Doc. 517). The Receiver took possession of the property and began marketing it for sale.

The Evergreen Property was built in 1943 and sits on approximately 2.4 acres. The total square footage of this home is approximately 3,190 feet. The main house has three bedrooms and four bathrooms. There is also a detached two-car garage on the property and an additional two story structure containing a one bedroom apartment on the top floor and a two car garage on the bottom. The Evergreen Property has received no significant improvements since it has been in the Receiver's possession.

The Evergreen Property has one known encumbrance: a first priority secured loan held by Freddie Mac which is serviced by Wells Fargo Bank, N.A. ("**Wells Fargo**"). Payments on the Freddie Mac loan secured by that property are current and the Receiver intends to satisfy the loan at the closing, with the balance of the sale price going to the Receivership Estate. No claims have been filed in the Receivership which are connected in any way to the Evergreen Property.¹

The Receiver's Marketing Efforts and Offer to Purchase the Evergreen Property

As required under 28 U.S.C. § 2001, three appraisals were conducted on the Evergreen Property in connection with the Receiver's efforts to market and sell the property. In September 2010, shortly before taking possession of the Evergreen Property, the Receiver obtained an appraisal valuing the Evergreen Property at \$910,000 (the "**First Appraisal**"). A copy of the First Appraisal is attached hereto as **Exhibit 2**. The Receiver then engaged the assistance of realtor Yvette Putt of Fuller Sotheby's International Realty to list and actively

¹ Wells Fargo requested leave to file a late claim with respect to the loan on the Evergreen Property (Doc. 740) but the Receiver responded that he intended to satisfy the loan when the property is sold. (Doc. 755). As such, Wells Fargo has stated that the Court need not address the Evergreen Property loan in the context of its request for leave to file a late claim in light of the Receiver's representation. (Doc. 762).

market the Evergreen Property for sale. The Receiver also marketed the property through his website, www.nadelreceivership.com, in a specific “Assets for Sale” section. The property was listed for sale on February 3, 2011, for the price of \$910,000, which was selected based upon the First Appraisal, and the condition of the market and comparable properties for sale in the Evergreen, Colorado community and surrounding area.

In March 2011, a prior potential purchaser obtained an appraisal which concluded that the Evergreen Property had an appraised value at that time of \$720,000 (the “**Second Appraisal**”). A copy of the Second Appraisal is attached hereto as **Exhibit 3**. In May 2012, the Receiver replaced Mrs. Putt with Mark T. Footer of Intero Real Estate Services, and re-listed the Evergreen Property for \$795,000. The Receiver received a total of eight other offers between February 2011 and November 2012, but none of these offers exceeded \$721,500.

The Receiver has received an offer from Robert C. Marshall and Betty Jean Marshall (the “**Purchasers**”), who have provided proof of funds in the form of a loan commitment letter (the “**Letter**”) to purchase the Evergreen Property for \$750,000 provided that the Receiver is able to close on the sale on or before July 25, 2013, after which the Purchasers’ loan commitment interest rate will no longer be valid. In connection with this offer, the Purchasers obtained an appraisal on June 27, 2013, which valued the Evergreen Property at \$780,000 (the “**Third Appraisal**”). A copy of the Third Appraisal is attached hereto as **Exhibit 4**.² The Purchasers have also informed the Receiver that, pursuant to the terms of the

² The First Appraisal, Second Appraisal, and Third Appraisal (collectively, the “**Appraisals**”) were each conducted by disinterested appraisers, and the Receiver seeks their appointment *nunc pro tunc* pursuant to 28 U.S.C. § 2001.

Letter, the interest rate underlying the loan commitment has been guaranteed up to and until July 25, 2013. In light of the recent increase in interest rates, Purchasers have indicated that they may not proceed with the sale if court approval is not obtained by July 25, 2013. The Receiver has accepted this offer, subject to the Court's approval. As such, the Receiver entered into a Purchase and Sale Agreement with Purchasers (the "**Agreement**"), a copy of which is attached hereto as **Exhibit 5**. The Receiver intends to convey title, free and clear of all claims, liens, and encumbrances, by Receiver's Deed in substantially the form as attached as **Exhibit 6**.

The Receiver believes that the proposed offer is reasonable in light of the current market conditions and the appraised value of the property. Pursuant to the Agreement, the Receivership Estate will net approximately \$320,000 from the sale after deducting payment of the balance owed on the loan, the commission, and normal closing costs.

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 sale of the Evergreen Property is in the best interests of and represents the best possible recovery for the Receivership Estate; the proposed sale

would result in the recovery of approximately \$320,000 for the benefit of defrauded investors. 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, property in the possession of a receiver may be sold by private or public sale. 28 U.S.C. § 2001. Specifically, subsection (b) establishes the following procedures for a private sale of real property:

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b) (“**Section 2001(b)**”).

Notwithstanding the language of Section 2001(b), 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(b) 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, *3 (D. Hawaii 2009) (granting receiver’s request to deviate from 28 U.S.C. § 2001 by allowing real estate broker to market and sell property for highest price obtained).

A. Waiver Of The Statutory Notice Requirements Under Section 2001(b) Is Warranted

Pursuant to Section 2001(b), a court may order the sale of real estate after (i) the completion of three appraisals, of which the proposed sale price may not occur at less than two-thirds of the average appraised value; and (ii) the advertisement of the terms of the proposed sale in such newspaper(s) of general circulation as directed by the court. 28 U.S.C. § 2001(b). Here, the Receiver and the Purchasers have obtained the Appraisals, which yield an average value of the Evergreen Property of approximately \$803,000.³ The proposed sale price of \$750,000 is well in excess of two-thirds of the average appraised value as required by 28 U.S.C. § 2001(b).⁴ The Receiver is unaware of any claims to the Evergreen Property other than Freddie Mac’s interest nor has he received any indication that any interested party plans to object to the proposed sale.

While the Receiver has obtained the requisite number of appraisals as required by Section 2001(b), the Receiver believes that full compliance with the statutory notice

³ Here, the Appraisals were conducted over a two-year period in connection with the Receiver’s efforts to market the Evergreen Property. The Receiver requests that the Court find these efforts in compliance with 2001(b), as the Receiver believes that obtaining any further appraisals would not only derail the proposed sale but also result in unwarranted financial cost to the Receivership Estate.

⁴ The amount representing two-thirds of the average of the Appraisals is approximately \$535,555.

procedure enumerated in Section 2001(b) would derail the sale of the Evergreen Property and result in the unwarranted expenditure of funds and resources of the Receivership Estate. The Receiver has learned the cost to publish notice of the sale for ten consecutive days in a newspaper of general circulation in Evergreen, Colorado is approximately \$1,540. While the Receiver is aware of less-costly local newspapers which could publish notice of the sale, those newspapers have a weekly, rather than daily, circulation. Most importantly, satisfying the statutory notice procedure could potentially derail the proposed sale, as publishing the statutory notice for ten days would eliminate the parties' ability to close the sale before July 25, 2013 – the expiration of Purchasers' loan commitment interest rate window. Given the existence of a ready and willing buyer and the short time frame by which the Purchasers' loan commitment remains valid, as well as the lack of any claims to the Evergreen Property or knowledge that any interested party plans to object to the proposed sale, the Receiver requests that the Court authorize deviation from the statutory notice requirement associated with the proposed sale of the Evergreen Property. *See Billion Coupons, Inc.*, 2009 WL 2143531 at *3 (relieving receiver of compliance with statutory provisions of 28 U.S.C. § 2001 where sufficient safeguards existed and proposed procedure would maximize net sales proceeds). This is especially important since the Receiver has unsuccessfully been trying to sell the Evergreen Property for several years.

Further, the Receiver believes that full statutory compliance with the statutory notice requirement of Section 2001(b) would be unnecessary in light of the substantial marketing and advertising efforts undertaken by the Receiver and his listing agents over the past two-plus years which have resulted in minimal interest in the Evergreen Property. The Receiver

will be posting a copy of this motion on his website, www.nadelreceivership.com, immediately after filing, which will be publicly available. Thus, the Receiver requests that the Court either waive Section 2001(b)'s notice provision, or in the alternative find that the Receiver's efforts in marketing and listing the Evergreen Property are in compliance with Section 2001(b). Again, such deviation is necessary in part because compliance would cause the Purchasers' loan commitment at earlier low interest rates to expire which, in turn, would likely cause them to walk away from this transaction.

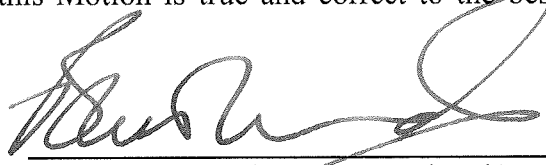
WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 to (1) sell the Receivership's real property located in Evergreen, Jefferson County, Colorado by private sale in accordance with the terms and conditions set forth in the Purchase and Sale Agreement attached hereto as Exhibit 5 and free and clear of all claims, liens, and encumbrances; (2) approve the appointment *nunc pro tunc* of appraisers James P. Westman, Robert Haller and Troy Nofzinger as appraisers under 28 U.S.C. § 2001(b); (3) find that the Receiver has substantially complied with 28 U.S.C. § 2001(b); and (4) waive the statutory notice provision requirement of 28 U.S.C. § 2001(b).

CERTIFICATE UNDER LOCAL RULE 3.01(g)

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

VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter, hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.



Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 16, 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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