

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 VERIFIED MOTION FOR  
APPROVAL OF SALE OF REAL PROPERTY LOCATED  
IN SARASOTA, SARASOTA COUNTY, FLORIDA**

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**, (i) authorizing him to sell certain real property and (ii) relieving him from certain provisions of 28 U.S.C. § 2001.

### **INTRODUCTION**

The Receivership Estate holds title to real property located at 15575 Fruitville Road, Sarasota, Sarasota, County, Florida (the “**Fruitville Property**”) pursuant to an order of this Court dated July 8, 2009 (Doc. 146). The Receiver has listed the Fruitville Property through a broker for several years and has received an offer to purchase the Fruitville Property for \$181,560. This offer is consistent with two appraisals obtained by the Receiver, which most recently valued the Fruitville Property at \$190,000. In light of the uncertain state of the real estate market, the Receiver believes the current offer represents a current fair and reasonable price for the Fruitville Property and believes it is in the Receivership Estate’s best interests to proceed with the sale of the Fruitville Property without obtaining any additional appraisals or advertising the terms of the sale as required under 28 U.S.C. § 2001(b). Thus, the Receiver requests that the Court waive, or find that the Receiver has substantially complied with, the procedures in 28 U.S.C. § 2001(b) governing the private sale of real property by a receiver.

### **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 Fruitville Property**

Shortly after his appointment, the Receiver learned that proceeds of Nadel’s fraud had been used to purchase various assets, including the Fruitville Property. Art and Peg Nadel (the “**Nadels**”) purchased the Fruitville Property for approximately \$205,000 in March 2003 and obtained a mortgage (the “**Mortgage**”) two months later through Northern Trust (“**Northern Trust**”) for \$191,250 in May 2003. The Receiver’s investigation revealed that the Mortgage was paid with ill-gotten gains of Nadel’s Ponzi scheme, and the Receiver successfully sought to expand the scope of the Receivership Entities to include the Fruitville Property. (Doc. 146).

The Fruitville Property consists of approximately 5 acres. The main house consists of approximately 1,700 square feet of living space and was built in 1983. There is an efficiency-style apartment with approximately 300 square feet of living space on the premises and a 20 x 30 barn. The Fruitville Property has received no significant improvements since it has been in the Receiver’s possession.

The Mortgage is the only known encumbrance on the Fruitville Property, and as of July 15, 2013, the balance due on the Mortgage including principal and interest was \$209,264.92. The Receiver has conducted discussions with Northern Trust relating to recovery of scheme proceeds used to purchase the Fruitville Property, and has reached an agreement with Northern Trust which will compromise and eliminate the Mortgage at closing. This Amended Agreement between the Receiver and Northern Trust is attached hereto as **Exhibit 2**.<sup>1</sup> Pursuant to the Amended Agreement, Northern Trust will receive sixty percent (60%) of the net proceeds from the sale of the Fruitville Property as full and final satisfaction of the Mortgage on the Fruitville Property and the related note. The Receiver will receive the remaining forty percent (40%) of the net proceeds of the sale of the Fruitville Property.

With the exception of Northern Trust's interest, the Receiver is unaware of any other interest in the Fruitville Property and no claim has been filed relating to that property.

#### **The Receiver's Marketing Efforts and Offer to Purchase the Fruitville Property**

As discussed above, two appraisals were conducted on the Fruitville Property in connection with the Receiver's efforts to market and sell the property. In June 2010,

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<sup>1</sup> The Fruitville Property was discussed in the December 9, 2009 Agreement Regarding Claims and Obligations between the Receiver and Northern Trust ("Agreement") filed in connection with the sale of the Venice Jet Center (Doc. 254, Ext. 6). The Agreement was approved by this Court on January 20, 2010 (Doc. 321). In pertinent part, the Agreement stated that, if the Fruitville Property was sold and the closing occurred within one year of the date the Fruitville Property became an asset of the Receivership, Northern Trust shall be paid the principal amount of the mortgage owed at that time, exclusive of all fees and penalties. If a sale and subsequent closing of the Fruitville Property did not occur within one year, the Receiver agreed to engage in good faith negotiations with Northern Trust regarding the disposition of the Fruitville Property. The Amended Agreement hereto attached as **Exhibit 2** represents the result of the Receiver's additional good faith negotiations with Northern Trust.

Northern Trust obtained an appraisal valuing the Fruitville Property at \$200,000 (the “**First Appraisal**”). A copy of the First Appraisal is attached hereto as **Exhibit 3**. Another appraisal was conducted by the current purchaser in March 2013, which valued the Fruitville Property at \$190,000 (the “**Second Appraisal**”) (the First Appraisal and Second Appraisal are collectively referred to as the “**Appraisals**”). A copy of the Second Appraisal is attached hereto as **Exhibit 4**.

The Receiver began marketing the Fruitville Property in 2009, listing the property for sale through his website, [www.nadelreceivership](http://www.nadelreceivership), in a specific “Assets for Sale” section. The Receiver also engaged the services of Coldwell Banker Commercial NRT (“**Coldwell Banker**”) to list and market the Fruitville Property for sale. The Fruitville Property was initially listed for sale for the price of \$320,000. After the Receiver did not receive any offers to purchase the Fruitville Property, the listing price was reduced to \$275,000 in August 2010. Upon expiration of the Receiver’s listing agreement with Coldwell Banker in late 2010, the Receiver engaged the services of Sharon Chiodi of Schemmel Property Group, a division of Premier Sotheby’s International Realty. The Fruitville Property was listed for \$250,000 and, after still receiving no offers, later reduced to \$229,000.

The Receiver has received an offer from Pearl Fitzgerald (“**Purchaser**”), who has provided proof of funds in the form of a loan commitment letter (the “**Letter**”) to purchase the Fruitville Property for \$181,560 provided that the Receiver is able to close on the sale on or before August 2, 2013, after which the Purchaser’s loan commitment interest rate will no longer be valid. In light of the recent increase in interest rates, the Purchaser has indicated she may not proceed with the sale if Court approval is not obtained by August 2, 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 Purchaser, 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. In the four-year period since the Receiver began marketing the Fruitville Property, he has received only two offers to purchase. One offer was for less than the Receiver's estimated fair market value, while the other offer received was from the current Purchaser. Thus, the Receiver believes that obtaining any additional appraisals would result in the unwarranted expenditure of funds and resources of the Receivership Estate. Pursuant to the Purchase and Sale Agreement and the Amended Agreement between the Receiver and Northern Trust, the Receivership Estate will net approximately \$68,000 from the sale after deducting 60% of the net proceeds for payment to Northern Trust to satisfy the Mortgage, 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 proposed sale of the Fruitville Property, which is expected to result in the recovery of approximately \$68,000 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). The goal of a receiver charged with liquidating assets is to obtain the best value available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996) (citations omitted). 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, district courts are afforded wide discretion in overseeing the sale of real and personal property in equity receiverships. Any action taken by the district court in the exercise of this 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. *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).

**A. Waiver Of The Statutory Appraisal 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 Purchaser have obtained two Appraisals, which yield an average value of the Fruitville Property of approximately \$195,000.<sup>2</sup> The proposed sale price of \$181,560 is well in excess of two-thirds of the average appraised value as required by 28 U.S.C. § 2001(b). The Receiver is unaware of any claims to the Fruitville Property other than Northern Trust's interest nor has he received any indication that any interested party plans to object to the proposed sale.

Courts have utilized their wide discretion to authorize 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. Stanley J. Kowalewski et. al.*, Case No. 1:11-cv-0056-TCB, Order Granting Receiver's Motion for Approval of Private Sale of Real Property (N.D. Ga. 2012) (finding compliance with 28 U.S.C. §2001(b) despite receiver not obtaining three appraisals for each property). In fact, this Court recently authorized the Receiver's deviation from the requirements of Section 2001(b) where the Receiver had obtained only one appraisal and had expressed belief that

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<sup>2</sup> Here, the Appraisals were conducted over a two-year period in connection with the Receiver's efforts to market the Fruitville Property. The Receiver requests that the Court find these efforts in compliance with 2001(b), as the Receiver believes that obtaining any further appraisals could not only derail the proposed sale but also result in unwarranted financial cost to the Receivership Estate.

any additional appraisals would only result in unwarranted expense to the Receivership Estate. (Doc. 811). These orders are attached hereto as “**Composite Exhibit 7**”.

At least one court authorized a receiver’s private sale of real property under 28 U.S.C. § 2001 without requiring any appraisals. In *S.E.C. v. Billion Coupons, Inc.*, the receiver proposed that the court deviate from the appraisal requirements of 28 U.S.C. § 2001(b) and instead authorize the receiver to retain a licensed real estate broker to market and sell the property for the highest and best price obtained. 2009 WL 2143531, \*3 (D. Hawaii 2009). Concluding that the proposed plan contained sufficient safeguards for maximizing the sales price, as well as an efficient process to minimize carrying costs and other expenses, the court granted the receiver’s request to deviate from 28 U.S.C. § 2001. *Id.* at \*4. Further, this Court recently authorized the sale of real property in an equity receivership despite the receiver obtaining less than the three appraisals required under Section 2001(b). In *S.E.C. v. Patrick Kirkland et al.*, the receiver requested that the court find substantial compliance with the appraisal requirements in Section 2001 based on a single appraisal and the uniqueness of the subject property. 2009 WL 1439087 (M.D. Fla. 2009). Citing the receiver’s belief that the proposed sale was in the best interest of the receivership estate and that no benefit would be realized in obtaining additional appraisals, the court granted – over the defendant’s objection – the waiver of the requirements of Section 2001(b). *Id.* at \*3.

Importantly, neither the receiver in *Kirkland* nor in *Billion Coupons* obtained both an appraisal and the services of a realtor in listing the property for sale, as the Receiver has done here, but still received court approval of their deviation from the Section 2001 requirements. Not only do the Receiver’s efforts here exceed those in *Kirkland* and *Billion Coupons*, but

full compliance with the statutory procedures enumerated in Section 2001(b) here would result in the unwarranted depletion of funds and resources of the Receivership Estate. Given the (1) existence of a ready and willing buyer, and (2) existence of two appraisals supporting the proposed sales price, the Receiver requests that the Court authorize deviation from the statutory requirements associated with the proposed sale of the Fruitville Property.

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

Section 2001(b) also requires that the terms of a proposed sale must be advertised in such newspaper(s) of general circulation as directed by the court. 28 U.S.C. § 2001(b). Here, the Receiver believes that full compliance with the statutory notice procedure enumerated in Section 2001(b) could derail the sale of the Fruitville Property and result in the unwarranted expenditure of funds and resources of the Receivership Estate. 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 August 2, 2013 – the expiration of Purchasers' loan commitment interest rate window. Given the existence of a ready and willing buyer, as well as the lack of any claims to the Fruitville 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 Fruitville 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 Fruitville Property for over four 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 four years which have resulted in minimal interest in the Fruitville Property. The Receiver will be posting a copy of this motion on his website, [www.nadelreceivership.com](http://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 Fruitville Property are in compliance with Section 2001(b). Again, such deviation is necessary in part because compliance would cause the Purchaser's loan commitment at earlier low interest rates to expire which, in turn, would likely cause her to walk away from this transaction.

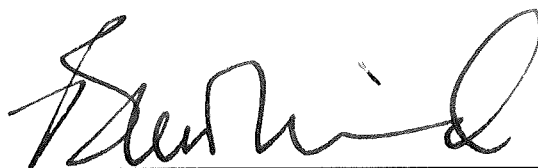
**WHEREFORE**, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 to (1) sell the real property located in Sarasota, Sarasota County, Florida by private sale in accordance with the terms and conditions set forth in the Purchase and Sale Agreement attached hereto as Exhibit 5 and free and clear of all claims, liens, and encumbrances; (2) approve the Amended Agreement with Northern Trust regarding the sharing of the net proceeds of the sale as provided in Exhibit 2 attached hereto; (3) approve the appointment *nunc pro tunc* of appraisers Brian K. Pellicot and Benjamin Herten as appraisers under 28 U.S.C. § 2001(b); and (4) waive the statutory notice and appraisal requirements 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 17, 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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