

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 FOR ORDER (1) AUTHORIZING RECEIVER TO EXECUTE AND SUBMIT AMENDED TAX RETURN OF ARTHUR NADEL; (2) DIRECTING THE INTERNAL REVENUE SERVICE TO ACCEPT THE TAX RETURN; (3) DIRECTING INTERNAL REVENUE SERVICE TO DELIVER ANY TAX REFUND TO RECEIVER; AND (4) AUTHORIZING RECEIVER TO NEGOTIATE AND DEPOSIT ANY TAX REFUND PAYABLE TO ARTHUR NADEL

Burton W. Wiand, as Receiver (the "Receiver"), respectfully moves the Court for entry of an order, in the form of the proposed order attached as **Exhibit A**, (1) authorizing the

Receiver to execute and submit an amended Form 1040X individual income tax return for Arthur Nadel (“**Nadel**”) to the Internal Revenue Service (“**IRS**”); (2) directing the IRS to accept that tax return; (3) directing the IRS to deliver any tax refund payable to Nadel to the Receiver in a timely manner;¹ and (4) authorizing the Receiver to negotiate and deposit any tax refund made payable to Nadel into any financial account held by the Receiver in his capacity as 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 (“**Scoop Capital**”) and Scoop Management, Inc. (“**Scoop Management**”) 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 Nadel (*see generally* Docs. 17, 44, 68, 81, 153, 172, 453). All of the entities and the trust in receivership are hereinafter referred to collectively as the “**Receivership Entities**.” Pursuant to the Order Appointing Receiver, the

¹ The Court previously entered an Order (Doc. 933) authorizing the Receiver to deposit any tax refunds made payable to Nadel into any financial account held by the Receiver in his capacity as Receiver. The Receiver seeks similar relief in this motion out of an abundance of caution.

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.

Following the Receiver's appointment, Nadel relinquished his interests in Receivership Entities Scoop Management and Scoop Capital to the Receiver. After consulting with his professionals, the Receiver filed separate individual income tax returns (the "**2009 Returns**") for Nadel and his wife, Marguerite Nadel ("**M. Nadel**"). Due to Nadel and M. Nadel's joint ownership of Scoop Management and Scoop Capital, which the Receiver discovered were insolvent from their inception due to Nadel's operation of a massive Ponzi scheme, the 2009 Returns included a net operating loss ("**NOL**") of approximately \$6,718,750.

The Worker, Homeownership, and Business Assistance Act ("**WHBAA**"), enacted in 2009, allows a taxpayer the election to carry back a NOL realized in 2008 or 2009 for a period of 3, 4, or 5 years. After consulting with his professionals, the Receiver elected to carry back M. Nadel's 2009 NOL (which was identical to Nadel's NOL) to Nadel and M. Nadel's 2006 married-filing-jointly tax return (the "**2006 MFJ Return**"). Following an IRS examination of this election to carry back M. Nadel's NOL to the 2006 MFJ Return, IRS Examiner Lisa Kelly certified the validity of the NOL in an Income Tax Examination Changes form (the "**Examination Change Form**") on December 14, 2012. The Examination Change Form indicated that a refund of approximately \$1,922,728.00 was due to M. Nadel pursuant to the amended 2006 MFJ Return.

Following receipt of the Examination Change Form, the Receiver and his professionals now seek the same tax treatment previously afforded to M. Nadel's tax return

for Nadel's 2009 NOL carryback.² The Receiver's professionals have prepared a Form 1040X Amended U.S. Individual Income Tax Return (the "**Amended Nadel Return**") for Nadel seeking to have the NOL applied to the 2006 MFJ Return, which they calculate should result in a refund of approximately \$2,351,565. As the Court is aware, Nadel died in April 2012 while incarcerated. During discussions with the IRS, the Receiver and his professionals were informed that the IRS would recognize the Receiver's ability to both execute the Amended Nadel Return and receive any refund owing on the Amended Nadel Return only upon provision of a court order allowing same. Accordingly, the Receiver is filing this Motion to obtain that authority. The Receiver also seeks an order directing the IRS to deliver any tax refund owing from the Amended Nadel Return to the Receiver in a timely manner to try to shorten some of the very lengthy time period it took the IRS to process and issue a refund for M. Nadel's return.

The Receiver believes this action is in the best interest of the Receivership, and is consistent with the Receiver's duties to marshal assets for an eventual distribution to investors with verifiable claims in an equitable and appropriate manner. The Receiver also believes that this represents the most efficient method to obtain any refund from the IRS. Accordingly, the Receiver respectfully requests that this Court enter an order in substantially the same form as the proposed order attached hereto as Exhibit A.

² Although the Receiver, with advice from his tax professional, initially elected to carry back Nadel's NOL to his 2007 return, the IRS informed the Receiver that Nadel's 2007 return was currently "in docketed appeals." As a result, the Receiver, again with advance from his tax professional, decided to change his approach and elected to carry back the NOL to the 2006 return to expedite the process. Carrying back the NOL to the 2006 return should also result in a benefit to the Receivership estate, as the resulting tax refund should be approximately \$800,000 higher than if the NOL was applied to the 2007 return according to the Receiver's tax professional's calculations.

MEMORANDUM OF LAW

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. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC 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; *SEC 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 obtaining authorization to execute and submit the Amended Nadel Return to the IRS, as well as authorization to negotiate any resulting refund owing on the Amended Nadel Return, is in the best interest of the Receivership. The relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

WHEREFORE, the Receiver respectfully requests this Court enter an Order, in substantially the form attached hereto as Exhibit A, granting this motion and (1) authorizing the Receiver to execute and submit an amended Form 1040X individual income tax return for Nadel to the IRS; (2) directing the IRS to accept that tax return; (3) directing the IRS to deliver any tax refund payable to Nadel to the Receiver in a timely manner; and (4) authorizing the Receiver to negotiate and deposit any tax refund made payable to Nadel into any financial account held by the Receiver in his capacity as Receiver.

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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 31, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by Certified Mail to the following non-CM/ECF participants.

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