

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.

**THE RECEIVER'S RESPONSE TO UNITED STATES OF AMERICA'S MOTION
FOR CLARIFICATION OF ORDER AUTHORIZING RECEIVER'S EXECUTION
AND SUBMISSION OF AMENDED TAX RETURN OF ARTHUR NADEL**

On January 15, 2014, the Court entered an Order (the “**Order**”) (Doc. 1100) authorizing Burton W. Wiand, as Receiver (the “**Receiver**”), to execute and file with the Internal Revenue Service (“**IRS**”) an amended tax return (the “**Amended Return**”) for Arthur Nadel (“**Nadel**”) and directing the IRS “to accept and timely process” the return and “deliver any applicable tax refund resulting from the [return] to the Receiver in a timely

manner” (Order at 2). The IRS, through the United States, subsequently moved for clarification or, alternatively, reconsideration of the above-quoted provision of the Order (the “**Motion**”) (Doc. 1101). Specifically, the IRS requests two clarifications:

Acceptance Of The Return. First, with respect to the directive that it “accept” Nadel’s Amended Return, the IRS explains that it “does not object to the Receiver filing the return on behalf of Mr. Nadel, and further does not object to delivering any refund ultimately determined to be due to the Receiver.” Mot. at 2-3.¹ Because this is the only relief the Receiver sought with respect to acceptance of that return by the IRS, to the extent the Court deems it necessary, the Receiver has no objection to an order clarifying that the Order is not “intended to nullify any statutory or regulatory requirement governing the form and/or content of the [Amended Return]” (Mot. at 3) except those specific statutory or regulatory provisions which would ordinarily preclude the Receiver from submitting a return on behalf of another person – here Nadel – and receiving any refund due on that return.

Timely Processing Of Return And Delivery Of Any Refund. Second, with respect to the directive that it “timely process” the return and deliver any refund in a “timely manner” (Order at 2), the IRS essentially objects on the ground that federal law contains “statutorily required time periods” that govern the processing of the return, payment of any refund, and suits by taxpayers, including in 26 U.S.C. §§ 6405(a), 6532, and 7422, and that the Court lacks jurisdiction to alter those periods. *See* Mot. at 3-4. The Receiver, however, did not ask the Court to alter any statutory deadline; rather, the Receiver’s pertinent request was directed

¹ Because the Motion does not have page numbers, this response references the page numbers inserted in the Motion by the CM/ECF system.

solely at ensuring the IRS acts diligently and processes the return and refund in a timely manner within the statutory timeframes. The Order does not contain language shortening any applicable statutory deadline.

The Receiver's request for this relief is based on his experience with the IRS's processing of an earlier return and refund submitted by the Receiver to recover Ponzi scheme proceeds previously paid to the IRS – specifically, the Receiver's experience with the 2009 tax return he prepared and filed for Nadel's wife, Marguerite "Peg" Nadel. Although Mrs. Nadel's 2009 return was filed in October 2010 (and an additional form filed in December 2010), the Receiver did not receive a refund for more than two years – the IRS finally issued a refund check for \$1,725,303.49 on May 29, 2013. That refund took an unnecessarily long time even though it did not require review and approval by the congressional Joint Committee on Taxation because it was not in excess of \$2 million. *See* 26 U.S.C. § 6405(a). In contrast, Nadel's return seeks a refund in excess of \$2 million, so, as the Motion notes, such a refund will require the additional step of review and approval by the Joint Committee. Timing of the expected sizeable refund is very important now that this Receivership is well past the midway point and the Receiver expects to make all distributions and wind up the Receivership in a shorter period than it took the IRS to pay Mrs. Nadel's tax refund.²

² The Receiver did not unnecessarily delay filing Nadel's Amended Return. Rather, as a strategic matter, because of the large overlap between Nadel's and Mrs. Nadel's relevant returns as explained later in this response, the Receiver, after consulting his tax professionals, decided it was in the Receivership's best interest to first proceed with Mrs. Nadel's return and obtain the results of that process before filing Nadel's return. Since that process was completed, the Receiver has been trying to file Nadel's return but it ultimately became clear the Receiver had no choice but to seek an order from the Court authorizing him to file on behalf of Nadel since Nadel is deceased and the Receiver is not Nadel's receiver.

Notably, the IRS should have no issues proceeding in a timely manner because Nadel's return involves the same years and losses involved with Mrs. Nadel's return. Specifically, Nadel's filing involves a carry back of the identical approximately \$6,718,750 2009 Net Operating Loss ("NOL") involving Scoop Management, Inc., and Scoop Capital, LLC, that underlay Mrs. Nadel's refund. Further, Nadel's filing involves carrying the loss back to his and Mrs. Nadel's 2006 married-filing-jointly tax return (the "**2006 MFJ Return**"), which is the identical carry back return involved in Mrs. Nadel's tax refund. During the lengthy time the IRS processed the 2009 return that the Receiver submitted for Mrs. Nadel, the IRS conducted an audit of the entire 2006 MFJ Return and a complete examination of the 2009 NOL and its carryback to the 2006 MFJ Return. In other words, the IRS has already examined and/or audited all of the information underlying the Amended Return that has been filed for Nadel. The result of those audits and examinations over a lengthy period of time was a report by the pertinent IRS Examiner approving a sizeable refund for Mrs. Nadel's tax return. Because the "legwork" underlying Nadel's Amended Return has already been done by the IRS in connection with Mrs. Nadel's return, the IRS should now have no issues proceeding in a timely manner to place Nadel's tax refund before the Joint Committee for review and approval.

In short, the Receiver did not seek to shorten any of the statutory timeframes governing the IRS's processing of Nadel's Amended Return. Rather, based on his experience with Mrs. Nadel's return and the need to wind up the Receivership, the Receiver merely sought to have the IRS act in a timely manner within the statutory timeframes (rather

than unnecessarily using all of the statutorily-allowed time or seeking unnecessary extensions).

Respectfully submitted,

s/Gianluca Morello

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 4, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

Gianluca Morello, FBN 034997