

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
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,

Relief Defendants.

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RECEIVER'S MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as Receiver, moves the Court for an order approving settlement of certain specific disputes that have arisen from the Receiver's garnishment and other collection efforts relating to a judgment entered in the Receiver's favor in *Burton W. Wiand, as Receiver v. Donald Rowe et al.*, Case No.: 8:10-cv-245-T-17MAP (M.D. Fla.) (the "**Rowe Action**"), on the basis of the Settlement Agreement attached as Exhibit A.

MEMORANDUM IN SUPPORT

The Securities and Exchange Commission (the “Commission” or “SEC”) instituted this action to “halt [an] ongoing fraud, maintain the status quo, and preserve investor assets” (Dkt. 1, Compl., ¶ 7.) Burton W. Wiand was appointed by this Court as the Receiver for Defendants other than Arthur Nadel and for Relief Defendants. (*See* Order Reappointing Receiver (Dkt. 140).) Additionally, the Receivership was expanded to include Venice Jet Center, LLC and Tradewind, LLC (Dkt. 17); Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, the Marguerite J. Nadel Revocable Trust UAD 8/2/07, and the Laurel Mountain Preserve Homeowners Association, Inc. (Dkt. 44); The Guy-Nadel Foundation, Inc. (Dkt. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Dkt. 81); Viking Oil & Gas, LLC (Dkt. 153); Home Front Homes, LLC (Dkt. 172); Traders Investment Club (Dkt. 454); Summer Place Development Corp. (Dkt. 911); Respiro, Inc. (Dkt. 916); and Quest Energy Management Group, Inc. (Dkt. 1024). All of the entities in receivership are collectively identified herein as the Receivership Entities.

Pursuant to the Order Reappointing Receiver (Doc. 493), the Receiver has the duty and authority to:

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement or profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

Further, the Order Reappointing Receiver (at paragraph 6) authorizes the Receiver to “[d]efend, compromise or settle legal actions ... in which the Receivership Entities or the Receiver is a party ... with authorization of this Court”

The Receiver sued Donald Rowe, individually (“**D. Rowe**”) and as Trustee of The Wall Street Digest Defined Benefit Pension Plan (the “**Plan**”); Joyce Rowe (“**J. Rowe**,” and collectively with D. Rowe, the “**Rowes**”); and one of the Rowes’ entities, Carnegie Asset Management, Inc. (“**CAM**”), to recover sums received from the Receivership Entities with a view to marshaling assets for an eventual distribution to investors with verifiable claims in an equitable and appropriate manner (the Rowes, the Plan, and CAM are collectively referred to as “**Defendants**” or “**Judgment Debtors**”). The Receiver and the Defendants entered into a settlement agreement, which was approved by the Court on February 5, 2013 (Doc. 963). As part of that settlement, the Defendants consented to the entry of a joint and several judgment in the Rowe Action in the amount of \$4,028,385.00 (the “**Judgment**”), which was entered by the Court on February 25, 2013. *See* Rowe Action (Doc. 124).

The Receiver then conducted discovery in aid of execution wherein he learned, *inter alia*, that the Judgment Debtors transferred some of their assets to third parties, including Band Gates, P.L. (“**Transferee**” or “**Band Gates**”). In total, Band Gates received \$345,441.22 and personal property, which has an approximate value of \$10,000 (“**Transfers**”). As shown by the attached Settlement Agreement, the Receiver and Transferee, subject to the approval of this Court, have agreed to settle the Receiver’s fraudulent transfer and unjust enrichment claims to recover the Transfers for a total payment

of \$167,208.30¹ and turnover of the personal property set forth in Exhibit A to the Settlement Agreement, which is to be paid and turned over to the Receiver within 20 days after approval of this settlement.

In reaching this agreement, the Receiver considered the risks and expense of further efforts to recover the Transfers. The Receiver believes that the settlement provides a practical solution which results in the maximum benefit to the Receivership. Further, the settlement reflected by the Settlement Agreement is in the best interests of the Receivership, the investors in the Receivership Entities, and Transferee, because resolution of the claim avoids protracted litigation, conserving Receivership assets and judicial resources, and avoids the cost of litigation to Transferee.

WHEREFORE, the Receiver moves the Court to approve the settlement reflected by the attached Settlement Agreement.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

The undersigned counsel for the Receiver is authorized to represent to the Court that the SEC has no objection to the Court's granting this motion.

¹ Band Gates subsequently transferred some of the monies it received to third parties. Of the \$345,441.22 Band Gates received, the Receiver already recovered \$178,232.92 from these third parties. Here, Band Gates is agreeing to pay the remaining amount that has not been recovered. In other words, as a result of this settlement, the Receiver will recover 100% of the Transfers Band Gates received.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on March 7, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/ Gianluca Morello

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