

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-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.

**RECEIVER'S UNOPPOSED MOTION FOR (1) POSSESSION OF BROKERAGE
ACCOUNTS CONTROLLED BY ARTHUR NADEL; (2) AUTHORIZATION TO
RELINQUISH REMAINING BROKERAGE ACCOUNTS; AND
(3) PARTIAL MODIFICATION OF ASSET FREEZE**

Burton W. Wiand, as Receiver (the “**Receiver**”), moves this Court for various relief related to his efforts to close various brokerage accounts opened or held through Shoreline Trading Group, LLC (“**Shoreline**”) and custodied at Goldman Sachs Execution & Clearing, L.P. (“**GSEC**”) which were frozen by this Court after the collapse of the Ponzi scheme perpetrated by Arthur Nadel (“**Nadel**”). In this Motion, the Receiver seeks an order (1)

granting him possession of the contents of two brokerage accounts containing proceeds of Nadel's scheme, which will entail a partial modification of the asset freeze currently in place, (2) authorizing him to relinquish the contents of the remaining accounts funded with scheme proceeds but which now contain worthless or otherwise *de minimus* holdings, and (3) modifying the asset freeze for the limited purpose of permitting the custodian of the accounts to proceed with those transfers and relinquishments, and thereafter to close or otherwise handle said accounts as determined by the custodian in the normal course of business.

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 (the "**Order Appointing Receiver**") appointing Burton W. Wiand as Receiver for various entities, including Defendants Arthur Nadel, Scoop Management, LLC, and Scoop Capital, LLC; and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; and Viking Fund, LLC (collectively, the "**Receivership Entities**"). (*See generally* Order Appointing Receiver (Doc. 8).)

Pursuant to the Order Appointing Receiver, in relevant part the Receiver has the duty and authority to "administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors." (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court

Doc. 8.

a. The Accounts

The Receiver’s investigation revealed that a number of brokerage accounts opened with or held through Shoreline were funded solely with proceeds from Nadel’s fraud. Of relevance to this motion, these accounts included the following:

<u>Account Name</u>	<u>Account Number</u>
Arthur Nadel	75K0 (the “75K0 Account”)
Neil Moody Revocable Trust	4EDL (the “4EDL Account”)
Chris Moody Revocable Trust	4P2K (the “4P2K Account”)
Papa Bear Investments (NVM)	4VRX (the “4VRX Account”)
Clark-Nadel Rev. Trust	4J5V (the “4J5V Account”)
Victory Fund, Ltd.	750A (the “750A Account”)

The Receiver’s investigation revealed that, of these accounts, only the 75K0 Account (in the name of Arthur Nadel) and the 4J5V Account (in the name of Clark-Nadel Rev. Trust) (collectively, the “**Accounts**”) have any value, with a total collective cash balance of approximately \$6,000.00.¹ Neither Arthur Nadel nor the Clark Nadel Rev. Trust are included

¹ The Receiver has also determined that the 4P2K Account (Chris Moody Revocable Trust) contained securities that continued to be actively traded and were not delisted or otherwise worthless. The Receiver is in the process of arranging for GSEC to transfer those securities to the Receiver.

in this Receivership, but the Accounts are currently frozen by order of this Court (*see* Doc. 7). Accordingly, a modification of the asset freeze and an order of the Receiver's authority over the Accounts is needed for GSEC to be able to transfer the Accounts' contents to the Receivership.

With respect to the contents of the 4EDL Account, the 4VRX Account, and the 750A Account (collectively, the "**Remaining Accounts**"), the Receiver's investigation has revealed that the holdings in the Remaining Accounts are essentially valueless, and any effort to gain possession of the contents of those accounts would not be in the best interests of the Receivership estate and would result only in the unnecessary expenditure of Receivership funds.² The gathering of such evidence and subsequent preparation of a motion to file with this Court would not be in the Receivership's best interests as the costs of doing so would exceed the value of the pertinent accounts. Thus, the Receiver seeks an order authorizing him to relinquish all interests of the Receivership in the Remaining Accounts.

ARGUMENT

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

² For example, the sole position in the 750A Account is worthless. Further, because the Neil Moody Revocable Trust and Papa Bear Investments are not included in the Receivership, GSEC informed the Receiver that it would require documentation from Neil V. Moody, the listed owner of the 4EDL Account and the 4VRX Account, clarifying the Receiver's authority over those accounts in order for those accounts to be transferred to the Receiver. As the total value of the 4EDL Account and the 4VRX Account is less than \$50, the Receiver believes that obtaining such documentation would neither be economical nor practical.

(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). Those powers include the power to order the transfer of property. *See SEC v. American Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996) (abrogated on other grounds). The relief sought by the Receiver falls squarely within those powers.

Given the Court's wide discretion and authority and the Order Appointing Receiver, the Receiver is entitled to possession of the Accounts. As discussed above, the evidence uncovered by the Receiver's investigation shows that the Accounts were funded solely with scheme proceeds. Additionally, in related "clawback" litigation against profiteers of Nadel's scheme, this Court determined that Nadel operated a Ponzi scheme from at least 2000 forward. *See Burton W. Wiand, as Receiver v. Vernon M. Lee, et al.*, Case No. 8:10-cv-210-T-EAK-MAP (January 23, 2013 M.D. Fla.) (Doc. 169).

A. The Receiver Is Entitled To Possession Of The Accounts

The Receiver is entitled to possession of the Accounts, as each was funded with proceeds of Nadel's scheme. Both of the Accounts were opened by Nadel, with the 75K0 Account opened in Nadel's personal capacity and the 4J5V Account opened in Nadel's capacity as trustee for the Clark-Nadel Rev. Trust. The 75K0 Account has a current balance of approximately \$2,176.24, while the 4J5V Account has a current balance of approximately \$3,646.35. While the Receiver was appointed to serve as receiver for the Receivership Entities, he did not serve as Receiver for Arthur Nadel in any capacity, including his individual capacity or capacity as trustee of the Clark-Nadel Rev. Trust. However, the

Receiver's investigation has shown that Nadel funded the Accounts exclusively using scheme proceeds. Thus, any remaining balance rightfully belongs to the Receivership estate. For this reason, the Receiver requests that this Court enter an Order awarding possession of the Accounts to the Receivership estate.

B. A Partial Modification Of The Asset Freeze Is Required To Effectuate Transfer Of The Accounts

The Receiver seeks to acquire ownership of the Accounts in the most efficient method possible without any violation of the asset freeze currently in place. Pursuant to the asset freeze provision of the Preliminary Injunction Order entered on January 21, 2009 (Doc. 7), financial institutions and depositories containing assets or property belonging to the defendants and relief defendants are restrained from transferring, liquidating, or otherwise disposing of those assets or property. Therefore, the Receiver requests a partial modification of the asset freeze solely to permit the Receiver to receive possession of the Accounts and their assets and to permit GSEC to dispose of the worthless position in the 750A account and close or otherwise handle the accounts in the normal course.

C. Pursuing Possession Of The Remaining Accounts Would Be Uneconomical And Result Only In Unnecessary Expense To The Receivership Estate

The Receiver's investigation revealed that the total combined value of the Remaining Accounts was less than \$50, with the majority of securities positions in those accounts having no value. While the Receiver has taken steps to gain possession of securities in accounts where the underlying securities have some material value, *see, e.g.*, Footnote 1 above, the Receiver believes the *de minimus* value of the positions held in the Remaining Accounts do not justify the expenditure of time and resources by the Receiver's team. Thus,

the Receiver seeks an Order allowing the Receiver to relinquish possession or control of the Remaining Accounts.

CONCLUSION

Based upon the foregoing, the Receiver respectfully moves the Court for an Order in substantially the form attached as **Exhibit A** (1) granting the Receiver possession of the contents of the 75K0 Account and the 4J5V Account custodied at GSEC; (2) modifying the asset freeze for the limited purpose of allowing the Receiver to gain possession of the contents of the 75K0 Account and the 4J5V Account and permitting GSEC to dispose of the worthless position in the 750A account and close or otherwise handle all of those accounts in the normal course of business; and (3) authorizing the Receiver to relinquish possession or control of the Remaining Accounts at GSEC.

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.

s/ Gianluca Morello

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 25, 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