

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, LLC,

Relief Defendants.

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**RECEIVER'S RENEWED UNOPPOSED VERIFIED MOTION FOR
LEAVE TO RETAIN WHITEHORSE PARTNERS, LLC, TO MARKET
AND SELL QUEST ENERGY MANAGEMENT GROUP, INC.**

Pursuant to 28 U.S.C. § 754, Fed. R. Civ. P. 66, and Local Rule 3.01, Burton W. Wiand, as Receiver, again moves the Court for leave to retain WhiteHorse Partners, LLC (“WhiteHorse”) to market and sell Receivership entity Quest Energy Management Group, Inc. and/or its assets (collectively, “Quest”). The Receiver believes that: (1) retaining WhiteHorse would be in the best interest of the Receivership, (2) WhiteHorse would be an effective marketer of Quest, and (3) the attached Marketing Engagement Agreement is fair

and reasonable (*see Exhibit A*).¹ The Receiver initially requested the Court authorize him to retain WhiteHorse on May 10, 2014 (*see Doc. 1115*), but the Court denied the Receiver's motion without prejudice concluding that it was "divested of any jurisdiction to entertain the [Receiver's] motion" due to the then-pending appeal to the Eleventh Circuit of its order adding Quest to this Receivership (*see Doc. 1116*). On September 25, 2014, the Eleventh Circuit dismissed that appeal because the purported appellant lacked standing. *See Doc. 1138; S.E.C. v. Quest Energy Mgmt. Grp., Inc.*, 2014 WL 4783564 (11th Cir. 2014). Because the Eleventh Circuit dismissed the appeal and issued the mandate, this Court now has jurisdiction to entertain the Receiver's renewed request to retain WhiteHorse.

Background

On January 21, 2009, the Securities and Exchange Commission (the "**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. *See generally* Doc. 8 (the "**Order Appointing Receiver**"). The Court subsequently granted several motions to expand the

¹ Although the Order Appointing Receiver authorizes the Receiver to appoint and engage persons in his discretion to assist with carrying out his duties and responsibilities and for the benefit of Receivership Entities and their investors and creditors without the Court's approval (*see Doc. 8 ¶¶ 1, 4, 5*), the Receiver seeks the Court's approval because this matter could be significant to the Receivership and its beneficiaries.

scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“Nadel”). See 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.

Quest’s Operations and Assets

During his investigation, the Receiver learned that proceeds of Nadel’s fraud had been used to purchase or fund various interests in Quest, a Texas-headquartered oil and gas exploration and production company. Specifically, Viking Oil & Gas, LLC (“**Viking Oil**”) and Neil and Chris Moody (the “**Moodys**”) invested \$4 million of scheme proceeds in Quest between February 2006 and April 2007. Valhalla Investment, Partners, L.P. (“**Valhalla**”), a Relief Defendant, also loaned Quest \$1.1 million of scheme proceeds as evidenced by a promissory note executed November 30, 2007, and amended July 29, 2008. In total, Viking Oil, Valhalla, and the Moodys invested at least \$5.1 million of scheme proceeds in Quest. The Receiver successfully sought to expand the scope of the Receivership Entities to include the Quest. See Doc. 1024.

The Receiver has made every effort to determine Quest’s potential value since it was included in the Receivership. The Receiver’s initial perspective based upon his review of Quest’s operations and communication with numerous individuals familiar with similar oil and gas exploration operations was that any meaningful sale value would be determined based upon several factors including: (1) Quest’s operational status with the Texas Railroad

Commission; (2) the status of the numerous leases under which Quest operated; and (3) the mechanical integrity of the wells and their ability to produce significant volumes of oil and natural gas. The Receiver determined and reported, however, that Quest's operations when he took over were in disarray – its P-5 operational license was in significant jeopardy, it was deeply insolvent, simple maintenance and basic well management had been ignored for some time, and it was producing less than 2 barrels of oil per day. Thus, in order to bolster Quest's potential sale value the Receiver determined it was necessary to implement a repair and maintenance plan designed to increase oil and gas production and revenues. These efforts have shown signs of success – Quest's P-5 is in active status with the Texas Railroad Commission, and its wells are producing between 25 and 50 barrels of oil per day. While the Receiver's efforts are far from complete, he believes Quest is a much more attractive asset today than it was before it was added to this Receivership. Additional information related to Quest, its assets, and its current status is available in the Receiver's Sixteenth Interim Report (Doc. 1135) and the Receiver's Interim Reports on Quest (Docs. 1054, 1117).

The Receiver's Marketing Efforts and Retention of WhiteHorse

The Receiver's marketing efforts to date have predominately occurred through word of mouth referrals or through communications with potential purchasers familiar with Quest and/or the Receivership. In most instances, communications with these potential purchasers or experts resulted in no meaningful offers. The Receiver also sought the expertise of various individuals with knowledge of the oil and gas exploration industry in an effort to determine a viable means of marketing and selling Quest. Two of the potential marketing firms submitted proposals to the Receiver. After careful consideration, the Receiver has

determined that selling Quest through a private sale with the assistance of WhiteHorse is in the best interest of the Receivership Estate, as he believes it provides the best opportunity to market Quest to the widest audience and maximize its value.

WhiteHorse is a boutique advisory firm based in Nashville, Tennessee. Its professionals have worked together on client engagements for an average of twenty years. *See* <http://whitehorse-partners.com>. Robert W. Scarlata, Senior Managing Director of WhiteHorse, has communicated with the Receiver over the past months and discussed the potential for selling Quest through a private sale. WhiteHorse is familiar with the oil and gas industry and has marketed and sold (or is currently marketing and in the process of selling) companies similar to Quest. Specifically, within the last twelve months, Whitehorse has closed the sale of a \$28 million oilfield survey company, a \$13.75 million petrochemical oil and gas inspection company, and an \$11 million non-destructive testing company. Whitehorse is also currently in negotiations with another oil and gas services company located in the Permian Basin with initial expressions of interest in the \$45 million dollar range. WhiteHorse has an indication of interest in an oilfield services company that specializes in maintenance in the \$20 million range, and it is in serious discussions regarding a \$22 million natural gas and construction drilling company. Additional materials regarding WhiteHorse are attached hereto as **Exhibit B**. In short, the Receiver believes retaining WhiteHorse is in the best interest of this Receivership.

WhiteHorse's marketing strategy follows a careful process that includes the following:

- Complete review of the documentation related to Quest's current and past operations including its current and past accounting databases so consolidated financial statements can be prepared;
- Determination of market value;
- Development of a unique marketing plan aimed at locating a qualified purchaser;
- Preparation of a Confidential Marketing Memorandum (CMM) outlining the particulars of Quest;
- Execution of a marketing initiative;
- Qualification of purchase prospects as to their financial wherewithal and prior transactions /experience with an entity such as Quest;
- Conduct tours of the property and meet with key personnel;
- Analysis of all offers;
- Assistance with the negotiation of a letter of intent or purchase offer; and,
- Work all the details including due diligence right through the date of closing.

WhiteHorse has presented the Receiver with a Marketing Engagement Agreement which seeks a non-refundable \$5,000 retainer and a 6% commission of the sale price of Quest. The \$5,000 retainer is credited at the time of closing. *See* Exhibit A. The Receiver believes the terms in the attached agreement are fair and appropriate and requests that the Court grant him leave to retain WhiteHorse on a contingency basis pursuant to the terms set forth in Exhibit A.

The Receiver will take steps to ensure that reasonable value is received for Quest and that the sale is in the best interest of the Receivership Estate. The Receiver will not sell Quest or any of its assets without the Court's approval and will comply with the statutory requirements for a sale as directed by the Court.

The Court's Authority

The Court's power to supervise an equity receivership and to determine the appropriate action 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. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)).

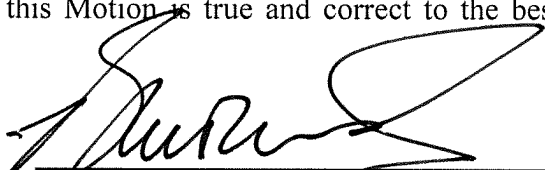
Based on (1) the Court's wide discretion, (2) the Receiver's independent investigation into the matters discussed in this motion, (3) the skill and competency of WhiteHorse to market and sell a company like Quest, and (4) the reasonableness of the Marketing Engagement Agreement (Exhibit A), the Receiver requests that the Court grant the Receiver leave to retain WhiteHorse Partners, LLC to assist him with the marketing and sale of Quest pursuant to the terms of the attached Marketing Engagement Agreement.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

Undersigned counsel has conferred with counsel for the Commission 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.

A handwritten signature in black ink, appearing to read 'Burton W. Wiand', written over a horizontal line.

Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 28, 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

Email: gianluca.morello@wiandlaw.com

Michael S. Lamont FBN 0527122

Email: mlamont@wiandlaw.com

WIAND GUERRA KING P.L.

5505 W. Gray Street

Tampa, FL 33609

Tel: 813-347-5100

Fax: 813-347-5199

Attorneys for the Receiver, Burton W. Wiand