

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 a settlement relating to payment of the judgment obtained by the Receiver in *Burton W. Wiand, as Receiver v. Rowe, et al.*, Case No. 8:10-cv-245-T-17MAP (M.D. Fla.) (the “**Rowe Action**”) on the basis of the Agreement attached hereto as Exhibit 1.

## 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 (Dkt. 984), 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 and as trustee of the Wall Street Digest Defined Benefit Pension Plan, Joyce Rowe, and Carnegie Asset Management (the “**Defendants**”) 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. On January 27, 2013, the Receiver and the Defendants entered into a settlement agreement (the “**Original Settlement Agreement**”) which provided *inter alia* for: (1) a \$250,000 payment; and (2) the entry of a judgment against the Defendants, jointly and severally, in the amount of \$4,028,385 (the “**Judgment**”). On February 13, 2013, the Court in the Rowe Action entered a joint and several Judgment against the Defendants. The Receiver has collected a total of \$2,735,790.30 in connection with the Judgment as of the date of this motion.

In connection with his collection efforts, the Receiver obtained and served a Writ of Garnishment upon MetLife Investors USA Insurance Company with respect to an MLI USA Variable Annuity Series L worth approximately \$360,000, which is owned by Joyce Rowe and identified as Account No. 3205300039 (“**MetLife Annuity**”). A dispute arose between the parties as to whether the MetLife Annuity was exempt from the Receiver’s collection efforts. The Receiver filed a motion for summary judgment in the Rowe Action with respect to entitlement to the MetLife Annuity. Joyce Rowe filed a cross-motion for summary judgment. On July 11, 2014, Magistrate Judge Mark A. Pizzo denied the Receiver’s motion

for summary judgment and granted Joyce Rowe's motion. With approval from this Court, on July 24, 2014, the Receiver timely filed a notice of appeal of the denial of his summary judgment motion to the Court of Appeals for the Eleventh Circuit. Oral argument is set to take place on July 29, 2015.

As shown by the attached Agreement, the Receiver and the Defendants, subject to the approval of this Court, have agreed to Defendants paying a total of **\$200,000** from either proceeds of a mortgage on their homestead or from the MetLife Annuity to resolve the dispute over the MetLife Annuity and Defendants' remaining obligations under the Judgment. Assuming this Agreement is approved by this Court, the Receiver will dismiss the appeal currently pending before the Eleventh Circuit, which is set for oral argument on July 29, 2015. After receipt and clearing of the \$200,000, the Receiver will file a satisfaction of judgment and request that the Rowe Action be dismissed.

In reaching this Agreement, the Receiver's primary considerations involved the financial circumstances of the Defendants, the risk of litigation, and additional expenses to the Receivership Estate.<sup>1</sup> As set forth in the Agreement, Defendants represented and warranted that they do not have sufficient non-exempt assets to satisfy the remaining amount owed under the Judgment. They also warranted they have not gifted or transferred any of their assets having a value of over \$500 to any third party, excluding any payments to third parties for fair value of any goods or services, from January 1, 2014 to the date of this Agreement. Further, they also provided the Receiver a financial affidavit, which sets forth

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<sup>1</sup> For example, if the Receiver prevails on the appeal, the case will be remanded back to the District Court for further proceedings, including resolution of Defendants' other purported exemptions regarding the MetLife Annuity.

their current assets, liabilities and income.<sup>2</sup> As a result, 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 Agreement is in the best interests of the Receivership, the investors in the Receivership Entities, and Defendants, because resolution of the Judgment avoids continued litigation relating to the MetLife Annuity, additional efforts to try to collect on a Judgment against Defendants with few, if any, collectable assets, and conserves Receivership assets and judicial resources.

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

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<sup>2</sup> In the event of any material breach of the Agreement by the Defendants, including if the \$200,00 payment is not made or if any representations and warranties or the financial affidavit prove to be inaccurate, the Defendants consented to, *inter alia*, the immediate entry of a joint and several judgment by this Court in the amount of \$1,292,594.70 (less any payments made in connection with the settlement agreement), interest, attorneys' fees, and to waive any and all arguments or exemptions that may apply to the MetLife Annuity.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on July 27, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**s/ Michael S. Lamont**

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