

**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.

_____ /

**RECEIVER'S MOTION TO OVERRULE
OBJECTIONS TO CLAIMS 403, 404, 405, 406, 407, 408, AND 477**

Burton W. Wiand (the “**Receiver**”), as Receiver for Valhalla Investment Partners, L.P. (“**Valhalla Investment**”); Viking Fund, LLC (“**Viking Fund**”); Viking IRA Fund, LLC, (“**Viking IRA Fund**”); Victory Fund, Ltd. (“**Victory Fund**”); Victory IRA Fund, Ltd. (“**Victory IRA Fund**”); and Scoop Real Estate, LP (“**Scoop Real Estate**”) (collectively, the “**Hedge Funds**”); and for Traders Investment Club (“**Traders**”) moves the Court to overrule

the objections submitted by investors Chester and Patricia Vincentz (the “**Vincentz**”) to the Receiver’s determination of Claims 403, 404, 405, 406, 407, 408, and 477 (the “**Claims**”).

BACKGROUND

Each of the Claims seeks recovery of the Vincentz’ principal investment amount plus the purported investment profits attributed to them in statements they received from Hedge Funds and Traders. In the Receiver’s Unopposed Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution and (4) Establish Objection Procedure (the “**Claims Determination Motion**”) (Doc. 675), the Receiver determined Claims 403, 404, 405, 406, 407, and 408 should be allowed only in part: the Vincentz lost money in connection with the scheme, but their recoveries should be limited to their net investment amounts (*i.e.*, the amounts they invested in the scheme minus the amounts they received back), they are not entitled to recover any false paper profits from Traders or the Hedge Funds. For example, the Receiver’s determination of Claim 405 is as follows:

This account has a Net Investment Amount of \$53,019.92. The amount claimed by the Claimant includes a transfer from an “investment account” with Receivership Entity Traders Investment Club in the amount of \$84,893.29. However, only \$53,019.92 was deposited into the transferring account. The difference of \$31,873.37 represents False Paper Profits to which the Claimant is not entitled. Accordingly, this claim should be allowed for the Net Investment Amount of \$53,019.92.

Doc. 675, Ex. D. at 13; *see also id.* at 14. Similarly, the Receiver determined Claim 477 should be denied because there were no losses in the pertinent account; rather, the account contained false paper profits of \$85,000. *See id.* Ex. G at 12 (collectively with the relevant determinations in Ex. D, the “**Determinations**”).

The Vincentz served identical objections to the Determinations:

We object to the inclusion of Traders Investment Club being categorized as a Ponzi scheme and the subsequent reduction of the so called false paper profits in this club. We do not believe a Ponzi scheme existed during this period of time and to date this has not been proven.

The amount stated by you in our claim is a minimum amount owed us and can be increased when forensic accounting and the courts determine the actual start date of any Ponzi scheme and the performance of Traders Investment Club prior to the start date of any Ponzi scheme.

See Morello Decl., Ex. A (compilation of objections). In other words, the Vincentz disagreed with the Receiver's determination that Traders also was operated as a Ponzi scheme, and consequently they wanted to be credited not only with the amount they invested in Traders, but also with the purported investment profits reflected on statements they received from Traders.

On November 6, 2013, the Receiver responded to the Vincentz' objections to the Determinations, explaining that the Court had recently decided this exact issue – *i.e.*, whether Traders was part of Nadel's Ponzi scheme – in a related clawback action:

After the Claimant submitted the Objections, the Magistrate Judge and, subsequently, the District Court Judge for the United States District Court for the Middle District of Florida determined that Arthur Nadel operated the Hedge Funds and Traders as a Ponzi scheme from at least 2000 through 2008. *See Wiand, as Receiver v. Vernon M. Lee, et al.*, Case No. 8:10-CV-210-T-17MAP (M.D. Fla.). *Lee* is similar to the matter at hand. In *Lee*, the defendants invested in Traders beginning in 1999 and later invested in the Hedge Funds. The Court found that the record “overwhelmingly” showed that Nadel was operating a Ponzi scheme at the time of the first distribution to the defendants in 2000 and that the scheme continued through 2008. Like the Claimant here, the *Lee* defendants had purportedly “rolled over” funds from Traders into two Hedge Fund accounts. The *Lee* defendants argued that they should receive credit for the amount of the purported roll overs and thus those amounts should be deducted from the total amount of False Profits the Receiver sought to recover. The Court found that those “winnings” were an illusory transfer of purported profits and were not the defendants' to keep.

The Court further noted “[h]ad they opted for a distribution in-hand, as opposed to a roll over, the Receiver could have justly demanded an avoidance of that transfer” *See Lee*, Report and Recommendation, Doc. 163, at 36-37.

See Morello Decl., Exs. B & C (Receiver’s responses). As such, the Receiver concluded the Vincentz’ objections to the Determinations should be overruled. *Id.*

On November 9, 2013, the Vincentz submitted six identical reply letters, in which they asserted their “position is unchanged” because they “do not believe your [and presumably the Court’s] interpretation of the Traders profitability in the early years is correct.” *See* Morello Decl., Ex. D (compilation of replies).

On April 2, 2015, the Vincentz wrote the Court and appeared to withdraw their objections to the Determinations:

Although we do not agree that Traders being lumped into the Ponzi scheme is valid because no one can find any factual data to confirm any of this. At this time it is mere supposition by Wiand, however, we would rather forgo this contention and wrap the entire situation up with the distribution of any remaining funds.

Doc. 1170. On April 6, 2015, counsel for the Receiver emailed the Vincentz to confirm whether they intended to withdraw their objections to the Determinations. *See* Morello Decl., Ex. E (email chain). On April 9, 2015, Mr. Vincentz clarified he and Mrs. Vincentz “weren’t withdrawing [their] objections to the handling of Traders without closing the entire case down and distributing the remaining funds. On that basis we wouldn’t hold up any decision but we still feel Wiand did not prove anything as to when Traders became a Ponzi scheme.” *Id.* Because the Vincentz withdrawal of their objections is contingent on closing the Receivership, which is not yet possible at this time, the Receiver moves the Court to overrule the objections.

ARGUMENT

I. THE DECLARATION OF MARIA YIP ESTABLISHES NADEL OPERATED TRADERS AND THE HEDGE FUNDS AS A PONZI SCHEME

Pursuant to a summary judgment standard, the Vincentz bear the burden of proof with respect to the Claims and their contention that Traders was not part of Nadel's Ponzi scheme. *See* Doc. 675 at 82 ("The Claimant shall have the burden of proof."); Doc. 776 (approving procedures set forth in Doc. 675); Doc. 1061 at 8-9 ("[T]he burden of proof in this proceeding lies on the claimant who filed the proof of claim pursuant to the objection procedure approved by this Court."). The Receiver, however, has litigated the issue of whether Traders was part of Nadel's Ponzi scheme, and he has prevailed on summary judgment in every case that did not reach a settlement. In each of those cases, the Receiver relied primarily on the Declaration Of Maria M. Yip, CPA, CFE, CIRA (*see, e.g., Lee* Doc. 99, which is also being filed along with this motion) (the "**Yip Declaration**" or "**YD**"), and he will continue to do so here. To conserve Receivership resources, the Receiver has not asked Yip to produce another declaration for purposes of this motion. Instead, the Receiver submits and relies on the Yip Declaration filed in the *Lee* action because it squarely addresses Nadel's operation of Traders as part of his Ponzi scheme, and no additional analysis is necessary here, especially because the burden of proof with respect to the Claims and resolving these objections rests with the Vincentz.

Yip is a forensic accountant, and as detailed in the Yip Declaration, she performed extensive analyses of the Hedge Funds and Traders. According to Yip, Nadel controlled Traders and operated it as a part of his Ponzi scheme. YD ¶¶ 28, 91, 92. Traders was

purportedly independent from the Hedge Funds, but in truth, Nadel comingled money among Traders and the Hedge Funds. YD ¶¶ 65-77. As with the Hedge Funds, Nadel misrepresented the performance of Traders. *Id.* Nadel made distributions to existing Traders investors using either money from new investors or money from the Hedge Funds. *Id.* Specifically, Yip concluded that between July 1999 and June 2003 (which includes the Claims), “[t]here is no evidence that any trading was conducted by Nadel on behalf of Traders in any account.” *Id.* ¶ 71. Nevertheless, Nadel caused Traders to pay purported profits and management fees on those fictitious profits as early as May 1999. *Id.* ¶ 91. He made those payments using the principal investment amounts of Traders’ investors. When that money ran out, he diverted money from the Hedge Funds to Traders. *Id.* ¶¶ 74, 92.

For example, “on January 29, 2003, Traders’ Wachovia Account 8115 had a balance of \$2,051. On January 30, 2003, Traders received two wires into this account in the amounts of \$22,000 and \$60,000. On January 31, 2003, Traders received funds in the amount of \$200,000 into this account directly from a Victory Fund bank account. On February 5, 2003, these funds were used to pay \$280,000 to Traders investor, Vernon Lee.” *Id.* ¶ 72. In 2005, Nadel purported to close and liquidate Traders, and its money was transferred to investors, the Hedge Funds, or Nadel. *Id.* ¶ 75, 76. Based on the foregoing, Yip concluded that, “[s]imilar to the Hedge Funds, Traders also operated as a Ponzi scheme misrepresenting purported profits to investors and using the monies of new investments from existing investors or monies from new investors to meet the redemption of existing investors, in furtherance of Nadel’s Ponzi scheme.” *Id.* ¶ 92.

Based on Yip's analysis, the Court has previously determined Nadel operated Traders as part of his Ponzi scheme. As noted above, in *Lee*, the Court reviewed the Yip Declaration and other record evidence and concluded "the evidentiary record supports a finding that Nadel ran the hedge funds and Traders as a Ponzi scheme." *Lee* Doc. 163 at 26. There is nothing warranting a different result here. The Vincentz have never provided any evidence to support their conclusion that Traders was not part of Nadel's Ponzi scheme. In contrast, the Receiver has extensively litigated the issue and prevailed. Although the rulings in the Receiver's clawback cases are not binding here, the Vincentz nevertheless bear the burden of proof with respect to the Claims and their objections, and they have not offered and cannot offer evidence sufficient to create a genuine issue of material fact regarding Traders' involvement in the scheme in light of Yip's extensive and unrebutted analysis.

CONCLUSION

For the foregoing reasons, the Receiver moves the Court to overrule the objections by the Vincentz to the Receiver's determination of Claims 403, 404, 405, 406, 407, 408, and 477.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

Undersigned counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that the SEC does not oppose the relief requested in this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 12, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on August 12, 2015, I caused a true and correct copy of the foregoing to be sent via email and mailed by first-class mail delivery to the following non-CM/ECF participants:

Chester and Patricia Vincentz
6500 Lakeview Drive
Falls Church, VA 22041

s/Gianluca Morello

Gianluca Morello, FBN 034997
gmorello@wiandlaw.com
Michael S. Lamont, FBN 0527122
mlamont@wiandlaw.com
Jared J. Perez, FBN 0085192
jperez@wiandlaw.com
WIAND GUERRA KING P.A.
5505 West Gray Street
Tampa, FL 33609
Tel: 813-347-5100
Fax: 813-347-5198

Attorneys for the Receiver, Burton W. Wiand