

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.

**RECEIVER'S UNOPPOSED MOTION TO ABANDON CONTENTS
OF TORRANCE, CA., STORAGE UNIT AND GIVE POSSESSION
OF SAME TO THE SECURITIES AND EXCHANGE COMMISSION**

Burton W. Wiand, as Receiver (the “**Receiver**”), respectfully moves the Court for an order, in substantially the form attached as **Exhibit 1**, (a) authorizing him to abandon the contents of a storage unit located in Torrance, CA, of which he obtained possession as a result of his 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**”), and (b) giving all contents of the storage unit to the Securities and Exchange Commission (the “**SEC**”).

BACKGROUND

The SEC instituted this action to “halt [an] ongoing fraud, maintain the status quo, and preserve investor assets....” (Doc. 1, Compl. ¶ 7.) Burton W. Wiand was appointed as the Receiver for Defendants other than Arthur Nadel and for Relief Defendants. (*See* Order Reappointing Receiver (Doc. 140).) The Receivership was expanded to include Venice Jet Center, LLC and Tradewind, LLC (Doc. 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. (Doc. 44); The Guy-Nadel Foundation, Inc. (Doc. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Doc. 81); Viking Oil & Gas, LLC (Doc. 153); Home Front Homes, LLC (Doc. 172); Traders Investment Club (Doc. 454); Summer Place Development Corp. (Doc. 911); Respiro, Inc. (Doc. 916); and Quest Energy Management Group, Inc. (Doc. 1024). All of the entities in receivership are collectively identified 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 “**Judgment Debtors**”). The Receiver and Judgment Debtors entered into a settlement agreement, which was approved by the Court on February 5, 2013 (Doc. 963). As part of that settlement, the Judgment Debtors consented to the entry of a joint and several judgment in the Rowe Action for \$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 and learned, among other things, that Judgment Debtors transferred some of their assets to third parties, including Ty Hardin (“**T. Hardin**”) and/or Choice Direct Mail, Inc. (“**Choice Direct**”) f/k/a Carnegie Marketing Associates, Inc. (“**CMA**”) (collectively the “**Transferees**”). On May 21, 2013, to recover those fraudulently transferred assets, the Receiver filed a motion to commence proceedings supplementary and to implead certain third parties into the Rowe Action, including the Transferees (the “**Impleader Motion**”). *See* Rowe Action, Doc. 156. The Court granted that motion on August 8, 2013. *Id.*, Doc. 223.

The parties impacted by the Impleader Motion agreed to settle the dispute underlying that motion, and as reflected in the Motion to Approve Settlement (Doc. 1099) and Order Granting Motion to Approve Settlement (Doc. 1102), the Receiver took possession of the assets of CMA and/or Choice Direct which included control of storage unit 516 located at Spencer Street Self Storage in Torrance, CA (“**Unit 516**”). Unit 516 contained approximately 193 boxes of business records from CMA and/or Choice Direct. The contents of Unit 516 are more fully described in **Exhibit 2** to this motion.

The Receiver has concluded his investigation and judgment collection efforts related to CMA and Choice Direct and has no further use for the documents in Unit 516. The rent for Unit 516 is \$148.00 per month and there is no longer any need for the Receivership estate to continue to incur this expense. The SEC is currently conducting an investigation in M2 Law Professional Corp. (NY-8866) – which is unrelated to this case – and has an interest in the documents stored in Unit 516. In fact, the SEC previously served a subpoena on the Receiver for certain of those documents. The SEC has agreed to take possession of the contents of Unit 516 at its expense.

ARGUMENT

I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP’S ADMINISTRATION

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. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (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; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368,

372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill the duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006).

The relief sought in this motion falls squarely within the Court's powers and is in the best interests of defrauded investors and the Receivership estate as it will eliminate an ongoing expense. As indicated above, the Receiver has concluded his investigation and judgment collection efforts relating to CMA and/or Choice Direct and has no further use for the documents stored in Unit 516 and the SEC is willing to take possession of the storage unit contents at its expense.

CONCLUSION

For these reasons, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 to (1) abandon the documents in Unit 516 and (2) allow the SEC to take possession of those documents so that Unit 516 can be closed.

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 relief requested in this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 8, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/ Gianluca Morello

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