

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 UNOPPOSED VERIFIED MOTION FOR APPROVAL OF THE SALE
OF (1) CERTAIN ASSETS OF QUEST ENERGY MANAGEMENT, INC. AND (2)
DISPOSITION OF OTHER ASSETS OF QUEST ENERGY MANAGEMENT, INC.
WITHOUT FURTHER ORDER FROM THE COURT**

Pursuant to 28 U.S.C. §§ 754, 2001, and 2004, Fed. R. Civ. P. 66, and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the “**Receiver**”), respectfully moves the Court for an order, in substantially the form attached as

Exhibit 1, authorizing him to (i) sell certain assets of Quest Energy Management Group, Inc., (ii) sell or otherwise dispose of, using commercially reasonable efforts, other assets of Quest Energy Management Group, Inc. without further order from this Court and, (iii) relieving him from the requirements of 28 U.S.C. §§ 2001 and 2004.

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 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 (the “**Order Appointing Receiver**”). (*See generally* Order Appointing Receiver (Doc. 8).) The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“**Nadel**”). (*See generally* 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 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

(*Id.* at 2.)

On May 24, 2013, the Court granted the Receiver’s motion to expand the scope of the Receivership to include Quest Energy Management Group, Inc. (“**Quest**”) (Doc. 1024). Quest is a Texas oil and gas production company that was initially funded with millions of dollars in proceeds from Nadel’s scheme. Included among Quest’s oil and gas operations was the Hatchett Ranch Lease (the “**Hatchett Lease**”), which covered land in Callahan County, Texas. Two lessors of the Hatchett Lease filed a complaint with the Texas Railroad Commission regarding the expiration of the lease. The Texas Railroad Commission proceeding was enjoined by the Court pursuant to an Order entered March 22, 2017 (Doc. 1272). On June 1, 2017, after consideration of the evidence and testimony presented on March 22, 2017, the supplemental memoranda of the parties and additional submissions, and the applicable law, the Court concluded that the Hatchett Lease expired and ordered the Receiver to retrieve equipment (the “**Assets**”) on the Hatchett Lease within 90 days (August 30, 2017) without interference from the lessors. (Doc.

1290). In light of the Court's June 1, 2017 Order, the Receiver has determined that the Assets are not necessary for Quest's continued operations.¹ Upon information and belief the Assets are unencumbered.

THE ASSETS

The Hatchett Lease equipment includes pumping units, separators, a test tank trailer, and fuel, water, and oil tanks, among other things.² See **Exhibit 2**. The Receiver circulated a description of the equipment to eight oil and gas operators in the west Texas vicinity with the hopes of garnering some interest in a purchase. The Receiver also communicated with the Hatchett Lease lessors about purchasing the equipment. As a result of the Receiver's efforts, he received an offer for the following Assets:

- 1 - Model 160 pumping unit \$5,500.00
- 1 - Model 114 chain-drive pumping unit \$3,000.00
- 1- Emsco Model 57 pumping unit \$3,750.00
- 1- CMC Model 57 pumping unit \$1,750.00

¹ The Hatchett Lease lessors subsequently withdrew their complaint before the Texas Railroad Commission, and the Commission entered Orders of Dismissal on July 20, 2017. The Receiver and the Hatchett Lease lessors have been working together to transfer possession and responsibility of any well bores that lessors may wish to keep and to plug those wells that the lessors do not plan to use.

² The Receiver was previously granted authority to sell, donate, or otherwise dispose of personal property having a value of less than \$5,000 without prior approval of this Court (Doc. 97). Some of the Assets have a value greater than \$5,000.

The total value of the Assets based upon the above offers is \$14,000.00. The respective purchaser has agreed to purchase the Assets in an “as is” condition and will remove the items from the Hatchett Lease property on or before August 30, 2017. The unsold Assets will be removed from the Hatchett Lease property on or before August 30, 2017 and held storage until it is sold or otherwise disposed. In light of the current market for used oil and gas equipment in the west Texas vicinity and the condition of the above-described equipment, the Receiver believes these offers represent fair and reasonable prices. The Receiver also believes selling the Assets is in the best interests of the Receivership, as it will eliminate the Receiver’s obligation to remove and store certain Assets. Accordingly, the Receiver respectfully requests that this Court enter an order approving the sale of the Assets identified above for \$14,000.00. The Receiver also respectfully requests that this Court enter an order authorizing him to sell or otherwise dispose of, using commercially reasonable efforts, the remaining Assets.

MEMORANDUM OF LAW

I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP’S ADMINISTRATION, AND THE SALE OF THE ASSETS IS IN THE RECEIVERSHIP ESTATE’S BEST INTEREST

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). The relief sought by the Receiver falls squarely within those

powers. The Receiver believes that the proposed sale of certain Assets for \$14,000.00, is in the best interests of and represents the best possible realistic recovery for the Receivership Estate. The Receiver also believes that authorizing the sale or disposition of the remaining Assets, using commercially reasonable efforts, without further order of this Court represents a practical and reasonable method for balancing receipt of the maximum possible value for the remaining Assets with the cost to the Receivership estate to sell them. The relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

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 his 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 goal of a receiver charged with liquidating assets is to obtain the best value available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996) (citations omitted). Further, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

The relief sought by the Receiver falls squarely within those powers. In light of the considerations discussed above, sale of certain Assets is in the best interest of the

Receivership estate, and would result in the recovery of \$14,000.00. Authorizing the sale or disposition of the remaining Assets, using commercially reasonable efforts, will save the Receivership Estate time and financial resources. As a result, the Receiver respectfully requests that the Court grant the relief requested in this motion and enter the proposed order attached as Exhibit 1.

II. TO THE EXTENT 28 U.S.C. §§ 2001 AND 2004 GOVERN THIS MATTER, THE COURT HAS THE AUTHORITY TO WAIVE THOSE REQUIREMENTS, AND THE CIRCUMSTANCES HERE WARRANT SUCH WAIVER

28 U.S.C. §§ 2001 and 2004 govern the “sale” of property. However, these statutory requirements can be and are often waived by courts. 28 U.S.C. § 2004 (“**Section 2004**”) governs the sale of personal property and provides as follows:

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with Section 2001 of this Title, unless the court orders otherwise.

28 U.S.C. § 2004 (emphasis added). 28 U.S.C. § 2001(b) (“**Section 2001(b)**”) addresses private sales and provides as follows:

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be

confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b)

Thus, “unless the Court orders otherwise” pursuant to Section 2004, Section 2001(b) requires a court to appoint three disinterested persons as appraisers and to direct that a notice of proposed sale be published in a newspaper prior to confirmation of a sale. Here, using the discretion afforded by Section 2004, the Court should “order otherwise” in this instance with regard to (i) the need for three appraisals and (ii) the publication in newspapers of notice of any sale. The Court’s authority to deviate from the requirements of Section 2004 is supported by caselaw and is in the best interests of the Receivership Estate.

The Receiver believes he is in a position to adequately evaluate the value of the Assets, particularly with the assistance of Mr. Chad Gray, who is employed by Quest and oversees its production operations and has extensive knowledge of the oil and gas industry and is familiar with the Assets, and that full compliance with Section 2004 and Section 2001(b) would result in the unwarranted expenditure of funds and resources of the Receivership Estate. Indeed, compliance with the statutory requirements could significantly offset the expected net sale proceeds. Thus, the Receiver requests that the Court authorize deviation from the statutory appraisal and notice requirement associated with the proposed sale of the Assets.

Courts have recognized the discretion afforded to them by Section 2004 in approving a discretionary deviation from the requirements of Section 2001. *See, e.g., Tanzer United States v. Stonehill*, 83 F.3d 1156, 1160 (9th Cir. 1996) (emphasizing statutory language,

“unless the court orders otherwise,” and concluding that “it is at the district court’s discretion whether to obtain appraisals [in sales of] personal property”); *see also SEC v. Kirkland*, 2008 WL 4264532, *2 (M.D. Fla. 2008) (approving sale of personalty without appraisals or publication where costs of compliance would significantly offset the purchase offer); *United States v. Kerner*, 2003 WL 22905202, *2 (E.D. Mich. 2003) (“Under...28 U.S.C. § 2004, which states that the requirements of section 2001 must be followed ‘unless the court orders otherwise,’ the Court clearly has the discretionary authority to confirm the private sale [made without strict adherence to the requirements in Section 2001].”).

Further, Courts have specifically exercised their authority to deviate from the requirements of Section 2001 when faced with the proposed sale of personal property by a receiver under Section 2004. *See Wells Fargo Capital Finance, Inc. v. North Pacific Group*, No. CV10-65-KI, Order on Receiver’s Motion for Order Authorizing Sale of Accounts Receivable (D. Ore. Jan. 24, 2012) (excusing receiver from “compliance with 28 U.S.C. § 2004 concerning sales of personal property through federal court proceedings”); *SEC v. Billion Coupons, Inc.*, 2009 WL 2143531, *4 (D. Hawaii 2009) (finding good cause to exercise discretion and permit receiver to sell personal and real property in manner other than as provided by federal statute, including 28 U.S.C. §§ 2001, 2004); *Federal Trade Commission v. Jeremy Johnson et. al.*, No. 2:10-cv-02203-RLH-GWF, Order (D. Nev. August 25, 2011) (allowing receiver to liquidate private limited liability membership interest and authorizing deviation from sale and publication procedures of 28 U.S.C. §§ 2001 and 2004); *SEC v. Lydia Capital, LLC, et al.*, No. 1:07-cv-10712-RGS, Order Granting Receiver’s Motion for Authorization to Sell Asset of the Receivership Estate (D. Mass.

March 16, 2011) (“Given the Receiver’s efforts in marketing the portfolio of policies, including the Sale Policy, the third-party offers the Receiver obtained from disinterested bidders in the marketplace, and the notices provided to all interested parties, neither an independent appraisal or publication is necessary under 28 U.S.C. §§ 2001 and 2004”) (emphasis added). Copies of these orders are attached hereto as **Exhibit 3**.

III. THERE EXIST NO OTHER KNOWN CLAIMS OR INTERESTS IN THE ASSETS

Deviation from the requirements of Section 2001(b) is not only warranted by the circumstances, but also by the absence of any known outstanding claims, liens, or encumbrances relating to the Assets. While the Receiver is not aware of any claims, liens, or encumbrances relating to the Assets, nevertheless to eliminate any risk whatsoever, the Receiver seeks an Order allowing him to transfer the Assets free and clear of any and all liens, encumbrances, and claims. This Court’s broad authority over the Receivership Estate includes the equitable power to “sell property free of liens, transferring the liens to the proceeds.” *Seaboard Nat’l Bank v. Rogers Milk Products Co.*, 21 F.2d 414, 416 (2d Cir. 1927); *see also Quilling v. Trade Partners, Inc.*, 2007 WL 296211 (W.D. Mich. 2007) (approving receiver’s sale of property free and clear of all liens and encumbrances and ordering that any liens or claims associated with the property would attach to the proceeds of the sale).

Finally, because no known claim, lien, or encumbrance affecting the Receivership Estate’s interests in the Assets will remain outstanding, no hearing on this Motion is necessary. In addition to filing this Motion in the public docket, the Motion and supporting papers will be posted and easily accessible to any interested party on the Receivership’s

website (www.nadelreceivership.com) promptly after they are filed. This procedure will provide any interested party with sufficient notice and opportunity to be heard in accordance with Section 2001(b). *See, e.g., North Pacific Group, Inc.*, No. CV10-65-KI (D. Ore. Jan. 24, 2012) (“no other or further notice of the Motion or the entry of this sale order is required”); *Lydia Capital, LLC, et al.*, No. 1:07-cv-10712-RGS (D. Mass. March 16, 2011) (provision of motion and proposed order to parties, investors, and creditors of receivership, along with posting copy on receiver’s website, was sufficient and reasonable where time was of the essence); *Albert Fase Kaleta et al.*, No. 4:09-cv-3674 (S.D. Tex. August 10, 2010) (granting emergency motion waiving receiver’s compliance with Section 2004, including notice requirements).

CONCLUSION

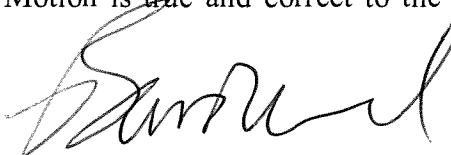
WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 approving the (i) sale of certain Assets of Quest Energy Management Group, Inc., (ii) sale of or otherwise disposition of other Assets of Quest Energy Management Group, Inc., using commercially reasonable efforts, without further order from this Court and, (iii) to the extent 28 U.S.C. §§ 2001 and 2004 govern the sale of the Assets, waiving any appraisal and publication requirements and allowing the Receiver to transfer the Assets free and clear of any and all claims, liens, and encumbrances. The Court has previously applied this procedure numerous times, including in connection with both real and personal property. See Docs.1050, 1075, 1110, 1151, 1177, 1230, 1301.

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.

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.



Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 16th, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/ Jared J. Perez

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