

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.: 8:09-0087-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.

AFFIDAVIT AS TO REASONABLENESS OF ATTORNEYS' FEES AND COSTS

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority, personally appeared, Jeffrey W. Warren, Esquire, who, after being first duly sworn, deposes and says:

1. Since 1972, I have been a practicing attorney and a member in good standing of the Florida Bar.
2. I have been the president of the law firm of Bush Ross, P.A. since 2002 and am a member of the firm's Creditors' Rights, Appellate, Arbitration and Mediation, and Bankruptcy practice groups.
3. In my professional practice, I have represented banks, court-appointed trustees and receivers, and I have experience in the litigation of claims similar to the issues involved in



65E9486.DOCX

disputes between Wells Fargo Bank, N.A. (the “**Bank**”) and Burton W. Wiand, the court-appointed receiver in the above-styled case (the “**Receiver**”) described in Wells Fargo’s Motion for Payment of Certain Fees and Costs as Administrative Expenses (the “**Motion**”). Throughout my practice, I have prepared numerous applications for compensation in connection with my representation of debtors, committees, and trustees in complex bankruptcy proceedings and I have been involved in multiple challenges regarding the reasonableness of fees and costs. I am familiar with the customary attorneys’ fee charges by attorneys and allowed by Tampa federal courts in such cases.

4. I have reviewed the Affidavit as to Attorneys’ Fees and Costs executed by Steven R. Wirth, Esquire (the “**Fees and Costs Affidavit**”), and have examined the time and cost records of Akerman LLP attached to Mr. Wirth’s affidavit (the “**Akerman Billing Records**”) that detail the fees and costs that the Bank seeks to recover from the Receiver as an administrative expense.

5. I have also reviewed the pleadings that are central to the Bank’s request for payment of certain of its attorneys’ fees and costs as administrative expenses.

6. In forming my opinion the reasonableness of the fees sought in the Motion, I have considered the twelve factors set forth in *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974) which are: as follows:

- the time and labor required;
- the novelty and difficulty of the question;
- the skill requisite to perform the legal services properly;
- the preclusion of other employment by the attorney due to acceptance of the case;
- the customary fee;
- whether the fee is fixed or contingent;
- time limitations imposed by the client or the circumstances;
- the amount involved and the results obtained;
- the experience, reputation and ability of the attorneys;
- the undesirability of the case;
- the nature and length of the professional relationship with the client; and
- awards in similar cases.

7. Paragraph 12 of the Fees and Costs Affidavit sets forth the blended rate for each timekeeper whose time is reflected on the Akerman Billing Records. The blended rate is calculated from the Akerman Billing Records and is based on the actual time recorded by the timekeeper and the hourly rate in effect when the services were rendered. The blended rate

reports the average rate charged for the timekeeper's services taking into account any adjustments made to the timekeeper's hourly rate during the relevant time period.

8. The Fees and Costs Affidavit states that Akerman extended courtesy discounts to the Bank. The Akerman Billing Records reflect \$585,830.50 as the total of the fees for the services provided, and \$521,066.49 as the total amount billed to the Bank after Akerman applied courtesy discounts for some of its invoices.

9. The Fees and Costs Affidavit states that at the request of the Bank, Akerman agreed to client adjustments resulting in further reductions totaling \$30,030.32 of the amount due for the services of its professionals.

10. Taking into account the courtesy discounts and agreed client adjustments, the Bank seeks to recover \$491,036.17 for the services of its professionals.

11. In my opinion, the blended rate of \$346 constitutes a reasonable hourly rate for the services rendered by Benjamin F. Diamond.

12. In my opinion, the blended rate of \$235.15 constitutes a reasonable hourly rate for the services rendered by John L. Dicks.

13. In my opinion, the blended rate of \$152.52 constitutes a reasonable hourly rate for the services rendered by Nora J. Graziano.

14. In my opinion, the blended rate of \$218.15 constitutes a reasonable hourly rate for the services rendered by Jason L. Margolin.

15. In my opinion, the blended rate of \$432.43 constitutes a reasonable hourly rate for the services rendered by Joseph L. Shaheen.

16. In my opinion, the blended rate of \$378.90 constitutes a reasonable hourly rate for the services rendered by Steven R. Wirth.

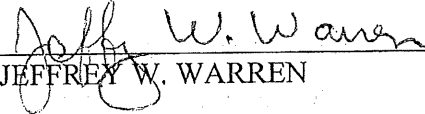
17. In my opinion, the blended rate of \$230.00 constitutes a reasonable hourly rate for the services rendered by Sarah R. Craig.

18. In my opinion, the 1649.50 hours detailed in the Akerman Billing Records, were reasonably expended in the representation of the Bank in connection with the issues for which the Bank seeks to recover its attorneys' fees and costs as an administrative expense of the Receivership.

19. In my opinion, therefore, the actual amount sought by the Bank in the Motion of \$491,036.17 for the services of the Akerman professionals is reasonable.

20. In my opinion, the sum of \$16,511.93 constitutes a reasonable amount of costs to be incurred in connection with the services described in the Akerman Billing Records.


FURTHER AFFIANT SAYETH NAUGHT.


JEFFREY W. WARREN

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

Sworn to and subscribed before me this 27th day of November, 2017, by Jeffrey W. Warren, who is personally known to me.


NOTARY PUBLIC-STATE OF FLORIDA
My Commission Expires:

