

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
TO SELL OR OTHERWISE DISPOSE OF UNDEVELOPED LAND
LOCATED IN THOMAS COUNTY, GEORGIA**

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 sell or otherwise dispose of two parcels of undeveloped land in Thomas County, Georgia (the “**Properties**”), free and clear of all claims, liens, and encumbrances and (b) relieving him from complying with certain provisions of 28 U.S.C. § 2001 (“**Section 2001**”).

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (the “**Commission**”) filed this case to prevent the defendants from further defrauding investors in hedge funds operated by them. That same day, the Court entered an order appointing Mr. 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 (Doc. 8) (the “**Order Appointing Receiver**”). 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 collectively referred to as the “**Receivership Entities.**” Pursuant to the Order Appointing Receiver, the Receiver was directed to, *inter alia*, administer and manage the business affairs, funds, assets, choses in action, and any other property of the Receivership Entities.

THE PROPERTIES

The Receivership’s Interests In The Properties

Shortly after his appointment, the Receiver learned that proceeds of Nadel’s fraud had been diverted to entities other than the defendant entities. One of those entities was the Guy-Nadel Foundation, Inc. (the “**Foundation**”), a Florida non-profit corporation formed in December 2003 by Nadel for “charitable, educational and scientific purposes.” Nadel served as one of the Foundation’s directors, along with Mrs. Nadel, and Mrs. Nadel’s son and

daughter, Geoff Quisenberry and Alexandra Quisenberry. The Receiver's investigation revealed that the Foundation was funded with nearly \$3 million in proceeds from Nadel's scheme that were either transferred directly from Receivership Entity Scoop Capital or indirectly through transfers from Nadel's personal accounts. Those proceeds were subsequently used for various purposes, including the purchase of the Properties at or near the height of the real estate boom. Upon this discovery, the Receiver successfully sought to expand the scope of the Receivership Entities to include the Foundation. (Doc. 68).

The Properties consist of two undeveloped lots in Thomasville, Thomas County, Georgia. The first lot is a 0.12-acre parcel located at 211 Church Street (the "**Church Street Lot**") that was purchased by the Foundation in December 2006 for \$4,000. The Thomas County Board of Tax Assessors currently appraises the Church Street Lot at \$2,224 (Parcel Number 001-0008018). *See Exhibit 2.* The second lot is a 1.17-acre parcel located on North Stevens Street (the "**North Stevens Street Lot**") that was purchased by the Foundation sometime in January 2008 for \$24,000. The Thomas County Board of Tax Assessors currently appraises the North Stevens Street Lot at \$10,342 (Parcel Number 001-029009). *See Exhibit 3.* The purchase price and subsequent closing costs for the Properties were paid entirely by the Foundation with proceeds of Nadel's fraud. The Receiver seeks to donate the **Church Street Lot**. The Receiver has a buyer for the **North Stevens Street Lot**.

The Properties were maintained (but not improved) since their purchase, and they are not subject to any known liens or encumbrances. Further, no claims have been filed in the Receivership that are connected in any way to the Properties. In light of (1) the current state of the real estate market in Thomas County, Georgia, (2) the fact that the Properties have

been marketed for sale since 2009 with minimal interest, and (3) the fact that prior efforts by the Receiver to sell the Properties via public action¹ were unsuccessful, the Receiver believes donating the **Church Street Lot** to Habitat for Humanity or a similar humanitarian organization to avoid additional maintenance expenses is in the best interest of the Receivership estate and that the current \$5,500 offer for the **North Stevens Street Lot** represents a fair and reasonable price. The Receiver also believes that it is in the Receivership estate's best interests to proceed with the sale without the expense of obtaining any appraisals or advertising the terms of the sale as contemplated by Section 2001(b). Thus, the Receiver requests that the Court waive, or find that the Receiver has substantially complied with, the procedures in Section 2001(b) governing the private sale of real property by a receiver. The Receiver also requests the Court grant this motion and allow him to transfer title to the Properties free and clear of all claims, liens, and encumbrances.

The Receiver's Marketing Efforts

After taking possession of the Properties, the Receiver marketed the Properties through his website, www.nadelreceivership, in a specific "Assets for Sale" section. The Receiver also engaged the services of Tallahassee Land Company in September 2009 to list and market the Properties for sale. The Properties were listed for sale for the price of \$5,000 and \$34,745, respectively. After the Receiver's listing agreement with Tallahassee Land Company expired, the Receiver continued to market the Properties on his own through posted advertisements in the local newspaper.

¹ See Docs. 1011 and 1106 and the Receiver's Twenty-First Interim Report at Doc. 1289.

Since the Receiver began marketing the Properties in 2009, he has received one offer to purchase each property. After considering each offer, the Receiver determined that neither offer adequately represented the value of the Properties and declined to accept either offer. Given the lack of interest in the properties, as well as the continuing need to pay maintenance, tax, and insurance obligations, the Receiver determined that a public sale by online auction through Iron Horse Auction Company (“**Iron Horse**”) could provide the best opportunity to sell the Properties. The Receiver filed and the Court granted the Receiver’s motion to auction the Properties. *See* Doc. 1106. Unfortunately, neither property was sold at the 2013 online auction, and Iron Horse was not paid for its advertising expenses or any commission. Since that time, the Receiver has continued to market the Properties through various cost-appropriate means, but interest has remained low.

Offer to Purchase North Stevens Street Lot

The Receiver recently entered into the Purchase and Sale Agreement attached as **Exhibit 4** with **Gregory Lance Mitchell** (the “**Mitchell**” or the “**Purchaser**”) for the **North Stevens Street Lot** for \$5,500. Mitchell was the highest bidder at the 2013 online action, but his offer then was less than half of what he has agreed to pay now. The Receiver seeks to convey title, free and clear of all claims, liens, and encumbrances, by Receiver’s Deed. The Receiver believes the Purchaser’s offer is reasonable considering the current real estate market conditions in the area and the length of time the Property has been listed for sale. Since Purchaser was associated with the online auction, the Receiver believes it is appropriate to compensate Iron Horse for its services. The Receiver has agreed to pay Iron Horse \$500 following the sale of the **North Stevens Street Lot**, and Iron Horse has agreed to

accept that amount in exchange for the release of any claims it might have due to its prior services. The Receivership estate will net approximately \$5,000 from the sale after paying standard closing costs.

Disposition of the 211 Church Street Lot

As indicated above, considering the current real estate market conditions in the area and the length of time the **Church Street Lot** has been listed for sale, the Receiver believes donating it is in the best interest of the Receivership Estate. The lot is simply not commercially viable. The Receiver reached out to various charities, including Habitat for Humanity, to determine if any would be interested in taking title to the **Church Street Lot**. Habitat for Humanity has agreed to do so, and as such, the Receiver seeks authority to convey title to that organization, free and clear of all claims, liens, and encumbrances, by Receiver's Deed without further order of this Court.

ARGUMENT

I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP'S ADMINISTRATION, INCLUDING TO CONVEY REAL PROPERTY FREE AND CLEAR OF CLAIMS, LIENS, AND ENCUMBRANCES

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in its administration 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 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 sale proceeds. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

The relief sought in this motion falls squarely within the Court's powers and is in the best interest of defrauded investors and the Receivership estate. That relief is also consistent with precedent, which establishes that a court of equity – like this one in these proceedings – may authorize the sale of property free and clear of all claims, liens, and encumbrances. *See, e.g., Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (3d Cir. 1933); *People's-Pittsburgh Trust Co. v. Hirsch*, 65 F.2d 972, 973 (3d Cir. 1933). In part, a court has this authority because when a court of competent jurisdiction takes possession of property through its officers – like this Court has done with the Properties through the Receiver – it has jurisdiction and authority to determine all questions about title, possession, and control of the property. *Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737-38 (1931). Indeed, in this Receivership, the Court has previously entered at least six orders approving sales that

convey title free and clear of all claims, liens, and encumbrances. (See Docs. 1043, 1044, 1075, 1110, 1151, 1177.)

III. THE COURT HAS THE POWER TO DEVIATE FROM THE REQUIREMENTS OF 28 U.S.C. § 2001, AND THAT IS WARRANTED UNDER THE CIRCUMSTANCES HERE

Pursuant to Section 2001, property in the possession of a receiver may be sold by private or public sale. As noted above, the Receiver has already attempted a public sale via auction of these Properties, but the auction was unsuccessful. Subsection (b) establishes the following procedures for a private sale of real property:

(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).

Notwithstanding the language of Section 2001, district courts are afforded wide discretion in overseeing the sale of real and personal property in equity receiverships. Any action taken by district courts in the exercise of this discretion is subject to great deference by appellate courts. See *United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's

appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to defrauded investors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys “wide discretionary power” related to its “concern for orderly administration”) (citations omitted).

A. The Statutory Appraisal Requirements Under Section 2001(b)

Pursuant to Section 2001(b), a court may order the sale of real estate after (i) the completion of three appraisals, of which the proposed sale price may not be less than two-thirds of the average appraised value, and (ii) the advertisement of the terms of the proposed sale in such newspaper(s) of general circulation as directed by the court. 28 U.S.C. § 2001(b). Here, given the values of the Properties as set forth by the Thomas County Board of Tax Assessors, the Receiver determined it was unnecessary to incur the cost of having formal appraisals prepared as it would only deplete the funds available to the Receivership Estate. This is especially true given that the Properties have already been auctioned unsuccessfully.

B. Waiver Of The Statutory Notice Provisions Under Section 2001(b) Is Warranted

Section 2001(b) also contemplates that the terms of a proposed sale will be advertised in a newspaper of general circulation. However, the Receiver believes that full compliance with the statutory notice procedure set forth in Section 2001(b) would create an unnecessary expense and could derail the sale or disposition of the Properties. Given the existence of a ready and willing buyer for the North Stevens Street Lot and a likely donee for the Church Street Lot, the lack of any actual or potential claims to the Properties, and efforts to sell the Properties the Receiver for almost eight years, the Receiver requests that the Court either

waive Section 2001(b)'s notice provision, or in the alternative, find that the Receiver's efforts in marketing and listing the Properties are in compliance with Section 2001(b). *See Billion Coupons, Inc.*, 2009 WL 2143531 at *3 (relieving receiver of compliance with statutory provisions of 28 U.S.C. § 2001 where sufficient safeguards existed and proposed procedure would maximize net sales proceeds). The Receiver will post a copy of this motion on his website, www.nadelreceivership.com, immediately after filing, which will be publicly available.

CONCLUSION

The Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as **Exhibit 1** to (1) sell the North Stevens Street Lot by private sale in accordance with the terms and conditions set forth in the Purchase and Sale Agreement attached hereto as **Exhibit 4**, such sale being free and clear of all claims, liens, and encumbrances; (2) donate the Church Street Lot to Habitat for Humanity or a charity or similar organization at the Receiver's discretion without further order of this Court; and (3) waive the requirements of 28 U.S.C. § 2001(b).

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.

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 March 30, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Jared J. Perez

Jared J. Perez, FBN 0085192

jperez@wiandlaw.com

WIAND GUERRA KING P.A.

5505 W. Gray Street

Tampa, FL 33609

Tel: 813-347-5100

Fax: 813-347-5198

Attorneys for the Receiver