

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-33CPT

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 APPROVE (1) SETTLEMENT OF OBJECTION,
(2) WAIVER OF OBJECTIONS, AND (3) AMENDED CLAIM DETERMINATIONS**

Burton W. Wiand (the “**Receiver**”), as Receiver for Quest Energy Management Group, Inc. (“**Quest**” and the “**Quest Estate**”) moves the Court to approve (1) the settlement of the claimant’s objection to Claim 72; (2) the waiver of objections to Claims 73, 75, and 79; and (3) amended determinations for Claims 29, 34, and 44 as set forth in this motion.

I. Background

On June 15, 2016, the Receiver filed his Unopposed Motion to (1) Approve Procedure to Administer Claims and Proof of Claim Form, (2) Establish Deadline for Filing Proofs of Claim, and (3) Permit Notice by Mail and Publication. *See* Doc. 1240 (the “**Quest Claims Motion**”). The Court granted the motion on June 17, 2016, thus establishing the “**Quest Claims Process.**” Doc. 1241. Investors and other creditors then submitted 93 claims, which the Receiver reviewed and evaluated.

On March 7, 2019, the Receiver filed his Motion to (1) Approve Determinations 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. 1383). The exhibits to the Claims Determination Motion contained the Receiver’s determinations on all 93 claims. In the Claims Determination Motion, the Receiver recommended that claims be allowed in full, allowed in part, or denied. The Receiver considered each submitted claim to determine its claim category, with the goal that distribution of the Receivership’s limited assets be equitable and fair among all claimants.

The Claims Determination Motion also contained a detailed objection procedure for any claimants who disagreed with the Receiver’s determinations. *See* Doc. 1383 at 41-45. On March 15, 2019, the Court granted the Claims Determination Motion and found the proposed objection procedure “logical, fair, and reasonable.” Doc. 1384. The objection procedure required objecting claimants to serve their objections on the Receiver by April 19,

2019. *Id.* Claimants served objections in connection with 11 of the 93 claims.¹ Pursuant to the procedure approved by the Court, the Receiver was required to evaluate all objections and notify the objecting claimants of his evaluation in writing (the “**Notification**”). After receipt of the Notification, objecting claimants had 30 days to serve the Receiver with a written response clearly stating whether the claimant maintained the objection or accepted the Receiver’s further determination of the claim as set forth in the Notification. Doc. 1383 at 43. Failure to properly and timely serve this written response is deemed an acceptance of the Receiver’s determination, as set forth in the Notification. *Id.*

II. Settlement of Objection to Receiver’s Determination of Claim 72

Claim 72 was submitted for \$5,275,889 based on a \$50,000 investment for which the claimant received total payments of \$29,542.90 before the appointment of the Receiver. The Receiver recommended the Court deny Claim 72 due to the belief that the claimant acted in a capacity comparable to a sales agent by seeking capital for Quest, and it would thus be inequitable to allow him to share in distributions from the Quest Estate.

On April 18, 2019, the claimant submitted an objection to the Receiver’s determination of Claim 72. He asserted that the claim was improperly denied because he never worked in any capacity for Quest and was a passive victim/investor. He did not, however, object to the net investment amount of \$20,457.10, which the Receiver had determined was the correct amount for this claim. The Receiver sent a Notification to the

¹ The Receiver reached agreements to resolve objections for five claims submitted by Texas taxing authorities and one claim submitted by the First National Bank of Albany. *See* Doc. 1402. The Court approved these agreements on August 9, 2019. *See* Doc. 1406. The Receiver filed a motion to overrule an objection to the claim determination for Claim 17. *See* Doc. 1412. The Court granted that motion on September 9, 2019. Doc. 1416. The remaining four objections (Claim Nos. 72, 73, 75, and 79) are discussed below.

claimant on June 14, 2019. The Notification stated that the Receiver was willing to compromise the claim and objection, considering that the claimant (1) agreed to the appropriate net investment amount of \$20,457.10 and (2) claimed that he had never acted on behalf of Quest. The Receiver agreed to recommend that the determination of Claim 72 be changed from denied to allowed as a Class 3 Investor Claim in exchange for the claimant providing an affidavit attesting to the following information: (1) he never worked in any capacity for or on behalf of Quest; (2) he never obtained any capital for Quest (other than his own \$50,000 investment); (3) he had no knowledge of any fraud perpetrated by Quest's principals or management; and (4) confirmation of his agreement to an allowed amount of \$20,457.10 for his claim. The claimant provided the requested affidavit attesting to the above information on July 3, 2019. Accordingly, the Receiver recommends that the Court approve the above settlement and change the determination of Claim 72 from denied to allowed as a Class 3 Investor Claim in the amount \$20,457.10.²

III. Waiver of Objections to Claims 73, 75, and 79

Claimants for Claims 73, 75, and 79 all submitted timely objections to the Receiver's determination of their respective claims. In accordance with the objection procedure approved by the Court, the Receiver sent Notifications regarding those objections to each of these claimants. *See* Notifications for Claims 73, 75, and 79 attached as Composite **Exhibit A**. In the Notifications, the Receiver set forth the basis for his recommendation that the objections should be overruled. The Notifications clearly informed the claimants of the

² Because this is not a secured claim and the settled claim amount is relatively small, the Receiver did not prepare a formal settlement agreement. The compromise is reflected in the parties' communications pursuant to the objection procedure.

date by which they needed to send a written response to the Receiver to maintain their objections and that failure to do so would result in an acceptance of the Receiver's determination of the objection, as set forth in the Notification. *See* Ex. A. The Receiver did not receive a response from any of the claimants for Claims 73, 75, or 79. As such, the Receiver's determination in the Notifications that the objections should be overruled should be deemed accepted by these claimants and their objections be deemed waived.

IV. Amended Determinations for Claims 29, 34, and 44

A. Claims 29 and 34

In the Claims Determination Motion, the Receiver stated that he had identified deficiencies in certain Proof of Claim Forms and communicated with those claimants to resolve the majority of those deficiencies. Doc. 1383 at 8. There were six claims that had outstanding deficiencies at the time of the filing of the Claims Determination Motion (*see* Claim Nos. 29, 32, 33, 34, 35, and 44). *Id.* Specifically, five of these claimants indicated on their Proof of Claim Forms that they had reached settlements with other parties in connection with their Quest investment but failed to disclose the amount of that recovery (*see* Claim Nos. 29, 32, 33, 34, and 35). *Id.* The Receiver recommended that these claims be allowed in part, contingent on the claimant providing an affidavit setting forth the amount he or she recovered from any third party in connection with their investment within 20 days from the date of the Court's order on the Claims Determination Motion. *Id.* The Claims Determination Motion further provided that any amounts recovered will be added to such claimant's total payments if not already included and will reduce the claimant's allowed amount accordingly. *Id.* If the claimants failed to provide this information within the

allowed time, the Receiver recommended that the pertinent claim be denied. *Id.* The Court approved these claim determinations in its order on the Claims Determination Motion on March 15, 2019. Doc. 1384.

The claimants who submitted Claim 29 informed the Receiver that they received the net amount of \$86,242 in connection with litigation relating to their Quest claim. This amount is greater than the amount that was deducted from the claimants' investment amount in the Claims Determination Motion. *See* Doc. 1383 at Ex. E. The amount disclosed after the filing of the Claims Determination Motion requires a further reduction in the amount of \$11,266 to the claimants' allowed amount. The claimants provided an affidavit to the Receiver, which set forth the amount received from litigation and acknowledged the reduction of the allowed amount to \$152,492. As such, the allowed amount for Claim 29 should be reduced from \$163,758 to \$152,492.

The Receiver also obtained affidavits for Claims 32, 33, 34, and 35. These claims are related and the claimants initiated litigation together. The affidavits provided information that the litigation brought by these claimants resulted in the net recovery of \$171,200, which was disbursed entirely to Claim 34. The allowed amount for Claim 34 is \$434,352. This allowed amount did not take into account the funds received in connection with the above-mentioned litigation. In light of the information provided by the claimants after the filing of the Claims Determination Motion, the allowed amount for Claim 34 should be reduced by \$171,200 from \$434,352 to \$263,152. The allowed amounts and determinations for Claims 32, 33, and 35 should remain the same as approved by the Court and set forth in the Claims Determination Motion.

B. Claim 44

The remaining claim of the six deficient claims was submitted by an incorporated endowment (*see* Claim No. 44). The president and founder of the endowment is a purported Quest sales agent. *Id.* Similar to the above, the Receiver recommended that this claim be allowed contingent upon the receipt of an affidavit from the claimant identifying all beneficiaries of this endowment and stating whether the sales agent will receive any funds from a distribution to this claim within 20 days from the date of the order on the Claims Determination Motion. *Id.* If the claimant failed to provide the affidavit within the prescribed twenty-day period, the Receiver recommended that this claim be denied. *Id.* at 9. Further, if the sales agent is a beneficiary of the endowment, the Receiver recommended this claim, or the portion of the claim that may benefit the agent, be denied. *Id.* The Court approved this determination in the March 15, 2019 order. Doc. 1384. The Receiver did not receive an affidavit or an objection from the claimant for Claim 44. Accordingly, the determination for this claim should be changed from allowed in part to denied.

Memorandum of Law

Courts sit as courts of equity over securities fraud receiverships. *See S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). The Court’s power over an equity receivership and to determine appropriate procedures for administering a receivership is “extremely broad.” *S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986); *S.E.C. v. Basic Energy & Affiliated Res. Inc.*, 273 F.3d 657, 668 (6th Cir. 2001); *Elliot*, 953 F.2d at 1566. The primary purpose of an equity receivership is to promote the orderly and efficient administration of the estate

for the benefit of creditors. *Hardy*, 803 F.2d at 1038. The relief requested by the Receiver in this motion best serves this purpose.

The Court should approve the settlement of the claim and objection to Claim 72 because the settlement is in the best interest of the Quest Estate. The settlement is fair and reasonable and will avoid unnecessary litigation. *See Fugazy Travel Bureau, Inc. v. State by Dickinson*, 188 So. 2d 842, 844 (Fla. 4th DCA 1966) (“The right of a receiver to settle claims and compromise actions with the approval and sanction of the court is well recognized”); *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).

It is also appropriate for the Court to approve the waiver of the objections to Claims 73, 75, and 79. In the Claims Determination Motion, the Receiver explained the rationale underlying the proposed objection procedure:

Importantly, the Proposed Objection Procedure eliminates the need for any objections to be filed with the Court in direct response to this motion. In turn, that will preclude inefficient piecemeal presentation and adjudication of objections by the Court. Such a piecemeal process would result in an inefficient claims process for both the Court and the Receivership. As such, the Proposed Objection Procedure promotes judicial efficiency and reduces litigation costs.

Id. at 41-45. On March 15, 2019, the Court granted the Claims Determination Motion and found the objection procedure “logical, fair, and reasonable.” The Eleventh Circuit and numerous other courts supervising equity receiverships or otherwise considering these matters have consistently approved the use of summary proceedings to adjudicate claim determinations. *See, e.g.*, Doc. 675 (the Nadel claims determination motion) and Doc. 776

¶ 7 (order on same); *see also* Elliot, 953 F.2d at 1567; *F.D.I.C. v. Bernstein*, 786 F. Supp. 170, 177-78 (E.D.N.Y. 1992). The claimants for Claims 73, 75, and 79 participated in the objection process and chose to not respond to the Receiver's Notification. The claimants were informed that their failure to respond would be deemed an acceptance of the Receiver's determination of their objections. The Receiver determined that the objections for each of these claims should be overruled. Accordingly, it is fair and appropriate for the Court to overrule these objections and deem them waived.

Similarly, the revisions to the claim determinations for Claims 29, 34, and 44 are warranted and fair. The Receiver set forth the Net Investment Method as the proper method for determining allowed amounts for investor claims. Doc. 1383 at 22. Using the Net Investment Method, the allowed amount only takes into account the actual dollars the claimant "invested" less any amounts the claimant already received. *Id.* This method of calculating a claimant's loss is regularly adopted by receivership courts, which consistently hold that a defrauded investor's claim should be limited to the total dollar amount of its investment reduced by any funds it received. *See id.* (citations omitted). The Court approved this method when it granted the Claims Determination Motion. Doc. 1384. Allowed amounts for all investor claims were calculated using the Net Investment Method. Accordingly, it is appropriate under principles of equity to reduce the allowed amounts for Claims 29 and 34 for additional monies that were received by the claimants but were not deducted from their investment amounts because the Receiver did not learn of them until after the filing of the Claims Determination Motion. The claim determinations for these claims clearly stated that the allowed amounts would be reduced if the claimants received

money from litigation relating to these investments. The claimants did not object to these determinations. Accordingly, the allowed amounts for Claims 29 and 34 should be reduced to \$152,492 and \$263,152, respectively.

The claimant for Claim 44 did not provide an affidavit or object to the Receiver's determination of the claim. The claimant should have been aware that failure to provide this information would result in the denial of its claim. In light of the fact that the president and founder of the claimant is a purported sales agent and the claimant's failure to provide any additional information regarding the beneficiaries of the endowment, the Receiver believes that the denial of Claim 44 is warranted, equitable, and reasonable.

In resolving claims submitted in a claims process, courts consider a wide variety of factors with the ultimate goal of fashioning an equitable system that treats similarly situated claimants equally. *See S.E.C. v. Homeland Commc'ns Corp.*, 2010 WL 2035326, at *1 (S.D. Fla. May 24, 2010) (“[I]n deciding what claims should be recognized and in what amounts, the fundamental principle which emerges from case law is that any distribution should be done equitably and fairly, with similarly situated investors or customers treated alike.”) (quotation omitted); *Cunningham v. Brown*, 265 U.S. 1, 13 (1924) (as among “equally innocent victims, equality is equity”); *Elliott*, 953 F.2d at 1570 (same). Put simply, equity requires that similarly situated investors be treated equally. *See Quilling v. Trade Partners, Inc.*, 2006 WL 3694629, at *1 (W.D. Mich. 2006). There is no requirement, however, that all claimants be treated in the same manner; rather, fairness only requires that similarly situated claimants should be treated alike. *See, e.g., S.E.C. v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) (“The Receiver's proposal to treat differently those involved in the

fraudulent scheme when distributions are being made is eminently reasonable and is supported by caselaw.”); *Quilling v. Trade Partners, Inc.*, 2006 WL 3694629, *1 (distinguishing between fraud victims and general creditors). In the end, “[a]n equitable plan is not necessarily a plan that everyone will like.” *S.E.C. v. Credit Bancorp*, 2000 WL 1752979, *29 (S.D.N.Y. 2000). Indeed, “when funds are limited, hard choices must be made.” *Byers*, 637 F. Supp. 2d at 176 (quoting *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 84 (2d Cir. 2006)).

CONCLUSION

For the foregoing reasons, the Receiver moves the Court to approve (1) the settlement of the claimant’s objection to Claim 72, (2) the waiver of objections to Claims 73, 75, and 79, and (3) amended determinations for Claims 29, 34, and 44 as set forth in this motion.³

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. Counsel has conferred with the pertinent claimants through the objection procedure and is also serving a copy of this motion on them.

³ A proposed order is attached as **Exhibit B**.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 4, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on October 4, 2019, I caused a true and correct copy of the foregoing to be sent via email and/or mailed by first-class mail delivery to the claimants mentioned in this motion. To protect the privacy of the claimants, names and contact information are not listed below.

s/Jared J. Perez

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