

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

CASE NO.: 8:09-cv-0087-T-26TBM

Defendants,

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.

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**DECLARATION OF BURTON W. WIAND, AS RECEIVER, IN SUPPORT
OF THE RECEIVER'S OPPOSITION TO NON-PARTY'S OBJECTIONS AND
MOTION TO QUASH SUBPOENA SERVED ON SUNTRUST BANKS, INC.**

Burton W. Wiand declares as follows:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida. I have personal knowledge of, or have obtained knowledge through my investigation of matters

during the course of this Receivership, regarding the matters asserted herein and am competent to testify thereto.

2. In the January 21, 2009, Order Appointing Receiver (Doc. 8), the Court appointed me Receiver over (a) defendants Scoop Capital, LLC (“Scoop Capital”) and Scoop Management, Inc. (“Scoop Management”) and (b) relief 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 (Scoop Real Estate, Valhalla Investment Partners, Victory IRA Fund, Victory Fund, Viking IRA Fund, and Viking Fund are collectively referred to as the “Hedge Funds”).

3. 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. 79); Viking Oil & Gas, LLC (Doc. 153); and Home Front Homes, LLC (Doc. 172). All of the entities in receivership are collectively identified herein as the Receivership Entities.

4. By early afternoon on January 21, 2009, I had entered and obtained control of the offices of the Receivership Entities (the “Office”) and had begun my investigation into the affairs of the Receivership Entities.

5. I have been assisted in my investigation by my attorneys, accountants, information technology experts, and others. Since I obtained control of the Receivership Entities, I, my attorneys, and/or my accountants have had discussions and other

communications – including continuing communications – with a number of people associated with Arthur Nadel (“Nadel”) and/or the Receivership Entities, including officers of some of the Receivership Entities and persons responsible for maintaining the financial books of the Receivership Entities and other businesses controlled by Nadel, for operating other businesses controlled by Nadel, for performing accounting services, and for administering the Hedge Funds. We have also had communications and gathered information from many investors in the Hedge Funds.

6. We have also reviewed documents located in the Office, documents obtained from the accountant for the Receivership Entities, information stored on the Receivership Entities’ computer network, documents obtained from other businesses controlled by Nadel, documents obtained from numerous third parties, and information available in the public record.

7. My investigation has revealed that Nadel defrauded investors through his control of the Hedge Funds’ advisers and managers. A review of any monthly trading account statement for any of the Hedge Funds would have shown that the trading activity, yields, and amounts in those accounts significantly differed from the information provided to investors in purported periodic Hedge Fund performance statements.

8. Further, my investigation has revealed that a January 2001 Valhalla Investment Partners, L.P. Confidential Private Placement Memorandum states that “Michael Zucker, C.P.A. serves as [Valhalla Investment Partners’] Certified Public Accountant.” In reality, as Florida public records reveal, Mr. Zucker’s CPA license has been “null and void” since 1989.

9. My investigation has also revealed that Donald Rowe, through certain entities, published an investment newsletter for paying subscribers, called The Wall Street Digest (the “newsletter”). The newsletters were published on a monthly basis and contained Rowe’s investment recommendations. Additional information concerning those newsletters is included in The Wall Street Digest “Investor Briefing” obtained from the archive of a website operated by Rowe. A true and correct copy of that “Investor Briefing” is attached as Exhibit A.

10. A true and correct copy of the October 2003 newsletter, which was obtained from the Office, is attached as Exhibit B.

11. Aside from the newsletter, Rowe created and circulated to subscribers, and in at least some cases made accessible on his website, so-called reports which focused on specific investment recommendations. True and correct copies of various reports are attached hereto as Composite Exhibit C. Those documents were obtained from the following sources: (1) the Office (NDL-075-000612, NDL-145-00830, NDL-145-000831, NDL-145-00832, NDL-030-000876, NDL-030-000877, NDL-030-000878, NDL-074-001417, NDL-074-001418) and (2) from the archive of a website operated by Rowe (RW 1, 2 and 3).

12. Rowe also communicated by telephone or by other means with potential investors interested in his recommendations. Investors have informed me that in those communications Rowe repeated his glowing recommendations of the Hedge Funds and confirmed that Nadel and Neil Moody (“Moody”) were “top-ranked” money managers.

13. According to documents produced by Rowe or his lawyers, over 100 investors in the Hedge Funds were solicited to the Hedge Funds by Rowe.

14. An employee of a Hedge Fund's manager estimated that for the years Rowe solicited investors for the Hedge Funds, Rowe was responsible for soliciting approximately 80% of investors.

15. Rowe was a major financial beneficiary of Nadel's fraudulent scheme. He, his wife Joyce Rowe, and his entities received a total of approximately \$9.4 million in distributions from the Receivership Entities.

16. Rowe, his wife, and a pension plan for an entity Rowe controlled, The Wall Street Digest Defined Benefit Pension Plan, "invested" in some of the Hedge Funds and received approximately \$6.71 million from those Hedge Funds as purported distributions of "returns" on investments and principal redemptions.

17. In exchange for Rowe's solicitation of investors for the Hedge Funds, Nadel and Moody had agreed to pay Rowe a percentage of fees earned from those investors. In large part, those fees were based on a percentage of the returns purportedly earned by the Hedge Funds' investment activities. In other words, they were calculated by applying a percentage to the purported appreciation in the value of the Hedge Funds for the relevant period.

18. Beginning in late 1999, Rowe and his entities received such fees. From that time through 2004, based on the records reviewed to date, Rowe and entities controlled by him received approximately \$1.7 million in fees. Attached hereto as Exhibit D is a spreadsheet detailing the date such fees were paid, the amount of such fees, the recipient of such fees (*i.e.*, the Rowe-controlled entity to which the fees were paid), and the financial institution in which such fees were deposited. Because during the time those fees were paid

(and at all other times) the Hedge Funds were operated as part of Nadel's fraudulent scheme, all of the fees paid to Rowe and his entities were proceeds of that scheme.

19. Based upon my investigation to date, Rowe and his entities have never been registered broker/dealers, associated persons of a registered broker/dealer, or registered investment advisors.

20. In 2004, a dispute arose between Rowe and Nadel concerning the amount of fees that Rowe should be paid for soliciting investors for the Hedge Funds. As part of discussions between Rowe and Nadel and Moody, they negotiated a draft "Service Agreement." A true and correct copy of a draft Service Agreement, which the FBI retrieved from Nadel, is attached as Exhibit E.

21. During the course of that dispute, Rowe's lawyer, Jason Lessinger of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A. ("Lessinger"), and Nadel and Moody's lawyers, John Chapman of Norton, Hammersley, Lopez & Skokos P.A. ("Chapman") and Scott MacLeod of Holland & Knight LLP ("MacLeod"), exchanged various communications. Those communications included: (i) a February 2, 2005, letter from Chapman to Lessinger, a true and correct copy of which retrieved from the Office is attached as Exhibit F; and (ii) a March 25, 2005, email from Lessinger to MacLeod, a true and correct copy of which was produced by Rowe is attached as Exhibit G.

22. The "Service Agreement" was eventually re-characterized as a "Non-Solicitation Agreement" and executed by the parties to the dispute. A true and correct copy of the Non-Solicitation Agreement retrieved from the Office is attached as Exhibit H.

23. A true and correct copy of an email dated April 29, 2005, from Chapman to Nadel and others retrieved from the Office is attached as Exhibit I.

24. As set forth in Exhibit D, my investigation has revealed that most of the money received by Rowe, his wife, and his entities was deposited into certain accounts at Orion Bank (n/k/a Iberia Bank), Northern Trust Bank, SunTrust Bank, and Fidelity Investments. Rowe and his wife deposited \$4,488,384.97 from the Hedge Funds into accounts at Fidelity Investments. In April 2009, only three months after the scheme collapsed, Rowe transferred over \$1 million from his Fidelity account to his wife's Fidelity account. The following month, Mrs. Rowe moved \$1.2 million from her Fidelity account.

25. In March 2009, we issued a subpoena targeted at Rowe. A true and correct copy of that subpoena is part of a filing in this case at Doc. 250. In response, in relevant part, Rowe produced only a few checks. His counsel claimed that Rowe purged many records after relocating offices in 2003 and the records in his garage were thrown away after Rowe moved homes in 2006.

26. Aside from directing me to "marshal and safeguard all of the assets" of the Receivership Entities and "take whatever actions are necessary for the protection of the investors" (Order Reappointing Receiver at 1), the Order Reappointing Receiver imposes on me a duty to "institute such . . . 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 . . ." It also directs me to "apply to this Court for an

Order giving the Receiver possession of' funds of "persons who have invested in the Receivership Entities [that] have been transferred to other persons or entities."

27. The Subpoena is part of my efforts to trace Rowe's ill-gotten gains as a result of the scheme and take necessary actions to protect the defrauded investors.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated this 23 day of June, 2010.



Burton W. Wiand