

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

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

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,

Relief Defendants.

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RECEIVER'S MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as Receiver, moves the Court for an order approving settlement of *Burton W. Wiand, as Receiver v. David Cava, as Trustee of the Edmund Cava Trust, et al.*, Case No.: 8:10-cv-186-T-17MAP (M.D. Fla.) (the "Cava Action") on the basis of the Settlement Agreement attached as Exhibit A.

MEMORANDUM IN SUPPORT

The Securities and Exchange Commission (the "Commission" or "SEC") instituted this action to "halt [an] ongoing fraud, maintain the status quo, and preserve investor assets . .

. .” (Dkt. 1, Compl., ¶ 7.) Burton W. Wiand was appointed by this Court as the Receiver for Defendants other than Arthur Nadel and for Relief Defendants. (*See* Order Reappointing Receiver (Dkt. 140).) Additionally, the Receivership was expanded to include Venice Jet Center, LLC and Tradewind, LLC (Dkt. 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. (Dkt. 44); The Guy-Nadel Foundation, Inc. (Dkt. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Dkt. 79); Viking Oil & Gas, LLC (Dkt. 153); and Home Front Homes, LLC (Dkt. 172). All of the entities in receivership are collectively identified herein as the Receivership Entities.

Pursuant to the Order Reappointing Receiver (Dkt. 140), the Receiver has the duty and authority to:

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and 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; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement or profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

Further, the Order Reappointing Receiver (at paragraph 6) authorizes the Receiver to “[d]efend, compromise or settle legal actions . . . in which the Receivership Entities or the Receiver is a party . . . with authorization of this Court”

The Receiver’s investigation has revealed a number of investors who received “false profits” (i.e., investors who received returns greater than their investments) (“profiteers”) to the detriment of those investors who lost money as a result of their investment. The Receiver

began recovery efforts by mailing letters to numerous profiteers, inquiring whether they agreed with the Receiver's calculated amount of false profits and whether they would return their false profits voluntarily to expedite the process and to avoid litigation. In connection with this process, the Receiver, with the approval of the Commission, offered to accept 90% of the amount claimed by the Receiver to constitute false profits to settle before the commencement of litigation. After David Cava, as Trustee, received the letter offering this discount, he requested certain information from the Receiver in order to fully evaluate the claim. Since that time, the Receiver has provided Mr. Cava relevant information, and the parties have had ongoing communications regarding settlement.

By a Complaint filed January 19, 2010, the Receiver sued David Cava, as Trustee of the Edmund Cava Trust and John and Jane Does 1-5 (the "Defendants"), to recover sums received from the Receivership Entities with a view to marshaling assets for an eventual distribution to investors with verifiable claims in an equitable and appropriate manner. Specifically, the Receiver sought recovery of "false profits" (as defined in the complaint) of \$590,186.48.

David Cava also invested in one or more Receivership Entities in his individual capacity ("Cava"). Cava had a loss of \$475,785.06. Cava was also one of the "John Does" that received a transfer of "false profits" from the Edmund Cava Trust.¹ As shown by the attached Settlement Agreement, the parties agreed to settle this matter with (1) Defendants paying a total of \$290,186.48 to the Receiver, to be paid within 30 days after approval of this settlement by the SEC Receivership Court, and (2) Cava waiving any and all claims he has or

¹ Virginia Ann Tanner in her individual capacity and David Cava, Virginia Ann Tanner and Anita Cava in their capacity as Co-Trustees of the Loren Cava Trust were the other "John and Jane Does."

may have against the Receiver and/or Receivership Entities, including, but not limited to, claims of \$475,785.06 in connection with his investments in one or more Receivership Entities, in full settlement of the Settled Claims.

Although it is the Receiver's position that as a matter of law the Defendants' and Cava's investments in Receivership Entities do not have to be considered collectively, the Receiver believes the settlement reflected by the Settlement Agreement, which includes payment of a sum of money and waiver of claims, is in the best interests of the Receivership, the investors in the Receivership Entities, the Defendant, and Cava because resolution of the claim avoids protracted litigation, conserving Receivership assets and judicial resources, and avoids the cost of litigation to Defendant.

The settlement reflected by the Settlement Agreement is in the best interests of the Receivership, the investors in the Receivership Entities, and Defendants, because resolution of the claim avoids protracted litigation, conserving Receivership assets and judicial resources, and avoids the cost of litigation to Defendants.

WHEREFORE, the Receiver moves the Court to approve the settlement reflected by the attached Settlement Agreement.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

The undersigned counsel for the Receiver is authorized to represent to the Court that the SEC has no objection to the Court's granting this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 25, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the

foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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