

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-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.

**RECEIVER'S VERIFIED (1) EMERGENCY MOTION FOR POSSESSION OF
FUNDS AND (2) MOTION FOR AN ORDER TO SHOW CAUSE AS TO WHY
MARGUERITE NADEL, MICHAEL D. ZUCKER, AND E. JOHN
LOPEZ SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR
VIOLATIONS OF THE COURT'S ORDER APPOINTING RECEIVER**

Burton W. Wiand, as Receiver (the "Receiver"), has recently learned that:

1. Arthur Nadel's ("Nadel") wife, Marguerite "Peg" Nadel ("Mrs. Nadel"), and the Nadels' accountant, Michael D. Zucker ("Zucker") (who also acted as accountant for Receivership Entities before Nadel's Ponzi scheme collapsed), have been violating the Court's Order Appointing Receiver by filing with the IRS and otherwise acting in connection with IRS matters on behalf of a Receivership Entity;

2. in March 2010, Mrs. Nadel, with Zucker's knowledge, came into possession of \$1,348,998 of proceeds of Nadel's scheme paid to the IRS in 2008 and refunded by the IRS this March; and
3. E. John Lopez ("Lopez") is an estate planning lawyer that practices in the Middle District of Florida. He has represented the Nadels (assisting them with preservation of assets), is aware of this receivership, and was aware of Mrs. Nadel's and Zucker's filings and other activities in connection with the IRS and Mrs. Nadel's receipt of \$1,348,998 of scheme proceeds.

Neither Mrs. Nadel, Zucker, nor Lopez have ever notified the Receiver of this conduct or of the receipt of significant funds from the IRS. Indeed, as shown below, each of them is well aware that Mrs. Nadel and Zucker are acting to keep the money from the Receiver.

In an effort to take immediate possession of the tax refund, pursuant to paragraph 23 of the Orders Appointing Receiver (Docs. 8, 140, 316) (collectively "Order Appointing Receiver"), the Receiver moves the Court for an order directing Mrs. Nadel or anyone else in possession of the tax refund or any assets derived from the tax refund to immediately turn over to the Receiver those refund checks and/or assets derived from those refund checks.¹ Further, the Receiver requests that such Order also direct Nadel and Mrs. Nadel to cooperate with the Receiver to enable him to deposit those funds into the Receivership Estate. Separately, pursuant to Rule 66 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1651, and Rule 3.01 of the Local Rules for the Middle District of Florida, the Receiver moves the Court for an order directing Mrs. Nadel, Zucker, and Lopez to show cause, within a reasonable amount of time, as to why they should not be held in contempt for violating this

¹ In light of these intentional efforts to conceal and retain assets from the Receivership Estate, these individuals should also be directed to turn over forthwith to the Receiver all funds or assets in their possession or that come into their possession that belong to Receivership Entities or that otherwise were funded with proceeds of Nadel's scheme.

Court's Order Appointing Receiver. The request for an order directing turn over of the tax refund is made on an emergency basis.

BACKGROUND

In March of this year, the Receiver learned from the Internal Revenue Service ("IRS") that a protective refund claim had been filed with the IRS on behalf of Receivership Entity Scoop Capital, LLC ("Scoop Capital"). The Receiver did not direct that filing and had no knowledge of it, so he immediately began investigating the circumstances surrounding that filing. After ongoing attempts to obtain information, the Receiver learned from the IRS in May 2010, that the filing had been signed by Mrs. Nadel. Upon learning of that, on May 13, 2010, the Receiver's counsel wrote to Mrs. Nadel's counsel, Clifford J. Hunt, instructing Mrs. Nadel to immediately cease taking any actions on behalf of Scoop Capital or any other Receivership Entity. (A true and correct copy of that letter is attached as Exhibit A.) That letter informed Mrs. Nadel that any tax filing made on behalf of Scoop Capital by her following the commencement of this receivership would be in violation of the injunctive provisions of the Order Appointing Receiver.

Within the last month, the Receiver learned that Zucker assisted Mrs. Nadel with the filing. Since that time, the Receiver's accountant has been in contact with Zucker regarding these matters. Despite the May 13th letter to Mrs. Nadel's counsel and communications with Zucker concerning these tax matters, neither Mrs. Nadel nor Zucker have ever informed the Receiver or his accountant of their receipt of any money whatsoever from the IRS.

As part of the Receiver's investigation into this matter, he requested from the IRS a copy of Mrs. Nadel's tax filing on behalf of Scoop Capital and all related documents. After

some delay, the IRS finally provided those documents to the Receiver by letter dated July 8, 2010, which were received by the Receiver on July 12, 2010. (A true and correct copy of the documents received from the IRS are attached hereto as Exhibit B.) Those documents include Mrs. Nadel's correspondence to the IRS dated April 14, 2009, the Amended Income Tax Return for Scoop Capital for the year 2005 filed by Mrs. Nadel and Zucker, and several pieces of correspondence from Zucker to the IRS on which Mrs. Nadel and Lopez were copied.

Those documents establish that Mrs. Nadel purported to file an Amended Income Tax Return (the "Tax Return") on behalf of Scoop Capital for the year 2005. Ex. B at 2-14.² She attempted to file the Tax Return as Scoop Capital's "General Partner." *Id.* at 13. As indicated on the face of the Tax Return, Zucker prepared that document. *Id.* at 14. Indeed, Zucker informed the IRS on May 19, 2010 that the "three year statute of limitations was about to expire, and I thought that this protective refund claim should be filed." *Id.* at 31.

The documents forwarded to the Receiver by the IRS included a letter from Zucker to the IRS dated March 17, 2010. *Id.* at 26-27. In connection with that letter, Mrs. Nadel and Zucker provided to the IRS a Form 2848, "Power of Attorney and Declaration of Representative" for Scoop Capital. *Id.* at 28-29. That document, which was delivered by Zucker to the IRS and was signed by Mrs. Nadel as "Member Manager" of Scoop Capital, attempted to authorize Zucker to act on behalf of Scoop Capital. *Id.*

² For the Court's convenience, the Receiver's counsel has added page numbers to the bottom right corner of the documents received from the IRS and attached as Exhibit B. The citations in this motion refer to those page numbers.

Importantly, a May 19, 2010, letter from Zucker to the IRS regarding Scoop Capital, which was included among the items received by the Receiver from the IRS, reveals that at the time of that letter Mrs. Nadel was in possession of two checks totaling \$1,348,998 received from the IRS, which represented tax refunds for estimated tax payments made with proceeds of Nadel's scheme on behalf of Scoop Capital in 2008. *Id.* at 31-32. Both Mrs. Nadel and Lopez were copied on that letter. *Id.* at 32. Specifically, the checks consisted of one made payable to Mrs. Nadel in the amount of \$675,595 and one made payable to Arthur Nadel in the amount of \$672,403. *Id.*

Of critical importance here, in his May 19th letter, Zucker informs the IRS that he and Mrs. Nadel would like to return the money to the IRS in order to keep it away from the Receiver and the Receivership Estate. Zucker writes, "if Mrs. Nadel handed over Arthur Nadel's check for \$672,403 to Mr. Wiand, he would immediately put the check into his Receiver's account 'never to be seen again.'" *Id.* at 32. Despite the fact that Mrs. Nadel and Lopez were copied on this correspondence and had specific knowledge of the receivership, neither of them, nor Zucker, made any attempt to contact the Receiver to inform him of the money received from the IRS. Mrs. Nadel has known about this receivership since its inception and her counsel was furnished a copy of the Order Appointing Receiver in January 2009. Zucker also has known about this receivership since its inception both through extensive communications with the Receiver and his professionals and through subpoenas served on him in January and February 2009. Finally, Lopez has known about this receivership since at least March 2009, when he accepted service of a subpoena for records relating to this receivership, and through discussions with the Receiver.

As of the time of this filing, the Receiver has no information that Mrs. Nadel no longer possesses the tax refunds. Indeed, the Receiver has been informed that the checks remain uncashed and in Mrs. Nadel's possession.

ARGUMENT

The Court's power to supervise an equity receivership and determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Id.* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)). Here, the Receiver was appointed by Order dated January 21, 2009 (Doc. 8), to, among other things, "marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors."

Entitlement To An Order Directing Mrs. Nadel To Turn Over Funds. Paragraph 23 of the order provides as follows:

23. In the event that the Receiver discovers that funds of persons who have invested in the Defendants or Relief Defendants have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds

Throughout 2008, and indeed from 1999 forward, Scoop Capital and other Receivership Entities were operated as part of a Ponzi scheme perpetrated by Nadel (the "scheme"). Nadel has admitted this by pleading guilty on February 24, 2010, to all counts in his indictment, which charges that he ran the scheme underlying this case from 1999 forward. (A true and correct copy of the indictment and Nadel's guilty plea are attached as Composite

Exhibit C.) That guilty plea establishes in a dispositive manner the existence of the scheme from 1999 forward. *See, e.g., Raiford v. Abney*, 695 F.2d 521 (11th Cir. 1983). In any event, the information in the Receiver's possession also establishes that Nadel operated the Receivership Entities as part of a Ponzi scheme from 1999 forward. *See, e.g., Doc. 362 at 11-12.*

As noted above, the tax refund that is the subject of this motion was a refund of money paid by Nadel in 2008. Those payments were made with fruits of Nadel's scheme. From at least 1999 forward, Nadel had no source of income that was not in some way funded by proceeds of his scheme. Indeed, based on information obtained by the Receiver, including directly from Mrs. Nadel, from at least 1999 forward, essentially all of Nadel's and Mrs. Nadel's income was derived from Receivership Entities. *See, e.g., Doc. 62 at ¶ 14.* Thus, the two checks in Mrs. Nadel's possession totaling \$1,348,998 represent proceeds from the scheme and should be immediately turned over to the Receiver and the Receivership Estate.

Order To Show Cause. As explained above, Mrs. Nadel, Zucker, and Lopez have knowledge of this receivership and that Burton W. Wiand has been appointed Receiver of Scoop Capital. Nevertheless, Mrs. Nadel and Zucker purported to act on behalf of Scoop Capital following their knowledge of this receivership (with Lopez's knowledge) and Mrs. Nadel received funds consisting of proceeds of the scheme underlying this case, and she and Zucker intentionally have kept those funds from the Receiver (with Lopez's knowledge).

In relevant part, the Order Appointing Receiver provides:

12. Unless authorized by the Receiver, the Defendants and Relief Defendants and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Defendants or Relief Defendants;

13. The Defendants and Relief Defendants, and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver. The Defendants and Relief Defendants and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above.

Here, it is abundantly clear that Mrs. Nadel and Zucker have taken actions, directly or indirectly, to "hinder, obstruct, or otherwise interfere" with the Receiver in the conduct of his duties and interfere with the custody, possession, and management of funds. Mrs. Nadel and Zucker have acted on behalf of Scoop Capital in connection with IRS matters, even forwarding to the IRS a power of attorney purporting to authorize Zucker to act on behalf of that entity, and have schemed to keep money from the Receivership Estate.

Although the Receiver does not have any information that Lopez has taken any affirmative steps in an effort to assist Mrs. Nadel and Zucker in connection with the matters addressed in this motion, the documents received by the Receiver indicate that he had knowledge of these matters, including Mrs. Nadel's receipt of money from the IRS and her and Zucker's efforts to keep that money from the Receiver. By failing to inform the Receiver of these matters, Lopez violated the Order Appointing Receiver by hindering and interfering with the Receiver.

As a result of these matters, the Receiver respectfully requests that the Court issue an Order to Show Cause why Mrs. Nadel, Zucker, and Lopez should not be held in contempt of court for violation of the Court's Order Appointing Receiver.

CONCLUSION

Based upon the foregoing, the Receiver respectfully moves the Court: (1) on an emergency basis for an Order directing (a) Mrs. Nadel or anyone else in possession of the tax refund or any assets derived from the tax refund to immediately turn over to the Receiver those refund checks or any funds and/or assets derived from those refund checks and (b) Nadel and Mrs. Nadel to cooperate with the Receiver to enable him to deposit those funds into the Receivership Estate; and (2) an Order to Show Cause why Mrs. Nadel, Zucker, and/or Lopez should not be held in contempt of Court for violating the Order Appointing Receiver.

Respectfully submitted,

/s/ Gianluca Morello

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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, Receiver

LOCAL RULE 3.01(g) CERTIFICATION OF COMPLIANCE

The undersigned counsel for the Receiver has conferred with counsel for the SEC, and the SEC does not object to the relief sought in this Motion.

In addition, this morning counsel for the Receiver sent a letter informing non-parties Mrs. Nadel's counsel, Zucker, and Lopez of this matter and to immediately contact the Receiver's counsel if they will agree to immediately turn over to the Receiver the tax refunds. (A true and correct copy of that letter is attached hereto as Exhibit D.) As of the time of this filing, only Lopez has contacted the Receiver, and he indicated that he would communicate with Zucker regarding this matter. In light of the emergency nature of this matter, the Receiver respectfully requests that the Court not delay its consideration of the emergency relief requested herein.

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2009, 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:

Arthur G. Nadel
Register No. 50690-018
Metropolitan Correctional Center, New York
150 Park Row
New York, NY 10007

I further certify that I emailed and faxed the foregoing document and the notice of electronic filing to the following non-parties:

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