

**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 UNOPPOSED MOTION TO EXPAND
RECEIVERSHIP TO INCLUDE TRADERS INVESTMENT CLUB
AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to 28 U.S.C. § 754, Rule 66 of the Federal Rules of Civil Procedure, and Local Rule 3.01, Burton W. Wiand, as Receiver, moves the Court to expand the scope of the receivership in this case to include Traders Investment Club (“Traders”). As explained below and in the Declaration of Burton W. Wiand, as Receiver, in Support of the Receiver’s Unopposed Motion to Expand Receivership to Include Traders Investment Club (the “Receiver’s Declaration”), which is being filed along with this motion, Traders was entirely

controlled by Defendant Arthur Nadel (“Nadel”), was part of the fraudulent scheme underlying this case (the “scheme”), and was funded with proceeds derived from the scheme, including with funds transferred from some of the entities in this Receivership.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (“Commission”) initiated this action to prevent Defendants from further defrauding investors of hedge funds managed by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC (“Scoop Capital”) and Scoop Management, Inc. (“Scoop Management”) and for Relief Defendants Scoop Real Estate, L.P. (“Scoop Real Estate”); Valhalla Investment Partners, L.P. (“Valhalla Investment Partners”); Valhalla Management, Inc. (“Valhalla Management”); Victory Fund, Ltd. (“Victory”); Victory IRA Fund, Ltd. (“Victory IRA”); Viking IRA Fund, LLC (“Viking IRA”); Viking Fund, LLC (“Viking”); and Viking Management, LLC (“Viking Management”) (the “Order Appointing Receiver”). (*See generally* Order Appointing Receiver (Doc. 8).) Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; 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.” (Order Appointing Receiver at 1-2.)

Between January 27, 2009, and August 10, 2009, on the Receiver’s motions, the Court entered orders expanding the scope of this Receivership to include additional entities controlled by Nadel or funded with proceeds of the scheme. (*See* Docs. 17, 44, 68, 81, 153,

172.) All of the entities and the trust in receivership are hereinafter referred to collectively as the “Receivership Entities.”

The Commission concluded that Nadel used Scoop Capital, Scoop Management, Valhalla Management, and Viking Management to defraud investors of the hedge funds those companies managed, Relief Defendants Scoop Real Estate, Valhalla Investment Partners, Victory, Victory IRA, Viking IRA, and Viking (collectively, the “Hedge Funds”). (See Compl. ¶¶ 5-7 (Doc. 1).) The Commission contends Defendants violated federal securities laws from at least January 2008 forward by “massively” overstating investment returns and the value of fund assets to investors and providing false account statements to investors. (*Id.* ¶¶ 3, 36.) The Commission also contends that Nadel misappropriated investor funds by transferring \$1.25 million from Viking IRA and Valhalla Investment Partners to secret bank accounts. (*Id.* ¶ 5.) The Court found the Commission demonstrated a *prima facie* case that Defendants committed multiple violations of federal securities laws. (Order Appointing Receiver at 2.)

While the Commission’s evidence showed that Nadel defrauded investors since at least January 2008, the Receiver’s investigation uncovered evidence showing the fraud began at the inception of the first Hedge Fund, Valhalla Investment Partners. (See Receiver’s 5th Interim Report at 12 (Doc. 362) (the “Interim Report”).) Indeed, on February 24, 2010, Nadel pled guilty to all counts in his indictment, which charged that he ran the scheme underlying this case from 1999 forward. (See Receiver’s Decl. ¶7.) (A copy of the Indictment and Nadel’s guilty plea is attached as Composite Exhibit C to the Receiver’s Motion for Possession of Funds and Motion for an Order to Show Cause (Doc. 434).)

Nadel's guilty plea to all counts in the indictment 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).

The evidence recovered by the Receiver is entirely consistent with Nadel's guilty plea. Each year from 1999 through 2008, Nadel caused Receivership Entities to grossly overstate the value of the Hedge Funds and to report to investors overstated values and other false performance indicators for those funds. (*See* Interim Report at 12-14.) The following table details the actual values of the Hedge Funds and the purported year-end values represented to investors from 1999 through 2008:

Year	Investment Managers' Represented Gains (\$)	Hedge Funds Actual Trading Performance(\$)	Difference (\$)
1999	959,480	35,647	923,833
2000	2,636,299	(2,882,463)	5,518,762
2001	2,560,961	(2,402,728)	4,963,689
2002	7,130,171 ¹	(3,012,774)	10,142,945
2003	23,716,749	19,843,624	3,873,125
2004	46,950,345	5,152,400	41,797,945
2005	61,169,058	6,064,172	55,104,886
2006	50,003,778	(18,549,355)	68,553,133
2007	54,665,571	(24,989,307)	79,654,878
2008	36,334,794	(2,493,654)	38,828,448
Total	286,127,206	(23,234,438)	309,361,644

The Receiver also uncovered evidence that Scoop Capital and Scoop Management received substantial amounts of money from the Hedge Funds in the form of management, profit incentive, and/or advisory fees. (*See* Receiver's January Declaration in Support of Motion to Expand Scope of the Receivership at ¶¶ 11-14 (Doc. 16).) During the course of

¹ This amount does not include representations made for purported trading performance for the Viking Fund or the Viking IRA Fund.

his investigation, the Receiver also learned that other operations controlled by Nadel, including Traders, were funded with proceeds of Nadel's fraudulent scheme, including through direct transfers of funds from Victory. (Receiver's Decl. ¶¶9, 12.) Specifically, at least \$1,925,000 was transferred to Traders from Victory. (*See Id.* ¶ 12.)

Traders Investment Club

Background. As detailed in the Receiver's Declaration, Traders was a Florida partnership that was formed in January 1999 to operate as a purported "investment club." (Receiver's Decl. ¶10.) Generally, an investment club is a group of people that pool their money to make investments. Similar to a hedge fund, an investment club must comply with certain limitations in order to be exempt from the registration requirements imposed by securities laws. Nadel controlled Traders and purported to buy and sell securities on its behalf in an effort to generate trading profits. (*Id.* ¶11.)

Records in the Receiver's possession show that Traders was operated until December 2005. (*Id.* ¶10.) During its existence, Traders had approximately 35 different investors, or limited partners, most of which were also simultaneously investors in the Hedge Funds. (*Id.* ¶11.) In 2005, Nadel purported to "wind up" Traders, and he distributed money remaining in the Traders accounts as "purported principal and trading gains" directly to investors or to the Hedge Funds as a purported "roll-over" into the pertinent investors' Hedge Fund "accounts." (*Id.* ¶13.) None of the investors in Traders incurred a loss from their investment in Traders. (*Id.*)

Aside from raising money for Traders from investors, Nadel funded it with unlawful transfers from Hedge Funds. The Receiver has obtained records, including account

statements and cashed checks, from the bank accounts Nadel maintained on behalf of Traders at Wachovia Bank, N.A., and its predecessor, SouthTrust Bank. (See Receiver Decl. ¶ 12.)

These records show that Nadel improperly transferred money from certain Receivership Entities, including Victory, to Traders. Those transfers included the following:

Check No.	Amount	Date	Payor	Payee
1007	\$200,000	1/31/03	Victory Fund, Ltd.	Traders Investment Club
1011	\$175,000	4/17/03	Victory Fund, Ltd.	Traders Investment Club
1013	\$125,000	4/30/03	Victory Fund, Ltd.	Traders Investments Club
1015	\$10,000	5/1/03	Victory Fund, Ltd.	Traders Investment Club
1016	\$415,000	5/2/03	Victory Fund, Ltd.	Traders Investment Club
0328	\$300,000	3/4/04	Victory Fund, Ltd.	Traders Investment Club
1019	\$350,000	3/31/04	Victory Fund, Ltd.	Traders Investment Club
1021	\$50,000	6/7/04	Victory Fund, Ltd.	Traders Investment Club
1022	\$300,000	6/25/04	Victory Fund, Ltd.	Traders Investment Club

These transfers were made to fund distributions of purported trading gains to Traders' investors. (*Id.*) In other words, Nadel made these transfers from the Hedge Funds to Traders so that there would be sufficient funds in the Traders account to cover checks or wires from that account to Traders investors.

In addition to transferring funds from the Hedge Funds, there is a significant discrepancy between the actual trading results of Traders and the amounts Nadel reported to

investors. For example, during the months of August, September, and October 2003, Nadel represented to investors that Traders achieved monthly gains of \$96,768, \$82,978.21, and \$106,483.93, respectively. (*See* Receiver Decl. ¶ 14.) However, Traders' actual trading statements during the same time period indicate that Nadel only achieved returns of approximately \$9,000, \$20,000 and \$0, respectively. (*Id.*) Thus, his representations to investors of monthly gains achieved by Traders were entirely false. Moreover, in Traders' 2003 tax return, Nadel represented that Traders had total assets of \$3,945,746.53 at the end of the year. (*Id.* ¶ 15.) Traders' actual trading and bank statements, however, indicate that it had a total of only approximately \$564,000 in its accounts. (*Id.* ¶ 15.)

Because of the fraud perpetrated by Nadel through the Receivership Entities, his control of Traders, and the commingling of funds between Traders and Receivership Entities, Traders should be included in this Receivership. It is clear that Nadel commingled funds from the Receivership Entities and Traders and intertwined their business operations. Including Traders in this Receivership would help the Receiver's marshalling and safeguarding all of the assets of the Defendants or Relief Defendants. (*Id.* ¶ 17.) To fulfill the Receiver's duty to take whatever actions are necessary for the protection of investors, the Receiver requests that the Court expand this Receivership to include Traders.

MEMORANDUM OF LAW

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)).

Such discretion may be properly exercised in the form of expansion of a receivership where a party seeking expansion establishes (1) a commingling of funds, (2) intertwined business operations, (3) utilization of an identical business address or identical offices and addresses, (4) or co-identity of officers, directors, or principals. *See SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 233 (D. Nev. 1985), *aff'd*, 805 F.2d 1039 (9th Cir. 1986); *see also Elliott*, 953 F.2d at 1565, n.1 (holding that court may extend equitable receivership over related entities).

In determining whether or not to extend a receivership to include related entities, a federal court has broad discretion to disregard corporate separateness and form and to give effect to the substance of the enterprise. *Elmas Trading Corp.*, 620 F. Supp. at 233. A corporate entity may be disregarded under federal law “in the interests of public convenience, fairness, and equity” *Id.* at 234; *see In re Bowen Transp., Inc.*, 551 F.2d 171, 179 (7th Cir. 1977) (stating that “[t]he separate corporateness of affiliated corporations owned by the same parent may be equally disregarded under the proper circumstances.”). The key goal behind a proposed receivership expansion should be “to ensure that all available assets are brought within the receivership and may properly be distributed to creditors.” *Id.* at 233.

Given the Court’s wide discretion and authority, the receivership estate in this case should be expanded to include Traders. As discussed above and in the Receiver’s Declaration, the evidence uncovered by the Receiver’s investigation shows that (1) Nadel controlled Traders and the Receivership Entities; and (2) Nadel commingled funds between

Receivership Entities and Traders in furtherance of his scheme. In short, the information gathered by the Receiver shows that there was no meaningful distinction between Traders and Receivership Entities and that Traders was also a part of Nadel's scheme.

This Court's Order Appointing Receiver already requires the Receiver to "marshal and safeguard all of the assets of the Receivership Entities and take whatever actions are necessary for the protection of the investors." (Doc. 8 at 1.) Further, the Receiver was authorized to "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 those individuals . . . which the Receiver may claim have . . . improperly . . . transferred monies . . . directly or indirectly traceable from investors in the Receivership Entities, including against their officers [and] directors . . . or against any transfers of money . . . directly or indirectly traceable from investors in the Receivership Entities" (*Id.* ¶ 2.)

Here, a review of the bank and trading records demonstrate that Nadel commingled funds of the Defendants and Relief Defendants with Traders. It appears that Nadel routinely used the funds from Relief Defendants to fund distributions to investors in Traders. As such, including Traders in this Receivership is necessary to protect investors given the fraudulent conduct perpetrated by Nadel. Notably, this Court's Order Appointing Receiver contemplates the expansion of the receivership. The Order expressly states:

In the event that the Receiver discovers that funds of persons who have invested in the Corporate 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 and, if the Receiver deems it advisable, *extending this receivership over any person or entity holding such investor funds.*

(Doc. 8 ¶ 24 (emphasis added).)

Because (1) the Court has the authority to expand the receivership to include Traders; (2) the evidence shows that Nadel misappropriated investor funds and transferred them to Traders through Receivership Entities; and (3) expansion of the receivership is necessary for the protection of the investors and the receivership estate, the Receiver respectfully requests that this Court modify the Order Appointing Receiver or otherwise expand the Receivership to include Traders Investment Club.

LOCAL RULE 3.01(G) CERTIFICATION OF COMPLIANCE

The undersigned counsel for the receiver has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 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 participant:

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

s/ Gianluca Morello
Gianluca Morello, FBN 034997
gmorello@wiandlaw.com
Michael S. Lamont, FBN 0527122
mlamont@wiandlaw.com
WIAND GUERRA KING P.L.
3000 Bayport Drive, Suite 600
Tampa, FL 33607
Tel. 813.347.5100
Fax 813.347.5155
Attorneys for the Receiver, Burton W. Wiand

42281719v1