

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.

RECEIVER'S MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as Receiver, moves the Court for an order approving a settlement which disposes in full of *Burton W. Wiand, as Receiver v. Kelvin Lee and Barbara Lee*, Case No.: 8:10-cv-251-T-17MAP (M.D. Fla.), and of *Burton W. Wiand, as Receiver v. Kelvin V. Lee, as Trustee of the Nancy E. Lee Trust dtd 12/1/1987*, Case No.: 8:10-cv-211-T-17MAP (M.D. Fla.) (collectively, the "Kelvin Lee Actions"), and which reduces the amount sought by the Receiver in *Burton W. Wiand, as Receiver v. Vernon Lee, Individually and as Trustee*

of the *Vernon M. Lee Trust*, Case No.: 8:10-cv-210-T-17MAP (M.D. Fla.) (the “Vernon Lee Action”). The relevant Settlement Agreements are attached hereto as Exhibits A and B.

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. 493).) 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); Home Front Homes, LLC (Dkt. 172); and Traders Investment Club (Dkt. 454). All of the entities in receivership are collectively identified herein as the Receivership Entities.

Pursuant to the Order Reappointing Receiver (Dkt. 493), 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”

By a Complaint filed January 19, 2010, the Receiver sued Kelvin V. Lee, as Trustee of the Nancy Lee Trust, 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 \$222,973.72.

By a Complaint filed January 20, 2010, the Receiver sued Kelvin V. Lee and Barbara Lee (Kelvin Lee is named as a defendant in his individual capacity and in his capacity as Trustee of the Nancy Lee Trust and Barbara Lee is named as a defendant in her individual capacity; they are referred to collectively as 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 \$97,998.54 in fees paid to Mr. Kelvin Lee.

As shown by the Settlement Agreement attached hereto as Exhibit A, the Receiver and the Defendants, subject to the approval of this Court, have agreed to settle the Lee Actions for \$295,973.72 in full settlement of the Settled Claims, to be paid within 14 days after approval of this settlement by this Court.

Upon receipt and clearing of the full settlement payment, the Receiver, on behalf of the Receivership Entities and their employees, agents, representatives, beneficiaries, and assigns, shall be deemed to have released and forever discharged the Defendants of and from

any and all claims asserted, or which could have been asserted, in the Kelvin Lee Actions, as well as any and all other claims, demands, rights, promises, and obligations arising from or related in any way to (i) the Defendants' investment in Receivership Entities and in any other product, fund, entity, or venture established, operated, or controlled by Arthur Nadel and (ii) Defendant Kelvin Lee's receipt of fees from Receivership Entities and from any other fund, entity, or venture established, operated, or controlled by Arthur Nadel.

By a Complaint filed January 19, 2010, the Receiver sued Vernon Lee, individually and as Trustee of the Vernon M. Lee Trust ("Vernon Lee") in an action styled Burton W. Wiand, as Receiver v. Vernon Lee, Individually and as Trustee of the Vernon M. Lee Trust (the "Vernon Lee Action"), Case No. 8:10-cv-210-T-17-MAP (M.D. Fla), seeking the return of certain funds received by Vernon Lee from or at the direction of one or more of the Receivership Entities in excess of his investment in one or more of the Receivership Entities. The Receiver's investigation has revealed that an additional appropriate party against whom claims could be asserted in the Vernon Lee Action is Mr. Kelvin Lee.

As shown by the Settlement Agreement attached hereto as Exhibit B, the Receiver and Mr. Kelvin Lee, subject to the approval of this Court, have agreed to a settlement that requires Mr. Kelvin Lee to pay and the Receiver to accept a total of \$133,371.09 (the "Settlement Amount"), to be paid within 14 days after approval of this settlement by this Court.

Upon receipt and clearing of this settlement payment, the Receiver, on behalf of the Receivership Entities and their employees, agents, representatives, beneficiaries, and assigns, shall be deemed to have released and forever discharged Mr. Kelvin Lee of and from any and

all claims relating to the receipt in 2010 of \$133,371.09 from Mr. Vernon Lee, which comprised a portion of “false profits” received by Mr. Vernon Lee and which are the subject of the Vernon Lee Action. As such, Mr. Kelvin Lee’s payment to the Receiver of \$133,371.09 as provided for in the Settlement Agreement attached as Exhibit B will reduce the amount sought by the Receiver in the Vernon Lee Action by the same amount.

The settlements reflected by the Settlement Agreements are 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 settlements reflected by the attached Settlement Agreements.

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 October 19, 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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s/ Michael S. Lamont

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Attorneys for the Receiver, Burton W. Wiand