

**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, LLC

Relief Defendants.

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**THE RECEIVER'S OPPOSITION TO NON-PARTY'S MOTION TO  
STAY DEADLINES PENDING LOCATION OF NEW COUNSEL (DOC. 563)**

On December 7, 2010, litigation counsel for non-parties Donald H. Rowe, Joyce A. Rowe, Carnegie Asset Management, Inc., and Wall Street Digest, Inc. (collectively, the "Rowe Non-Parties") moved to withdraw based on an "irretrievably broken" relationship between counsel and the Rowe Non-Parties. (Doc. 562.) That motion and the subsequently-filed Non-Parties' Motion to Stay Deadlines Pending Location Of New Counsel (Doc. 563) seek a 30-day stay of "pending deadlines in this case" (*see id.* ¶ 2) to allow the Rowe Non-

Parties to retain new counsel (the “Stay Request”).<sup>1</sup> As set forth below, that request should be denied.

First, the Stay Request should be denied because it would interfere with the Receiver’s efforts and could significantly harm the Receivership Estate. As detailed in the Receiver’s Opposition to Non-Party’s Objections and Motion to Quash Subpoena Served on SunTrust Bank, Inc. (Doc. 420), Rowe played a key role in the Ponzi scheme underlying this case by soliciting a large number of investors with material misrepresentations and omissions that amounted to securities fraud and by otherwise violating federal and state securities laws. For those unlawful activities, Rowe Non-Parties received approximately \$2.7 million in Ponzi scheme proceeds. They also received another approximately \$6.7 million of Ponzi scheme proceeds in connection with their investment in the scheme. The Receiver has been charged by this Court with tracing and recapturing for the benefit of the Receivership Estate those approximately \$9.4 million, and the Receiver is in the process of doing so and preparing to take additional steps to protect the Receivership Estate. Any stay would delay and interfere with those efforts to the detriment of the Receivership Estate. Indeed, possible harm to the Receivership Estate is underscored by the privilege log submitted by the Rowe Non-Parties *in camera* on December 6, 2010, which reflects a significant amount of “estate planning” and what appear to be other asset-preservation activities which could very well be

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<sup>1</sup> Presumably, the Rowe Non-Parties seek a stay only of deadlines which implicate them and not a stay of this entire enforcement proceeding, which involves many other facets that have no relationship to them.

directed at hiding the Ponzi scheme proceeds received by the Rowe Non-Parties.<sup>2</sup>

Second, the Stay Request should be denied because there is no need for it. Currently, the only outstanding deadlines in this case implicating the Rowe Non-Parties are the December 9, 2010, deadline for the Receiver's response to Non-Party Rowe's Motion for Protective Order (Doc. 544); the December 13, 2010, hearing on that motion (Doc. 548); and the January 12, 2011, deposition of Joyce Rowe.<sup>3</sup> With respect to the first two items, the Rowe Non-Parties have already filed the motion for a protective order, and the only outstanding matters are the Receiver's response and the currently pending hearing on that motion. Once the Receiver files his response, the briefing will be concluded and the Court could resolve the matter without a hearing. If the December 13th hearing proceeds, then the Rowe Non-Parties could be represented by current counsel, which may not withdraw until December 16, 2010. *See* Doc. 562 (noting that Rowe Non-Parties were notified on December 6, 2010, of intent to withdraw); M.D. Fla. L.R. 2.03(b) (requiring 10-day notice to client before attorney withdraws from representation).

Regardless of whether the hearing proceeds or is cancelled, delaying adjudication of the Rowe Non-Parties motion for a protective order raises a significant risk of harm to the Receivership Estate as the documents withheld from production are necessary to trace the

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<sup>2</sup> Notably, the privilege log also identifies already-existing relationships between the Rowe Non-Parties and other law firms that have the expertise to represent them in litigation with the Receiver. As such, there is a real possibility the Rowe's could promptly find new litigation counsel.

<sup>3</sup> For some time, the Receiver has worked to promptly take Joyce Rowe's deposition, but recently as a courtesy the Receiver agreed to postpone it to January at her request after she provided a letter from a physician indicating that she was currently suffering from a medical matter that rendered her unable to sit or stand for "extended periods."

current location of Ponzi scheme proceeds transferred to the Rowe Non-Parties, including those still in the possession of the Rowe Non-Parties and those transferred to other individuals and other entities controlled by Rowe. Then, the Receiver will use that information to take necessary steps to protect the Receivership Estate. Notably, those documents are particularly important to the Receivership because at his deposition on August 31, 2010, Donald Rowe refused to answer any question regarding those issues (or any other issues other than his identity and his mental capacity to testify) based on his claimed right against self-incrimination afforded by the Fifth Amendment of the U.S. Constitution.

With respect to Joyce Rowe's deposition, she and the rest of the Rowe Non-Parties will have had over a month to retain new counsel before her January 12th deposition. Accordingly, no stay or delay of that deposition is warranted.

#### **CONCLUSION**

For each of these reasons, the request for a 30-day stay made in the Motion to Withdraw (Doc. 562) and the Motion to Stay Deadlines Pending Location of New Counsel (Doc. 563) should be denied.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 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 participants:

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