

**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 settlement of *Burton W. Wiand, as Receiver v. Chester Trachtenberg, Foxhaven, LLC, as successor in interest of Ouisa, LLC, and Cherrytoes, LLC, as successor in interest of Beatrice, LLC*, Case No.: 8:10-cv-1257-T-17MAP (M.D. Fla.) (the "Trachtenberg 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); 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 June 4, 2010, the Receiver sued Chester Trachtenberg, Foxhaven, LLC (“Foxhaven”), as successor in interest of Ouisa, LLC (“Ouisa”), and Cherrytoes, LLC (“Cherrytoes”), as successor in interest of Beatrice, LLC (“Beatrice”), to recover sums received from Receivership Entities with a view to marshaling assets for an eventual distribution to investors with verifiable claims in an equitable and appropriate manner. Each of Mr. Trachtenberg, Foxhaven, Ouisa, Cherrytoes, and Beatrice, as well as Mr. Trachtenberg’s wife, Louisa Heyward, separately invested in Receivership Entities. Mr. Trachtenberg, Ms. Heyward, Foxhaven, Ouisa, Cherrytoes, and Beatrice are collectively referred to as the “Defendants.”

With respect to Ouisa and Beatrice, they were merged with and into Foxhaven and Cherrytoes, respectively, in 2010. Prior to the mergers, however, Ouisa had a “false profit” of \$255,740.62 and Beatrice had a “false profit” of \$45,073.87 from their respective investments in Receivership Entities. Mr. Trachtenberg also had a “false profit” of \$61,552.47. As such, the Receiver sought a total of \$362,366.96 in “false profits.” Prior to the above mentioned mergers, Heyward, Foxhaven, and Cherrytoes had a combined loss of \$1,710,000 from their investments with Receivership Entities, as measured by the difference between the amount invested and the amount returned.

As shown by the attached Settlement Agreement, the Receiver and the Defendants, subject to the approval of this Court, have agreed to a reduction of any distribution the

Defendants may receive in connection with the Receiver's claims process in the SEC Receivership Action (the "Claims Process") arising from losses that certain Defendants sustained in connection with their investments in one or more of the Receivership Entities. Specifically, with respect to any such distribution, Defendants have agreed that the first \$362,366.96 will automatically revert to the Receivership and Defendants will only receive payment from that portion of any distribution which exceeds \$362,366.96 of any such distributions. After the \$362,366.96 is satisfied, any distributions made to Defendants through the Claims Process shall be made in due course with other distributions relating to claims filed with the Receivership. In reaching this agreement, the Receiver considered the risks and expense of litigation.

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 March 22, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on March 22, 2011, 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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