

**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 SECOND MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as Receiver, moves the Court for another order approving settlement of *Burton W. Wiand, as Receiver v. Steven Settlage*, Case No.: 8:10-cv-136-T-17MAP (M.D. Fla.) (the "Settlage Action") on the basis of the Amended Settlement Agreement attached as Exhibit A.

1. On October 5, 2011, the Receiver filed a Motion to Approve the Settlement between the Receiver and the defendant in the Settlage Action, Steven Settlage. *See* Doc. 658.

2. On October 6, 2011, this Court entered an Order which “specifically approve[d] the written settlement agreement attached to the motion entered into between the Receiver and Steven Settlege...” *See* Doc. 659.

3. After the entry of this Order, the parties agreed to slightly amend the language (but not the terms) of the settlement agreement to enable the defendant to make payment directly from his IRA account to the Receiver. The Amended Settlement Agreement is identical to the original agreement, except that it adds the following provision: “The parties understand and agree that the Settlement Payment is satisfying a debt owed by an IRA account and therefore intend for the Settlement Payment to be a non-taxable distribution from the debtor IRA account.” *See* Exhibit A, p. 2.

4. In light of the fact that the Amended Settlement Agreement has been amended and in the abundance of caution, the Receiver moves the Court to approve the settlement reflected by the attached Amended Settlement Agreement.

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 14, 2010 (the “Settlage Action”), the Receiver sued Steven Settlage (the “Defendant”), 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 \$80,024.73.

On December 30, 2010, Defendant filed in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, Case No. BK 10-388848-DOT (“Bankruptcy Court”), a voluntary petition in bankruptcy pursuant to Chapter 7 of Title 11 of

the United States Code. The Bankruptcy Court granted the Defendant (in his individual capacity) a discharge from bankruptcy, pursuant to 11 U.S.C. § 727. The Receiver filed an Objection to a Certain Claimed Exemption (“Bankruptcy Objections”) in the Bankruptcy Court relating to the false profits received by Defendant in his IRA. The Receiver also filed a Motion for Relief from Stay in order to pursue the res in the Settlege Action.

As shown by the attached Settlement Agreement, the Receiver and the Defendant, subject to the approval of this Court, have agreed to settle the Settlege Action and the Bankruptcy Objections for \$40,012.00 in full settlement of the claims. In reaching this agreement, the Receiver considered Defendant’s financial situation, the risks and expense of litigation, including proceeding in bankruptcy court, and the risk associated with collecting on any eventual judgment.

The settlement reflected by the Settlement Agreement is in the best interests of the Receivership, the investors in the Receivership Entities, and Defendant, because resolution of the claim avoids protracted litigation, conserving Receivership assets and judicial resources, and avoids the cost of litigation to Defendant.

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 October 18, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I **FURTHER CERTIFY** that on October 18, 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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s/Michael S. Lamont

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