

**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 UNOPPOSED MOTION FOR LEAVE TO RESPOND TO
LANDMARK BANK'S OBJECTION TO PROPOSED OBJECTION PROCEDURE**

Burton W. Wiand, as Receiver (the “**Receiver**”), recently filed a motion relating to claims determinations and the claims process (the “**Motion**”) (Doc. 675). Among the claims addressed in that motion were two submitted by LandMark Bank (“**LandMark**”). As the Motion details (at 59 to 66), those claims involve a line of credit extended to a principal and officer of three of the funds used to perpetrate the scheme underlying this case, Christopher Moody (“**Moody**”), by a bank whose Chairman was Moody’s accountant, and, specifically, to that bank’s attempt to recover purported security interests in Moody’s (1) “investment” in

one of those funds and (2) Bonds.com stock and notes.¹ As the Motion also details, LandMark's claims should be denied for five independent reasons, including that LandMark had actual notice of fraud when it received Moody's Bonds.com interests and that transfer of those interests violated the Temporary Restraining Order and Order Appointing Receiver.

LandMark subsequently filed an objection (the "**Objection**") to the Motion's Proposed Objection Procedure (Doc. 677), complaining that procedure does not permit discovery, "imposes unrealistic time schedules," and violates due process. In its place, LandMark seeks a burdensome, lengthy, and, in many cases, potentially unnecessary procedure which favors claimants.

The Receiver respectfully seeks leave to file a reply to address various issues raised by the Objection, including:

- (1) its failure to understand and appreciate the Proposed Objection Procedure's efficiency (which gives the Receiver and the objecting claimant an opportunity to resolve the objection – and exchange information – in a relatively expedited fashion and without the cost of full-blown discovery);
- (2) its failure to understand that if the Receiver and a claimant cannot resolve an objection, it will be submitted to the Court, and the Court can then set tailor-made procedures before ruling on that objection (rather than relying on the more burdensome "one-size-fits-all" approach advocated in the Objection);
- (3) its unsupported contention that the Proposed Objections Procedure violates due process;
- (4) its unworkable contention that the Receiver should have to sue each claimant whose claim is being denied in any part based on a fraudulent transfer theory;

¹ Moody's Bonds.com interests were the subject of a dispute between the Receiver and LandMark presented to the Court in 2009. *See* Docs. 154, 155, 166, 168, 169.

(5) its failure to recognize authority – including a Report & Recommendation in one of the Receiver’s “clawback” cases – holding that the Ponzi scheme presumption for fraudulent transfers applies not only to transfers in “furtherance” of the scheme, but also to certain other relevant transfers of scheme proceeds;

(6) its contention relating to the appropriate burden of proof in circumstances like here where the claimant – not the Receiver – has asserted a claim; and

(7) its focus on fraudulent transfers and its failure to recognize the impact the other four independent bases for denying LandMark’s claims would have on its arguments.

The Receiver believes his additional briefing will assist the Court with resolving the Objection, and thus requests leave to file a six-page reply within seven days of an order on this motion.

LOCAL RULE 3.01(g) CERTIFICATION

Counsel for the Receiver has conferred with counsel for LandMark. LandMark does not object to the Receiver having leave to reply.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on December 15, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I **FURTHER CERTIFY** that on December 15, 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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