

**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.

**DECLARATION OF BURTON W. WIAND IN SUPPORT OF THE
RECEIVER'S OPPOSITION TO MOTION OF WELLS FARGO BANK,
N.A. (I) FOR RELIEF FROM INJUNCTION OR, IN THE ALTERNATIVE,
(II) TO COMPEL THE RECEIVER TO ABANDON THE PROPERTY
LOCATED AT 841 SOUTH MAIN STREET, GRAHAM, NORTH CAROLINA**

Burton W. Wiand declares as follows:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida.
2. I make this declaration in my role as court-appointed receiver in support of the Receiver's Opposition to Motion of Wells Fargo Bank, N.A. (I) for Relief from Injunction or,

in the Alternative, (II) to Compel the Receiver to Abandon the Property Located at 841 South Main Street, Graham, North Carolina filed by non-party Wells Fargo Bank, N.A.

3. I make this declaration based on information personally known to me or gathered and investigated by others at my request and under my direction.

4. By orders dated January 21, 2009, June 3, 2009, January 19, 2010, and September 23, 2010, the Court in *Securities & Exch. Comm'n v. Arthur Nadel, et al.*, Case No. 8:09-cv-87-T-26TBM (M.D. Fla.), appointed me as Receiver for various entities, including Viking Fund, LLC ("**Viking Fund**"); Viking IRA Fund, LLC ("**Viking IRA Fund**"); Victory Fund, Ltd. ("**Victory Fund**"); Victory IRA Fund, Ltd. ("**Victory IRA Fund**"); Scoop Real Estate, L.P. ("**Scoop RE**"); and Valhalla Investment Partners, L.P. ("**Valhalla**") (collectively, the "**Hedge Funds**").

5. Wells Fargo Bank, N.A.'s predecessor, Wachovia Bank, N.A. (collectively, "**Wells Fargo**" and, when referring exclusively to Wachovia Bank, N.A. before its acquisition by Wells Fargo, "**Wachovia**"), loaned Scoop RE \$2,655,000 to purchase a building at 841 South Main Street, Graham, North Carolina which is currently being leased to a Rite-Aid Pharmacy (the "**Property**"). To date, Wells Fargo has received payments of interest or principal of \$681,050.22 on this loan.

6. Arthur Nadel controlled Scoop RE and acted on its behalf in connection with the purchase of the Property and the loan described in the previous paragraph.

7. Nadel had been a customer of Wachovia for some time when he opened a set of "shadow" accounts at Wachovia to commingle money invested in the Hedge Funds and to

move it in and out of those Hedge Funds' trading accounts to satisfy redemptions and for other purposes.

8. Because of the obvious impropriety of transferring money directly between independent investment funds, it was necessary for Nadel to conceal these activities. To this end, he opened accounts for Scoop RE and Victory Fund at Wachovia, which he had authority to do. But because he had no authority to open accounts, to transfer money, or to withdraw money for Valhalla, Viking Fund, and Viking IRA Fund, he also opened "doing-business-as" accounts at Wachovia for those Hedge Funds. Specifically, he opened an "Arthur Nadel dba Valhalla Investments" account for Valhalla and an "Arthur Nadel dba Viking Fund" account for Viking Fund and Viking IRA Fund.

9. These and other accounts at Wachovia allowed Nadel to divert funds to satisfy his and his scheme's cash needs. Nadel could not have perpetrated the scheme without these and other Wachovia shadow accounts.

10. Periodically, Nadel transferred large sums of money between the shadow accounts to then move it into the hedge funds' trading accounts for, among other purposes, to be able to cover redemptions requested by investors in the Hedge Funds and to pay them the purported investment gains that were represented to them. Even a cursory review of these transfers raised immediate questions about their propriety.

11. Further, Nadel initiated a number of wires from trading accounts which were accepted into Wachovia shadow accounts that bore an account name that was different from the deposit account name attached to the wires. As such, Wachovia accepted deposits into accounts that had a different name than the destination account name on the wires.

12. Nadel's personal banker at Wachovia had responsibility for making the loan discussed in paragraph 5 above, and had available to him at all relevant times information relating to Nadel and his use of the "doing business as" and other accounts to divert money from the Hedge Funds.

13. Wachovia also was an investor in two Hedge Funds: Scoop RE and Viking Fund. Specifically, a related Wachovia entity which acted as a broker/dealer held investments in those two Hedge Funds for the benefit of Wachovia in connection with a financial transaction involving Wachovia tied to the returns paid by those Hedge Funds.

14. The information distributed to investors and potential investors in those funds showed the following:

a. for the 63 months during which Viking Fund was in existence before Wachovia's investment, that fund only reported one month with a negative return (and at -0.31%, it was barely negative) – in contrast, the S&P index had 22 months of negative returns during the same period;

b. for the 35 months during which Scoop RE was in existence before Wachovia's investment, that fund only reported one month with a negative return (and at -0.25%, it was barely negative) – in contrast, the S&P index had 11 months of negative returns during the same period;

c. for the approximately 21 months during which the pertinent investment in Viking Fund was in place, the fund did not report a single month with a negative return – in contrast, the S&P index had 11 months of negative returns during the same period;

d. for the approximately 18 months during which the pertinent investment in Scoop RE was in place, the fund did not report a single month with a negative return – in contrast, the S&P index had 8 months of negative returns during the same period;

e. the Hedge Funds never reported a single quarter with a negative return;

f. the Hedge Funds reported unusually high investment returns - for example, they reported yields between 11.43% and 55.12% per year, and in most years between 20% and 50%;

g. the Hedge Funds were not audited; and

h. the Hedge Funds' purported accountant had been misidentified as a "CPA" (in reality, his license had been "null and void" since 1989) and had been the subject of an investigation and a cease and desist notice from state regulators for improperly identifying himself as a CPA, all of which information was publicly available.

15. Sarasota County public records also contained the following information at the time Wachovia invested in the Hedge Funds:

a. Nadel had at least eight money judgments entered against him in Sarasota County courts for failing to pay debts; and

b. Nadel had gone through a divorce in which in publicly filed documents he: was alleged to have defrauded "numerous individuals and/or businesses;" swore he was a "self employed" "musician" and later unemployed, had

monthly gross income of \$889.00 and later none, had monthly expenses of \$2,894.00, had total assets of \$1,650.00 and later of only \$1,000.00, and had total liabilities of \$129,075.00; and he otherwise represented to the court that he was “financially impoverished” and had “no assets, no liquidity, no money in the bank, and no resources of any kind.”

I declare under the penalty of perjury that the foregoing is true and correct and is executed this 1st day of February, 2012.

A handwritten signature in black ink, appearing to read "Burton W. Wiand", written over a horizontal line.

Burton W. Wiand, as Receiver
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