

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants.

CASE NO.: 8:09-cv-0087-T-26TBM

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.

**RECEIVER'S MOTION TO APPOINT APPRAISERS
PURSUANT TO 28 U.S.C. §2001 TO APPRAISE RECEIVERSHIP
REAL PROPERTY IN GRAHAM, NORTH CAROLINA**

On January 24, 2012, the Court denied without prejudice (Doc. 726) Burton W. Wiand, as Receiver's (the "Receiver") Verified Motion to Approve the Sale of Real Property Located in Graham, Alamance County, North Carolina (the "Sale Motion") (Doc. 706). As that motion explained, the proposed sale of the pertinent property in Graham, North Carolina (the "Property") is in the best interest of the Receivership estate. The January 24th Order

denied the motion without prejudice based on the Receiver's non-compliance with 28 U.S.C. §2001(b) ("Section 2001(b)"). In accordance with the requirements of Section 2001(b), the Receiver respectfully moves the Court for entry of an order appointing the three disinterested persons identified below to appraise the Property. In support, the Receiver states:

1. The Receiver took possession of the Property pursuant to the Order Appointing Receiver. *See generally* Order Appointing Receiver (Doc. 8).

2. Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to "administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors." *Id.* at 1-2.

3. In accordance with his duties, the Receiver moved to approve a private sale of the Property on January 6, 2012. *See* Receiver's Verified Motion to Approve the Sale of Real Property Located in Graham, Alamance County, North Carolina (Doc. 706). The Receiver believes that a private sale of the Property at this time is in the best interest of the Receivership estate. *See id.*

4. The Court denied the Receiver's motion without prejudice on the ground that the procedural safeguards of Section 2001(b) had not yet been satisfied, thus depriving the Court of jurisdictional authority to confirm the sale proposed by the Receiver. *See* Order Denying Motion (Doc. 726). In relevant part, Section 2001(b) requires the Court to appoint three disinterested persons to appraise the Property before confirming a sale. Specifically, Section 2001(b) states (emphasis added):

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

5. The Receiver has identified three disinterested persons (the “Proposed Appraisers”) to appraise the Property who are qualified to provide the required appraisals. The Proposed Appraisers are Thomas J. Skeahan, MAI (Vice President, CBRE, Inc.), Roscoe W. Shiplett, MAI (Managing Director, Grubb & Ellis Landauer Valuation Advisory Services, LLC), and Mark A. Morgan (Fred H. Beck & Associates, LLC).¹ Copies of the Proposed Appraisers’ qualifications are attached hereto as Exhibits A, B, and C, respectively.

6. The Proposed Appraisers estimate the cost of the required appraisals to be between \$4,000 and \$5,500 each, depending upon the time within which the appraisal is to be completed. The Receiver believes the range of quoted fees charged are reasonable and consistent with the fees charged by other appraisers.

¹ Wells Fargo Bank, N.A.’s (“Wells Fargo”) opposition to the Sale Motion (Doc. 718) included an appraisal used to support its asserted value of the Property, but that appraisal is unreliable for a number of reasons. Those reasons include that: it did not comply with the typical methodology used by appraisers; it applied the methodology it did use incorrectly to inflate the Property’s value; it did not account for the tenuous financial condition of Rite Aid; and it used “comparables” that were not, in reality, comparable. In fact, the appraisal demonstrates that Rite Aid stores have sold at a significant discount to those of competitors such as CVS and Walgreen’s, yet the appraisal still uses the latter two as “comparables”.

7. Although the Receiver did not previously have the Property formally appraised to conserve Receivership resources,² in light of Section 2001(b) and Wells Fargo Bank, N.A.'s objection to the sale, the Receiver is now compelled to do so to protect the best interests of the Receivership estate. The appraisals are appropriate at this time because the buyer identified in the Receiver's Sale Motion is still interested in purchasing the Property.

WHEREFORE, the Receiver respectfully requests that this Court enter an order pursuant to 28 U.S.C. §2001(b) appointing the three disinterested persons identified herein to appraise the property located at 841 South Main Street in the City of Graham, Alamance County, North Carolina.

LOCAL RULE 3.01(g) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission and is authorized to represent to the Court that this motion is unopposed.

² Although the Property was not formally appraised, as the Verified Motion to Approve the Sale of Real Property Located in Graham, Alamance County, North Carolina (Doc. 706) shows, the Receiver is fully informed about the Property's current value based on analyses provided by the experienced real estate broker – which, notably, was recommended to the Receiver by Wells Fargo – and the experience of having the Property on the market for almost three years.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on February 8, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I **FURTHER CERTIFY** that on February 8, 2012, I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

Arthur Nadel, Register No. 50690-018
FCI BUTNER LOW
Federal Correctional Institution
P.O. Box 999
Butner, NC 27509

Respectfully submitted,

JAMES, HOYER, NEWCOMER &
SMILJANICH, P.A.

/s/ Sean P. Keefe

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