

**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;
and 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, LLC,

Relief Defendants.

ORDER

Before the Court are Receiver's Motion to Approve Settlement With Goldman Sachs Execution & Clearing, L.P., with supporting exhibits and affidavit (Dkt. 679), Investors' Objections to Settlement and Opposition to Receiver's Motion to Approve Settlement (Dkts. 707-711, 715 & 716), and Receiver's Reply to Objections (Dkt. 731).

Burton W. Wiand, as Receiver, moves the Court for an order approving settlement of claims he intended to assert against Goldman Sachs Execution & Clearing, L.P.

(“GSEC”) on the basis of a Settlement Agreement (Dkt. 679, Ex. A) that contemplates GSEC’s payment in the amount of \$9,850,000 to the Receivership estate in resolution of all claims against that entity as well as the entry of a bar order. The bar order would preclude any claims against GSEC by investors in the Receivership entities or by potential joint tortfeasors, including claims for contribution or indemnity that relate in any way to the Ponzi scheme perpetrated by Defendant Arthur Nadel (Nadel). The Receiver mailed more than 700 settlement notices to investors in the scheme underlying this case, to potential joint tortfeasors, and to other interested parties whose rights may be affected by the Settlement. (Dkt. 686; Dkt. 731, Affidavit of B. Wiand, ¶ 4.) He also published notice in the Wall Street Journal national edition and in the Sarasota Herald Tribune, and posted notice on the receivership website. (Dkt. 699.) The notices advised recipients of their right to object to the Settlement, of the procedure for objecting, and of the January 17, 2012, deadline for filing objections.

The Court finds that the Settlement amount represents an equitable and good faith balance between the advantages afforded to clearing firms by relevant authorities and various calculations of GSEC’s potential liability in connection with Nadel’s Ponzi scheme. The Settlement amounts to a recovery by the Receivership that is well in excess of all revenues earned by GSEC as a result of its indirect dealings with Nadel. Litigation of the claims against GSCE could easily cost the Receivership in excess of \$1 million without the guarantee of a significant benefit to the estate. The Court also finds that

entry of a bar order is appropriate inasmuch as the Receiver has established that the settlement, and its resulting avoidance of protracted and expensive litigation, is in the best interest of the Receivership estate and the investors and will not result in any prejudice. The Receiver additionally demonstrates that entry of the bar order facilitates a higher settlement value and, therefore, a larger recovery for claimants that would otherwise be available without the bar order.

A district court has broad powers and wide discretion to determine relief in an equity receivership. See S.E.C. v. Elliott, 953 F.2d 1560, 1566 (11th Cir. 1992); see also Liberte Capital Group, LLC v. Capwill, 462 F.3d 543, 551 (6th Cir. 2006) (reiterating holding that a district court has broad powers in fashioning relief in an equity proceeding) (citing and quoting Liberte Capital Group, LLC v. Capwill, 421 F.3d 377, 382 (6th Cir. 2005)). In fact, federal courts have issued bar orders in connection with settlements proposed by equity receivers. See generally, Gordon v. Dadante, 336 Fed.Appx. 540 (6th Cir. 2009); Commodity Futures Trading Comm'n v. Equity Fin. Group, 2007 WL 2139399 (D. N.J. 2007); Harmelin v. Man Fin., Inc., 2007 WL 4571021 (E.D. Pa. 2007); SEC v. Capital Consultants, LLC, 2002 WL 31470399 (D. Or. 2002). Notably, only the Investors' Objection even addressed the bar order and only to

the extent of arguing that the record is insufficient for the Court to properly evaluate the request. (Dkt. 715.)¹

The Court has carefully reviewed the Objections to Receiver's Motion to Approve Settlement, but finds that none of the Objectors has standing to contest the Settlement. Seven of the eight Objectors did not file a claim in the claims process established in this case. Consequently, they lack standing to object. See Callahan v. Moneta Capital Corp., 415 F.3d 114, 117-18 (1st Cir. 2005) (holding that potential claimants who did not submit claims by bar date "d[id] not have "standing to object to the adjudication of a pending claim in the Claims Disposition Order."); see also Fryer v. Enter. Bank, 2006 WL 3052165, at *9 n.10 (W.D. Pa. 2006) (following Callahan). The sole Objectors who actually filed a claim, Vernon M. Lee, individually, and as trustee of the Vernon M. Lee Trust (Dkt. 715), lack standing because they allegedly received false profits and consequently are not creditors of the Receivership estate and are not otherwise entitled to distributions from it.² See e.g., In re Patriot Co., 303 B.R. 811, 815 (8th Cir. BAP 2004) (holding that objector lacked standing to challenge a settlement in which the objector was not aggrieved or had no financial stake) (citations omitted); In re Southern Med.

¹ These Objectors are currently Defendants in lawsuits filed by the Receiver in the Tampa Division of this district seeking return of what the Receiver classifies as "false profits." See case numbers 8:10-cv-166-T-17MAP; 8:10-cv-205-T-17MAP; and 8:10-cv-210-T-17MAP.

² As noted earlier, these Objectors are currently Defendants in a lawsuit filed by the Receiver in the Tampa Division of this district seeking return of what the Receiver classifies as "false profits." See 8:10-cv-210-T-17MAP.

Arts Cos., Inc., 343 B.R. 258, 263 (10th Cir. BAP 2006) (holding that “[b]eing neither a party to the [settlement] Agreement, a creditor, nor adversely effected by the Agreement, [objector] lacked standing to object to its approval.”); In re Huggins, 460 B.R. 714, 718 (E.D. Tenn. Bankr. 2011) (rejecting Objector’s argument that the terms of the settlement were not in the best interests of the estate because he was not a creditor and would not receive a distribution from the estate). Furthermore, each of the Objections focuses on matters that are either unfounded or irrelevant to resolving Receiver’s Motion.

What is indeed relevant is that, in full compliance with his responsibilities, the Receiver carefully considered the potential claims against the GSEC by properly balancing the costs and risks of proceeding to litigation with the considerable savings and the certain and substantial benefit to the Receivership estate that would result from the Settlement. Contrary to Objectors’ assertions, each of the legal and factual considerations relevant to that balancing process is discussed in sufficient detail in Receiver’s Motion (Dkt. 679) and supporting affidavit (Dkt. 680). Receiver explained that GSEC’s role as a clearing firm presents an additional barrier to potential claims; that litigation would likely cost the Receivership more than \$1 million in legal expenses; that the settlement amount approximates the full value of money transferred from Nadel-controlled accounts at GSEC serviced through Shoreline Trading Group LLC to shadow accounts at Wachovia Bank and exceeds the total fees that GSEC earned in connection

with those accounts; and that the Settlement amount will compensate Nadel's victims with allowed claims.

Here, the Receiver acts on behalf of private Receivership Entities and must protect the best interests of the Receivership estate and defrauded investors. In a similar case involving a Ponzi scheme, the Tenth Circuit determined that the interests of the receiver were very broad and included not only protection of the receivership *res*, but also protection of the defrauded investors and considerations of judicial economy. See Securities and Exchange Comm'n v. Vescor Capital Corp., 599 F.3d 1189, 1194 (10th Cir. 2010). The Court finds that the Settlement is fair, reasonable, and in the best interest of the Receivership estate and the defrauded investors as a whole. See Sterling v. Stewart, 158 F.3d 1199, 1202 (11th Cir. 1998) (holding that the determination of fairness of the settlement [in an equity receivership] is left to the sound discretion of the trial court and that the court's decision will not be overturned absent a clear showing of abuse of discretion).

ACCORDINGLY, it is ORDERED AND ADJUDGED:

1. Receiver's Motion to Approve Settlement With Goldman Sachs Execution & Clearing, L.P. (Dkt. 679) is granted.
2. The Settlement between Receiver and GSEC presented to the Court is a fair, equitable, and good faith settlement of all claims that the Receiver, the Receivership estate, and the Receivership entities may have against GSEC;

3. The Settlement reflected in the Settlement Agreement attached as Exhibit A to docket 679 is specifically approved, and the Receiver is authorized to enter into and complete the proposed Settlement with GSEC in accordance with the requirements of the Settlement Agreement;

4. All individuals or entities who invested money in a Receivership Entity, as well as persons or entities who may have liability to Receiver, the Receivership Entities, or such investors arising or resulting from the fraudulent scheme underlying the SEC Receivership Action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors, and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action, or proceeding of any kind and in any forum against GSEC that arises from or relates to the clearing, execution, and/or prime brokerage services that GSEC performed for Receivership Entities, including the Relief Defendants, or the allegations of the SEC Receivership Action;

5. The injunction bars all claims against GSEC for contribution, indemnity, or any other cause of action arising from the liability of any person or entity to the Receiver or to any of the Receivership Entities or their investors (including claims in which the injury is the liability to Receiver or any of the Receivership Entities or their investors or where damages are calculated based on liability to the Receiver or any of the Receivership Entities or their investors), in whatever form and however denominated, and that such

person or entity shall be entitled to such set-offs or judgment reductions as permitted by law, if any, as a result of said injunction;

6. The releases included in the Settlement Agreement have been given in good faith, and the Settlement Agreement, therefore, discharges GSEC from all liability for contribution to any other tortfeasor pursuant to, at a minimum, Fla. Stat. § 768.31(5) and 15 U.S.C. § 78u-4(f)(7).

7. The Clerk is directed to enter this order as a final judgment.

DONE AND ORDERED at Tampa, Florida, on February 10, 2012.

s/Richard A. Lazzara

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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