

EXHIBIT D



U.S. Department of Justice

United States Attorney
Southern District of New York

United States District Courthouse
300 Quarropas Street
White Plains, New York 10601

May 23, 2011

Via Federal Express

Ana T. Barnett
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street, Ste. 2200
Miami, FL 33130

Re: United States v. Arthur G. Nadel
09 Cr. 433 (JGK)

Dear Ms. Barnett:

Enclosed is a copy of the Preliminary Order of Forfeiture/Final Order of Forfeiture as to Defendant's Interest in Specific Property, entered by the Court on December 2, 2010 in the above-referenced case. Should you wish to assert a legal interest in the property which has been ordered forfeited to the United States, a petition for a hearing to adjudicate the validity of your alleged interest in the property must be filed within thirty-five days of the date of this letter.

Pursuant to 21 U.S.C. § 853(n)(3), such a petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the claim, and the relief sought.

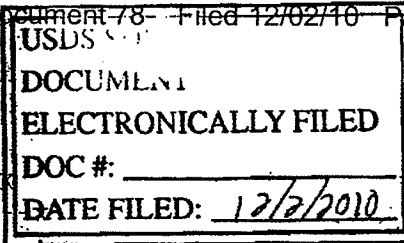
Respectfully,

PREET BHARARA
United States Attorney
Southern District of New York

By:

Jeffrey E. Alberts
Jeffrey E. Alberts
Assistant United States Attorney
Tel. (914) 993-1965

Enclosure



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : PRELIMINARY ORDER
 : OF FORFEITURE/FINAL ORDER
 -v.- : OF FORFEITURE AS TO
 : DEFENDANT'S INTEREST IN
 ARTHUR NADEL, : SPECIFIC PROPERTY
 :
 Defendant. : 09 Cr. 433 (JGK)
 :
 -----x

WHEREAS, on or about April 28, 2009, ARTHUR NADEL, (the "defendant"), was charged in a fifteen-count Indictment 09 Cr. 433 (JGK) (the "Indictment"), with, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Counts One through Six); mail fraud in violation of Title 18, United States Code, Sections 1341 and 2 (Count Seven); and wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 (Counts Eight through Fifteen);

WHEREAS, the Indictment includes forfeiture allegations, providing notice that the Government is seeking, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the fraud offenses, including, but not limited to, the following:

- a. A sum of money equal to \$162,000,000 in United States currency, representing the amount of proceeds obtained as a result of the fraud offenses alleged in Counts One through Fifteen of the Indictment;
- b. Any and all funds on deposit in Account No. 2840109316 held in the name of Marguerite J. Nadel Revocable Trust at Northern Trust, N.A.;
- c. The real property and appurtenances known and described as 15576 Fruitville Road, Sarasota, Florida;
- d. The real property and appurtenances known and described 131 Garren Creek Road, Fairview, North Carolina;
- e. The real property and appurtenances known and described as approximately acres and forty-five lots in the name of Scoop Capital, LLC, in Thomasville, Georgia;
- f. The real property and appurtenances known and described as approximately thirty-seven acres in the name of Scoop Capital, LLC, in Grady County, Georgia;
- g. All right, title, and interest in the entity known and described as the Venice Jet Center located in Venice, Florida;
- h. All right, title, and interest in the entities known and described as Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, and Laurel Mountain Preserve Homeowners Association, Inc., including, but not limited to, 420

acres in Buncombe County and McDowell County, North Carolina;

- i. All right, title, and interest in the entity known and described as Tradewind, LLC, including, but not limited to, five airplanes, one helicopter, and thirty-one airport hangars, located in Newnan-Coweta County Airport, Georgia; and
- j. All right, title, and interest in the entity known and described as the Guy-Nadel Foundation, Inc.;

WHEREAS, on or about February 24, 2010, the defendant pled guilty to Counts One through Fifteen of the Indictment pursuant to a plea agreement with the Government ("the Agreement");

WHEREAS, in the Agreement, the defendant agreed to forfeit to the Government a sum of money equal to \$162,000,000 in United States Currency (the "Money Judgment"), and all of his right, title and interest in the following properties:

- (a) Any and all funds on deposit in Account No. 2840109316 held in the name of Marguerite J. Nadel Revocable Trust at Northern Trust, N.A.;
- (b) The real property and appurtenances known and described as 15576 Fruitville Road, Sarasota, Florida;
- (c) The real property and appurtenances known and described as 131 Garren Creek Road, Fairview, North Carolina;
- (d) The real property and appurtenances known and described as approximately fourteen acres and forty-five lots in the name of Scoop Capital, LLC, in Thomasville, Georgia;

- (e) The real property and appurtenances known and described as approximately thirty-seven acres in the name of Scoop Capital, LLC, in Grady County, Georgia;
- (f) All right, title, and interest in the entity known and described as the Venice Jet Center located in Venice, Florida;
- (g) All right, title, and interest in the entities known and described as Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, and Laurel Mountain Preserve Homeowners Association, Inc., including, but not limited to, 420 acres in Buncombe County and McDowell County, North Carolina;
- (h) All right, title, and interest in the entity known and described as Tradewind, LLC, including, but not limited to, five airplanes, one helicopter, and thirty-one airport hangars, located in Newnan-Coweta County Airport, Georgia; and
- (i) All right, title, and interest in the entity known and described as the Guy-Nadel Foundation, Inc.

(hereinafter the "Specific Properties");

WHEREAS, on or about October 14, 2010, the defendant was sentenced and ordered to forfeit his interest in the Specific Properties and to the Money Judgment;

WHEREAS, pursuant to 21 U.S.C. § 853(g), the United States is now entitled, pending any assertion of third-party claims, to reduce the Specific Properties to its possession and to notify any and all potential purchasers and transferees thereof of its interest therein;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. As a result of the offenses charged in Counts One through fifteen of the Indictment, to which the defendant entered a guilty plea, a Money Judgment in the amount of \$162,000,000 shall be entered against the defendant, as such sum represents property, real and personal, derived from the offense charged in Counts One through Fifteen of the Indictment.

2. All of the defendant's right, title and interest in the Specific Properties is forfeited to the United States for disposition in accordance with the law, subject to the provisions of 21 U.S.C. § 853(n).

3. Upon entry of this Preliminary Order of Forfeiture, the United States Marshals Service (or its designee) is authorized to seize the Specific Properties and hold the Specific Properties in its secure, custody and control.

4. Pursuant to 21 U.S.C. § 853(n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, and Rules G(4)(a)(iv)(C) and G(5)(a)(ii) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, the United States shall publish for at least thirty (30) consecutive days on the official government internet forfeiture site, www.forfeiture.gov, notice of this Preliminary Order of Forfeiture. Any person, other than the defendant in this case, claiming an interest in the Specific Properties must file a

petition within sixty (60) days from the first day of publication of the notice on this official government internet site, or no later than thirty-five (35) days from the mailing of actual notice, whichever is earlier.

5. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in one or more of the Specific Properties, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title and interest in the Specific Properties and any additional facts supporting the petitioner's claim and the relief sought, pursuant to 21 U.S.C. § 853(n).

6. Pursuant to Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, the Government shall send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

7. Upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture with respect to the Specific Properties pursuant to 21 U.S.C. 853(n) and Rule 32.2(c)(2) of the Federal Rules of Criminal Procedure, in which all third-party interests will be addressed.

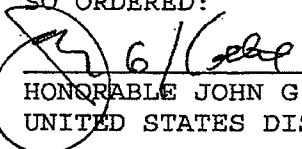
8. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

9. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Preliminary Order of Forfeiture, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

10. The Clerk of the Court shall forward three certified copies of this order to Assistant U.S. Attorney Sharon Levin, One St. Andrew's Plaza, New York, New York, 10007.

Dated: New York, New York
October 21, 2010

SO ORDERED:



HONORABLE JOHN G. KOELTL
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	
UNITED STATES OF AMERICA	:	
	:	
-v.-	:	VERIFIED PETITION FOR A
	:	HEARING TO ADJUDICATE
ARTHUR NADEL,	:	THE INTEREST OF WELLS
	:	FARGO BANK
Defendant.	:	
	:	No. 09 CR 433 (JGK)
-----X	:	

**VERIFIED PETITION FOR A HEARING
TO ADJUDICATE THE INTEREST OF WELLS FARGO BANK**

Third Party Petitioner WELLS FARGO BANK, N.A., (“Wells Fargo”)¹, as successor by merger to Wachovia Bank, N.A., hereby petitions the Court for an ancillary hearing pursuant to 21 U.S.C. § 853(n)(2), and Fed. R. Crim. P. 32.2(c) to adjudicate its interest in real property identified in the Preliminary Order of Forfeiture (DE 78) as **Laurel Mountain Preserve**, located in Buncombe and McDowell Counties, North Carolina², and states:

FACTS SUPPORTING PETITION

1. Wells Fargo owns and holds a duly perfected³ priority interest in the Laurel Mountain real property. Its interest arises from a Deed of Trust and Assignment of Rents (“Deed of Trust”) given to secure a Promissory Note (“Note”) evidencing a loan made to Laurel Preserve, LLC in the amount of One million, nine hundred thousand dollars (\$1,900,000.00) on

¹ The bank charters of Wachovia Bank, N.A. and Wells Fargo Bank, N.A. were combined under the Wells Fargo Bank charter.

² The Laurel Mountain Preserve real property is only referred to in the Preliminary Order of Forfeiture as “420 acres in Buncombe County and McDowell County, North Carolina. These 420 acres are more precisely described in Exhibit A.

³ The Deed of Trust and Assignment of Rents dated May 2, 2008 was recorded on May 6, 2008 in Official Records Book 4560 at Page 779, of the Public Records of Buncombe County, N.C. and also recorded on May, 9 2009 in Official Records Book 961 at Page 854, of the Public Records of McDowell County, N.C.

May, 2, 2008. True copies of the Promissory Note and Deed of Trust are attached hereto and incorporated herein as Exhibits B and C, respectively.

2. The Deed of Trust on the Laurel Preserve real property was given to secure the \$1.9 million loan to Laurel Preserve, LLC, at a time when Wells Fargo Bank was reasonably without cause to believe that the property was subject to forfeiture. This makes Wells Fargo Bank a *bona fide* purchaser for value of the right, title and interest in the Laurel Preserve real property.

3. As of this date, there remains an outstanding principal balance of \$1,900,000.00 due and owing to Wells Fargo under the Promissory Note, exclusive of interest, fees and costs.

4. The payment of principal and interest due on February 2, 2009 and thereafter has not been made. Accordingly, under the terms and requirements of the Note and Deed of Trust, Wells Fargo is entitled to look to its secured interest in the Laurel Mountain Preserve real property for repayment.

MEMORANDUM OF LAW

To prevail on its claim to the Laurel Mountain Preserve real property, Wells Fargo need only establish by a preponderance of the evidence that is a *bona fide* purchaser for value of its interest in the property, and at the time it acquired its interest it was reasonably without cause to believe that the property was subject to forfeiture under the forfeiture law. See, 21 U.S.C. § 853(n)(6).

Wells Fargo loaned Laurel Preserve, LLC \$1.9 million on May 2, 2008, and in consideration it obtained a Deed of Trust in its favor to ensure repayment. At the time of the loan, in 2008, Wells Fargo could not have reasonably suspected, much less “believed” that the property might be subject to forfeiture. Arthur Nadel’s criminal activity did not become known

to Wells Fargo (or anyone outside the government) until January, 2009, when Nadel was arrested – nearly one year after Wells Fargo obtained and perfected its interest in the Laurel Mountain Preserve real property.

RELIEF SOUGHT

Pursuant to 21 U.S.C. § 853(n)(2), and Fed. R. Crim. P. 32.2(c), Wells Fargo Bank seeks a determination of the validity and superiority of its security interest in the Laurel Mountain Preserve real property, in the amount of the outstanding principal and interest, plus fees, costs and expenses due under the Note and Deed of Trust; and a determination that Well Fargo's security interest in the Laurel Preserve Mountain real property is not subject to forfeiture.

WHEREFORE, Third Party Petitioner, Wells Fargo Bank, N.A., having set forth the nature and extent of its interest in the Laurel Mountain Preserve real property, petitions the Court to find that Wells Fargo is a bone fide purchaser for value without knowledge that the property was subject to forfeiture and accordingly amend its Preliminary Order of Forfeiture; and for such other relief in favor of Wells Fargo as the Court deem just and proper.

Respectfully Submitted,

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
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150 West Flagler Street
Miami, FL 33130
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KELLY R. MELCHIONDO

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Appearing Pro Hac Vice

VERIFICATION

In accordance with the requirements of 21 U.S.C. § 853(n)(3):

I, Sara E. Ottman, am Assistant Vice President of Petitioner WELLS FARGO BANK, N.A., successor by merger to Wachovia Bank, N.A. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Sara E. Ottman

6-9-11

Date