

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

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:
UNITED STATES OF AMERICA
:
-v.- **09 Cr. 433 (JGK)**
:
ARTHUR NADEL, **ECF CASE**
:
Defendant.
:
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**GOVERNMENT'S APPLICATION FOR AN ORDER
VACATING THE PRELIMINARY ORDER OF FORFEITURE**

The Government respectfully submits this application for an order vacating the Preliminary Order of Forfeiture/Final Order of Forfeiture as to Defendant's Interest in Specific Property, dated October 21, 2010 (the "Preliminary Order of Forfeiture") as to all specific property identified in that order. As explained below, vacating the Preliminary Order of Forfeiture will assist victims of Arthur Nadel's criminal scheme in receiving the remaining proceeds of that crime by facilitating the distribution of that property by the Receiver appointed in *Securities and Exchange Commission v. Nadel*, 09-cv-87-T-26TBM (M.D. Fla.) (the "S.E.C. Action").

BACKGROUND

A. The Indictment

On or about April 28, 2009, Arthur Nadel ("Nadel" or 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). 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. At least approximately \$360 million in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the charged securities fraud, mail fraud, and wire fraud offenses;
- 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 3966 Country View Drive, Sarasota, Florida;
- d. The real property and appurtenances known and described as 15576 Fruitville Road, Sarasota, Florida;
- e. The real property and appurtenances known and described 131 Garren Creek Road, Fairview, North Carolina;
- f. 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;
- g. The real property and appurtenances known and described as approximately thirty-seven acres in the name of Scoop Capital, LLC, in Grady County, Georgia;
- h. All right, title, and interest in the entity known and described as the Venice Jet Center located in Venice, Florida;
- i. 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;
- j. 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
- k. All right, title, and interest in the entity known and described as the Guy-Nadel Foundation, Inc.

B. Guilty Plea and Plea Agreement

On or about February 24, 2010, the defendant pled guilty to Counts One through Fifteen of the Indictment pursuant to an agreement with the Government (“the Agreement”). 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 (the “Laurel Mountain Preserve Property”);
- 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”).

C. Sentencing and Preliminary Order of Forfeiture

On or about October 21, 2010, the defendant was sentenced and ordered to forfeit his interest in the Specific Properties and to the Money Judgment. In an order dated October 21,

2010, the Court entered the Preliminary Order of Forfeiture, which entered the Money Judgment against the defendant and forfeited all of the defendant's right, title and interest in the Specific Properties.

D. Wells Fargo Petition

On June 24, 2011, Wells Fargo Bank, N.A. ("Wells Fargo") filed its Verified Petition pursuant to 21 U.S.C. § 853(n)(2), and Fed. R. Crim. P. 32.2(c), seeking a hearing to adjudicate its interest in the Laurel Mountain Preserve Property, which petition was amended on July 2, 2011. Wells Fargo represented that it is a bona fide purchaser for value of a right, title, or interest in the Laurel Mountain Preserve Property, and was at the time that it obtained its interest in the property reasonably without cause to believe that the property was subject to forfeiture.

On February 12, 2012, this Court entered a Stipulation and Order vacating the Preliminary Order of Forfeiture as to the Laurel Mountain Preserve Property.

No other forfeiture petition has been filed in this action and no person has otherwise filed any submission in this action asserting a legal interest in any of the Specific Properties.

E. Receiver

On January 21, 2009, the Securities and Exchange Commission (the "S.E.C.") initiated the S.E.C. Action by filing a complaint charging Nadel and certain entities that he controlled with violations of federal securities laws. That same day, the court in the S.E.C. Action entered an order appointing Burton W. Wiand as Receiver for certain of these entities and later granted several motions that expanded the scope of the Receivership and appointed the Receiver as receiver over additional entities controlled by Nadel. *See generally* Receiver's

Tenth Interim Report, filed December 15, 2011, attached hereto as Exhibit A; Receiver's Unopposed Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan Distribution, and (4) Establish Objection Procedure, filed December 11, 2011 (the "Receiver's Distribution Motion"), attached hereto as Exhibit B.

Since that time, the Receiver has obtained control of numerous assets previously controlled by Nadel, including all of the Specific Properties. *See* Receiver's Tenth Interim Report. More specifically, the funds on deposit in Account No. 2840109316 held in the name of Marguerite J. Nadel Revocable Trust at Northern Trust, N.A. have been transferred to the Receivership Estate. The real property and appurtenances known and described as 15576 Fruitville Road, Sarasota, Florida is under the Receiver's control and has been listed for sale. The real property and appurtenances known and described as 131 Garren Creek Road, Fairview, North Carolina is under the Receiver's control and has been listed for sale. 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 is under the Receiver's control and has been listed for sale. The real property and appurtenances known and described as approximately thirty-seven acres in the name of Scoop Capital, LLC, in Grady County, Georgia was sold by the Receiver in May 2011. The right, title, and interest in the entity known and described as the Venice Jet Center located in Venice, Florida, including assets controlled by that entity, were sold by the Receiver in January 2010. The Laurel Mountain Preserve Property is under the Receiver's control and the property is for sale. As for the 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,

Tradewind, LLC is under the Receiver's control, and the Receiver has sold 3 airplanes and a helicopter and turned 2 other airplanes over to lenders. Finally, as to the right, title, and interest in the entity known and described as the Guy-Nadel Foundation, Inc., this entity is under the Receiver's control. The Receiver closed the entity's accounts and transferred the funds to the Receivership Estate.¹

The Receiver has moved for an order determining the priority of claims. In this motion, the Receiver asks that priority be given to investor claims and tax claims (which represent only a few thousand dollars) over other claims, including trade creditor claims. *See* Receiver's Distribution Motion at 7-71. This priority of investor claim over other claims is consistent with the statutory definition of victim for purposes of criminal restitution as "a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered." 18 U.S.C. § 3663(a)(2).

DISCUSSION

A. The Court Should Vacate the Preliminary Order of Forfeiture as to the Specific Properties

The Court should vacate the Preliminary Order of Forfeiture as to the Specific Properties, because this is in the best interest of Nadel's victims. When a partnership or corporate entity participated in, or was otherwise closely associated, with securities fraud, it is common for the S.E.C. to initiate civil proceedings while the criminal prosecution, including any associated forfeiture proceeding, is pending. It is in the best interest of fraud victims for the

¹ This summary of the status of the individual properties are based on oral and written summaries provided to the Government by the Receiver's counsel. The Receiver's counsel represented that this information was accurate as of February 14, 2012.

Government to coordinate with S.E.C. and, where applicable, the appointed S.E.C. Receiver in order to maximize recovery of assets available to victims.

In this particular case, the Government determined that the Receiver was best situated to collect and distribute assets to defrauded investors. The Receiver has collected assets that would otherwise be subject to forfeiture, as well as other assets, and has applied for an order authorizing the Receiver to begin distributing assets to victims. Because in this action the Receiver has control over the Specific Properties and is in a position to quickly and efficiently liquidate this property and distribute the property to victims, it is in the best interest of the victims to have the Specific Properties distributed in the S.E.C. Action.

The Receiver has informed the Government that vacating the Preliminary Order of Forfeiture as to the Specific Properties would assist the Receiver in quickly getting available assets to victims. Among other things, vacating the Preliminary Order of Forfeiture as to the Specific Properties would eliminate any cloud that might otherwise exist over the title of the Specific Properties. It also would make clear, to the extent that any dispute exists, that the S.E.C. Action is the proper action for resolving any disputes that exist over the Specific Properties.

Because vacating the Preliminary Order of Forfeiture as to the Specific Properties is in the best interests of the victims in this case, the Government respectfully requests that the Court enter the proposed order, attached hereto as Exhibit C, vacating the Preliminary Order of Forfeiture as to the Specific Properties.

CONCLUSION

For these foregoing reasons, the Government respectfully requests that the Court vacate the Preliminary Order of Forfeiture as to the Specific Properties.

Dated: February 29, 2012
New York, New York

Respectfully submitted,

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By: /s/
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