

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

8:09-cv-87-T-26TBM

Plaintiff

-v.-

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, LTD,  
VIKING FUND, LLC, and  
VIKING MANAGEMENT,

Relief Defendants.

**UNITED STATES' MEMORANDUM ON JURISDICTION**

The United States Attorney for the Middle District of Florida, through the undersigned Assistant United States Attorney, on behalf of the United States Attorney for the Southern District of Florida, respectfully submits this memorandum concerning the United States Attorney's Office for the Southern District of New York's (USAO) coordination with the S.E.C. and the Receiver concerning assets controlled by the Defendants and Relief Defendants in this

action and concerning the legal basis for this Court to exercise jurisdiction over those assets.

## **BACKGROUND**

### **A. The Indictment**

On or about April 28, 2009, a grand jury in the Southern District of New York charged Arthur Nadel 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, Nadel pled guilty in criminal action 09 Cr. 433 (JGK) (S.D.N.Y.) (the “Criminal Action”) 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, United States District Court Judge John G. Koeltl entered the Preliminary Order of Forfeiture/Final Order of Forfeiture as to Defendant's Interest in Specific Property (“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 a Verified Petition, pursuant to 21 U.S.C. § 853(n)(2) and Fed. R. Crim. P. 32.2(c), in the Criminal Action, 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, the court overseeing the Criminal Action (the “S.D.N.Y. 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 the Criminal Action and no person has otherwise filed any submission in that 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 this action by filing a complaint charging Nadel and certain entities that he controlled with violations of federal securities laws. That same day, this Court 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.

The S.D.N.Y. Court was aware that the Receiver was actively involved in tracking down assets controlled by Nadel. Indeed, the bail conditions that the S.D.N.Y. Court imposed on Nadel, on February 25, 2009, included that “the defendant shall cooperate with the Government to identify where each of the withdrawals went to for the period since 10/1/08” and “the defendant shall cooperate with the receiver and the SEC to trace all of the financial transactions, to uncover any assets and recover any assets.” See Criminal Action Docket, attached hereto as Exhibit A, 02/25/2009 Entry.

Moreover, the S.D.N.Y. Court was aware that the assets that the Receiver was tracking and take possession of were the same assets listed in the Indictment. For example, on May 22, 2009, the Receiver’s First Interim Report was filed in the Criminal Action. See Criminal Action Docket, Entry 22. As this Court is aware, the First Interim Report detailed the Receiver’s efforts to take possession of assets of the Defendants. Among other things, the First Interim Report expressly discusses the Receiver’s efforts to exercise control over the Venice Jet Center, LLC [at 19-20], Tradewind LLC [at 20-22], the Laurel Mountain Preserve Property [at 22-24], the Guy-Nadel Foundation, Inc. [at 25-26], forty-five lots in the name of Scoop Capital, LLC, in Thomasville, Georgia [at 30-31], and thirty-seven acres in the name of Scoop Capital, LLC, in Grady County, Georgia [at 31], all of which were listed as subject to forfeiture in the

Indictment. The First Interim Report also made clear what the Receiver intended to do with Nadel's assets, stating [at 7] that "[a]s contemplated by the Order, the Receiver will ultimately institute a claims process primarily for the benefit of the Receivership Entities investors who have been defrauded and suffered legitimate losses as a result of the activities of Nadel and others." Similarly, the Second Interim Receiver's Report also was filed in the Criminal Action. See Criminal Action Docket, Entry 25 (06/12/2009).

In addition to receiving written reports concerning the Receiver's ongoing efforts to collect Nadel's assets, the S.D.N.Y. Court requested that the Receiver directly participate in the Criminal Action. On July 9, 2009, the S.D.N.Y. Court requested that the Receiver be present for a bail hearing then scheduled for July 9, 2009. See Criminal Action Docket, Entry 30. At that hearing the S.D.N.Y. Court noted that "the receiver has been actively involved in seizing property . . . there were other assets that were out there which have now gone [including] corporations, planes, houses." 7/9/2009 Hearing Tr. at 8 (excerpts of this transcript are attached hereto as Exhibit B). The Receiver also explained to the S.D.N.Y. Court what he was charged to do in this action:

I'm charged with gathering assets, conducting investigation with respect to what's transpired, operating and managing whatever assets are there, including businesses, and then concurrently, and usually somewhat subsequently, conducting the claims process and distributing whatever comes out of this.

*Id.* at 23.

The USAO understands that the Receiver has now 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.<sup>1</sup>

The USAO further understands that 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. 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).

**F. Coordination and Motion to Vacate**

Early on in the Criminal Action, the USAO determined that the Receiver was better situated than the USAO to efficiently collect at least some of Nadel's assets and return them to victim investors. Among other things, the Receiver had possession of the Nadel's headquarters at 1618 Main Street, Sarasota, FL 34236, which contained the books and records of Nadel and the other

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<sup>1</sup> 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.

Defendants. The Receiver also had possession of several servers and related computer equipment used by Nadel and the other Defendants. This put the Receiver in a good position to act quickly to identify and seize Nadel's property. In addition, the Receiver informed the USAO that it intended to request that assets that it seized would be distributed to investors who were Nadel's victims—the same victims identified in the Criminal Action. Accordingly, the USAO informed the Receiver that, based on the Receiver's representations, it did not intend to object to the Receiver's efforts to obtain possession of property that was identified in the Indictment. The USAO further informed the Receiver that the USAO was not permanently waiving its right to pursue forfeiture of those properties and that it would request a preliminary order of forfeiture seeking to forfeit Nadel's interest in those properties. This would ensure that if the Receiver was somehow unable to obtain possession of assets that were subject to forfeiture, or if the Receiver took actions with the property that was inconsistent with the interests of justice, the USAO would retain the ability to seek forfeiture of the property. Finally, the USAO and the Receiver agreed that they would continue to coordinate to ensure the efficient distribution of fraud proceeds to victims of Nadel's fraud.

After the Receiver filed the 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 (the "Receiver's Distribution Motion"), the Receiver requested that the USAO file

a motion to vacate the Preliminary Order of Forfeiture as to the Specific Properties. The USAO concluded that this was in the best interests of the victims identified in the Criminal Action because it would enable the Receiver to quickly and efficiently liquidate this property and distribute the property to victims. Accordingly, on February 29, 2012, the USAO filed an application for vacatur of the Preliminary Order of Forfeiture as to the Specific Properties. This application is attached hereto, without exhibits, as Exhibit C.

## **DISCUSSION**

### **A. The USAO's Coordination with the Receiver Was In the Best Interest of the Investor Victims.**

#### *1. Background on Coordination with the S.E.C. and Other Government and Private Entities*

When a partnership or corporate entity participated in or was otherwise closely associated with a securities fraud, it is common for the S.E.C. to file a complaint against that entity while the criminal prosecution, and any associated forfeiture proceedings, are pending. It is in the best interest of victims for the USAO to cooperate closely with the S.E.C., the S.E.C. receiver, if any, as well as other governmental and private entities, in order to maximize recovery of assets available to victims.

In past cases, the USAO has worked together with the S.E.C., receivers, and other government and private entities who have interests in assets that were used to commit a crime. These entities include the S.E.C., receivers appointed by the S.E.C., bankruptcy trustees, and members of securities class actions.

The optimal form of this cooperation is specific to the facts of each case and can vary widely as a few recent examples demonstrate:

a. Adelphia Communications Corp.

The USAO worked with the S.E.C. and the debtor-in-possession<sup>2</sup> to negotiate a settlement that resolved forfeiture claims against certain members of the Rigas family, potential claims to that property by other members of the Rigas family, and various potential criminal and civil claims against Adelphia. This resulted in the creation of a \$715 million fund to be used to compensate defrauded investors. Because the defrauded Adelphia shareholders could number in the tens of thousands, the Government retained a special master to identify and notify potential victims, verify and process petitions, and recommend a distribution.

b. Refco

The USAO worked, and continues to work, with the Trustee of Refco Litigation Trust, which was created as part of the Chapter 11 plan of Refco, Inc., to recover assets from certain individuals and entities who received proceeds of the Refco fraud. To date, the USAO and the Trustee of Refco Litigation Trust have recovered over \$700 million from these individuals and entities. Some of these funds were paid to the bankruptcy estate and distributed to creditors,

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<sup>2</sup> Under the Bankruptcy Code, a debtor-in-possession is charged with essentially the same fiduciary duties and has essentially the same powers as a trustee. See, e.g., *Adelphia Bus. Solutions v. Abnos*, 482 F.3d 602, 605 (2d Cir. 2007) (“As a debtor in possession, Adelphia has essentially the same rights, powers, and duties as a trustee.”) (citing 11 U.S.C. §§1107(a), 1108).

including victims of the Refco fraud. The remaining funds were forfeited to the United States under civil forfeiture law and distributed to various victims, including *inter alia* creditor victims of the bankruptcy estate.

c. AremisSoft

The USAO has worked, and continues to work, with the Trustees of the AremisSoft Liquidating Trust, which was created as part of the Chapter 11 plan of AremisSoft Corporation, to recover assets from individuals and entities who participated in and facilitated the AremisSoft fraud. To date, the USAO, working with the trustees and the SEC, has recovered approximately \$200 million from these individuals and entities and has assisted the trustees in recovering an additional \$65 million. Some of these funds were paid directly to the Liquidating Trust. The remaining funds were forfeited to the United States and subsequently distributed to the Liquidating Trust. The trustees distributed the recovered proceeds of the AremisSoft fraud under the Chapter 11 plan of reorganization.

d. Bayou

The USAO has worked, and continues to work, with the Equity Receiver, appointed by the court under 28 U.S.C. § 959(b), to recover proceeds of the Bayou hedge fund fraud. To date the USAO has forfeited over \$100 million under final orders of forfeiture entered against individuals convicted of perpetrating that fraud. The USAO continues to pursue assets on behalf of victims in a forfeiture proceeding that is ancillary to the criminal conviction of Samuel Israel III. This ancillary proceeding was consolidated, at the joint request

of the USAO and the Equity Receiver (acting for the Bayou hedge funds in bankruptcy), with an adversary proceeding within the bankruptcy case for purposes of resolving claims over the assets that are the subject matter of the ancillary proceeding.

e. Dreier

The USAO has worked with the Trustees of the estates of Dreier LLP and Marc Dreier to recover assets from individuals and entities who participated in and facilitated the Dreier fraud. The USAO forfeited assets that are likely worth more than \$80 million and the Chapter 11 Trustee sought various assets, including artworks worth hundreds of thousands of dollars that previously had been seized as part of the criminal action against Dreier.

The foregoing examples represent just a few instances in which the USAO has worked with the S.E.C., as well as with other governmental and private entities, to maximize assets available to victims. In addition, these cases show how fraud victims benefitted from working with the USAO to resolve claims. It is noteworthy that in none of these cases did the existence of criminal forfeiture allegations or civil forfeiture claims prevent parallel actions, such as S.E.C. actions and bankruptcies from going forward or prevent the S.E.C. from liquidating assets and making distributions to creditors.

## 2. *Coordination in this Action*

As set forth above, the Receiver is best situated to efficiently collect and distribute the proceeds of Nadel's fraud to investor victims of the fraud.

Accordingly, it is in the best interest of those victims for the Receiver to take the lead in collecting, liquidating, and distributing those proceeds.

The Receiver's role in collecting and distributing assets also was not concealed from the S.D.N.Y. Court as Wells Fargo suggests in its submission. Rather, as described above, the S.D.N.Y. Court was aware that the Receiver was tracing and collecting Nadel's assets with the intention of distributing them, including assets listed in the Indictment and Preliminary Order of Forfeiture.

Moreover, Wells Fargo's suggestion that the Government should have submitted documents to the S.D.N.Y. Court concerning its coordination with the Receiver ignores the fact that there was no conflict requiring the S.D.N.Y. Court's intervention. In contrast to cases like *Dreier*, in which there is a conflict between criminal forfeiture proceedings and other parallel proceedings that relate to forfeitable property, in this case there was no conflict and therefore no cause to apply to the S.D.N.Y. Court for relief. Wells Fargo's suggestion that coordination between the USAO and other government entities like the S.E.C. is a violation of a "minimum standard of decency, honor, and reliability" is absurd. (Wells Fargo Jurisdictional Mem. at n.11.) To the contrary, courts generally appreciate such coordination when it is undertaken in an attempt to maximize the return to victims.

**B. The Preliminary Order of Forfeiture Did Not Divest this Court of Jurisdiction over the Specific Property**

As in the various cases described in the preceding section, the filing of the Indictment did not divest this Court of jurisdiction over the property listed in the Indictment. The listing of property in an indictment merely provides notice to the defendant that the Government will seek the forfeiture of the property as part of the defendant's sentence. See Fed. R. Crim. P. 32.2(a). It is not an assertion of *in rem* jurisdiction over the property listed therein. Rather, as the S.E.C. observes in its Memorandum on Jurisdiction Pursuant to the Court's February 3, 2012 Order (the "S.E.C. Jurisdiction Memorandum"), the jurisdiction in a criminal action is *in personam*, and does not divest other courts of their jurisdiction. See *generally* S.E.C. Jurisdiction Memorandum at 3-5. This also is in the best interests of the victims, because it enables various government and private entities who have interests in assets that were used to commit a crime to coordinate to maximize the return to victim investors.

## CONCLUSION

For these foregoing reasons, the Government respectfully submits that its coordination with the S.E.C. and the Receiver was lawful, proper, and in the best interest of Nadel's victim investors.

Respectfully submitted,

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PREET BHARAR

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## CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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I further certify that on March 1, 2012, I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant:

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*s/Anita M. Cream*  
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