

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

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

Defendants,

SCOOP REAL ESTATE, L.P., et al.

Relief Defendants.

**THE RECEIVER'S AND WIAND GUERRA KING P.L.'S *AMENDED* RESPONSE IN
OPPOSITION TO WELLS FARGO BANK, N.A.'S MOTION FOR LEAVE TO
REPLY IN SUPPORT OF ITS MOTION TO DISQUALIFY (DOC. 794)¹**

Less than 48 hours before the Court's hearing on the Receiver's claims determination motion and Wells Fargo Bank, N.A.'s ("**Bank**") efforts to stop it from proceeding, the Bank moved to disqualify the Receiver and his counsel, Wiand Guerra King P.L. ("**WGK**"), and sought other related relief ("**Motion**"). As WGK's, the Receiver's, and the Securities and Exchange Commission's ("**SEC**") responses to that motion demonstrate ("**Oppositions**") (Docs. 786, 788, 792), the Motion has no merit and is simply the Bank's latest effort to stop this Receivership from (i) contesting the Bank's purported interests in several Receivership properties and (ii) holding it accountable for its role in the Ponzi scheme underlying this case ("**scheme**"). Significantly, the Bank's efforts to date have delayed this Receivership's ability to provide relief to investors victimized by that very scheme.

The Bank's efforts have involved a large number of filings: in only approximately the last 80 days, it has filed 10 legal memoranda consisting of 120 pages of argument and

¹ This is amended to correct a discussion on page 3 of a matter in which Michael Goldberg acted as receiver.

472 pages of exhibits and declarations. The Motion alone is 25 pages with another 44 pages of exhibits and a declaration. Plus, the Bank has filed papers in *U.S. v. Arthur Nadel*, No.1:09-cr-433-JGK (S.D.N.Y.), and it even presented argument on its Motion during the 45-minute hearing held on March 2, 2012 (Doc. 774). Unquestionably, the Bank has had every opportunity to present all possible arguments and supporting information it has relating to its disputes with the Receiver and WGK in its 592 pages of filings and 45 minutes of argument.

Those efforts have not only burdened the Court, but they have also burdened the Receivership estate, the SEC, the Southern District of New York U.S. Attorney's Office, and now also WGK. Notably, they have also negatively impacted the victims of the scheme, not only by costing Receivership resources, but also by delaying relief to the many victims who are depending on this Receivership to provide some relief through claims process distributions. Although that process is now again on track (*see* Doc. 776), the Bank still has been successful in delaying the Court's resolution of, *inter alia*, the dispute between the Receivership and the Bank relating to Receivership real property commonly referred to as the "Rite Aid Property." In turn, that delay is jeopardizing the arrangement currently in place to sell that property for the Receivership estate's benefit.

Not content with 592 pages of filings and the negative impact on this Receivership of its conduct to date, the Bank now seeks leave to file a 20-page reply in support of its Motion (Doc. 794), to essentially "reply" to everything submitted by the Receiver, WGK, and the SEC in the Oppositions. From the Bank's perspective, everything in the Oppositions is "incorrect" or "misrepresents" the law and the facts. But the Oppositions did not raise any novel or unforeseen matters, and the Bank does not even try to explain why it did not

affirmatively address those matters in its original Motion.² There is nothing in the Motion and Oppositions which the Court is incapable of determining without additional briefing and delay. A reply is especially unwarranted in light of the many opportunities the Bank has had – and of which it has taken advantage – to present its arguments to this Court in its over 592 pages of submissions.

Further, a reply is unwarranted because the Motion lacks merit. Perhaps most striking, Michael Goldberg, a partner at Akerman Senterfitt – the Bank’s law firm here – in his capacity as receiver took the same steps as the Receiver here when faced with similar circumstances: when Akerman Senterfitt, acting as Mr. Goldberg’s counsel, was faced with a conflict, Mr. Goldberg never asked to be removed from that receivership and initially did not even ask to be removed from matters involving Akerman Senterfitt’s client, and he certainly did not volunteer to return his or his law firm’s fees.³ Rather, he simply retained special counsel to replace Akerman Senterfitt in receivership matters relating to that client. That is precisely what the Receiver has done here. Mr. Goldberg later sought expansion of special counsel’s role and then appointment of a substitute receiver to handle matters relating that party, but here that is unnecessary because the Bank is no longer a client of WGK.

WHEREFORE, the Bank’s motion for leave to reply (Doc. 794) should be denied so the Court can resolve the Motion without delay and then address the merits of the Bank’s claimed interests in Receivership properties, so the Receiver and his counsel can return their entire focus to continue to move the Receivership forward for the benefit of Nadel’s victims.

² The Bank’s motion for leave to reply appears to refer to correspondence relating to the Receiver’s efforts to negotiate a resolution of the Bank’s loan in connection with offers the Receiver had accepted for the sale of the Rite Aid Property. Those matters did not become adverse until the Receiver denied the claim in December 2011 and, in any event, as Docket 788 addresses, WGK did not even represent the Bank between September 2010 and the end of August 2011.

³ See *SEC v. Latin Am. Servcs. Co.*, No. 99-2360-cv (S.D. Fla.) (discussed in SEC’s submission at Doc. 790).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 15, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on March 16, 2012, I will mail the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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