

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

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

Defendants,

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.

**RECEIVER'S REPLY TO LIMITED OBJECTION OF WELLS FARGO BANK, N.A. IN
OPPOSITION TO RECEIVER'S UNOPPOSED MOTION TO (1) APPROVE FIRST
INTERIM DISTRIBUTION, (2) ESTABLISH RESERVES, AND (3) APPROVE
REVISIONS TO CERTAIN CLAIMS DETERMINATIONS**

Burton W. Wiand, as Receiver (the "**Receiver**"), by and through the undersigned counsel, replies to the Limited Objection of Wells Fargo Bank, N.A. ("**Wells Fargo**" or the "**Bank**") in Opposition to Receiver's Unopposed Motion to (1) Approve First Interim Distribution, (2) Establish Reserves, and (3) Approve Revisions to Certain Claims Determinations ("**Limited Objection**") (Doc. 831) as follows in further support of his Unopposed Motion.

BACKGROUND

On March 2, 2012, a hearing was held before this Court regarding several Receivership matters, including, but not limited to, Wells Fargo's objection to the Receiver's Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, and (3) Establish Objection Procedure (the "**Motion**"). (Docs. 675, 689, 774) As reflected in the Court's Order dated March 2, 2012, the Receiver and Wells Fargo left this hearing with the understanding that the Court's granting of the Motion would not affect any claims asserted by the Bank against real property within the Receivership estate, and that such claims would be considered and resolved by the Court at a later date. (Doc. 776) It was also made clear at the March 2 hearing that any interest that Wells Fargo has as a secured creditor to the property located at 841 South Main Street, Graham, North Carolina (the "**Rite Aid Property**") would simply transfer to the proceeds of the Court-approved sale of the Property and could not exceed the value of such sale.¹ As previously asserted by the Receiver, the Bank would not be able to recover any deficiency from the Receivership estate. And any such deficiency claim would be a Non-Investor Unsecured Claim and thus would receive lower priority than Class 1 Claims.

ARGUMENT

Despite the above-described understandings, Wells Fargo's Limited Objection continues the Bank's pattern of attempting to put its own monetary interests before those of the hundreds of defrauded investors scheduled to receive the first interim distribution for their Class 1 Allowed Claims in the amount of \$25,994,012.73. Now, Wells Fargo contends that the reserve established by the Receiver in the amount of \$1,120,480.72 in connection with the Bank's claim

¹ The Receiver contends that the Bank has no valid claim against the Rite Aid Property or any other Receivership asset as a direct result of the Bank's role in enabling, facilitating and executing Nadel's Ponzi scheme. As reflected elsewhere in the record, the Receiver is currently litigating a separate action against the Bank for aiding and abetting fraud, breach of fiduciary duty and conversion, and negligence, fraudulent transfer and unjust enrichment.

and asserted interests is not enough and should be increased. As a general creditor, the Bank is demanding special treatment that far exceeds what other creditors are receiving. Specifically, Wells Fargo argues that the established reserve should be increased to ensure 100% coverage of the purported value of its claim, while all other claimants are receiving 20% of the value of their Allowed Claims. The Bank provides no explanation or support for why it should be treated more favorably than other creditors.

The status of the Receivership's assets should moot any concern raised by the Bank. Although the Receiver has denied Wells Fargo's claim regarding the Rite Aid Property, should this Court determine that the Receiver must satisfy the Bank's claim, the Receiver has more than adequate assets to satisfy the claim, as valued by Wells Fargo.² The Receiver currently has an asset balance of \$35,128,556.76. Following the first interim distribution, the Receiver will have a remaining balance of \$9,134,544.03. In addition, the Receiver has receivables in the amount of approximately \$5,005,738.95 resulting from other Court-approved land sales and clawback action settlements. Clearly, the Receiver has assets well in excess of the purported value of the Bank's claim against the Rite Aid Property. Accordingly, Wells Fargo has no valid basis for objecting to the Motion or continuing its attempt to derail the first interim distribution.

WHEREFORE, the Receiver respectfully requests that the Court grant his Unopposed Motion to (1) Approve First Interim Distribution, (2) Establish Reserves, and (3) Approve Revisions to Certain Claims Determinations so that the Receiver may proceed with the distribution of \$25,994,012.73 to the innocent victims of Nadel's Ponzi scheme without further delay.

² Notably, Wells Fargo has inflated the value of its security interest against the Rite Aid Property by \$283,929.85 by including unexplained legal fees from three separate law firms totaling \$277,089.85 and a property appraisal fee in the amount of \$6,840.00.

/s/ Jonathan B. Cohen

Jonathan B. Cohen (FBN 0027620)

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Attorney for the Receiver, Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Jonathan B. Cohen

Attorney for the Receiver, Burton W. Wiand