

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants,

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

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 CORRECTED AND UNOPPOSED MOTION FOR ORDER
DIRECTING MEDIATION**

Burton W. Wiand, as Receiver (the "**Receiver**"), by and through his undersigned attorneys, hereby moves this Court for entry of an Order directing the Receiver and Wells Fargo Bank, N.A. ("**Wells Fargo**" or the "**Bank**") to mediation of all unresolved matters pending between the Bank and the Receivership Estate (collectively, the "**Parties**") within forty-five (45) days hereof, and states the following in support.

1. Since the inception of this Receivership on January 21, 2009 (Doc. 8), the Receiver has pursued multiple lawsuits and successfully marshaled Receivership assets in excess

of \$40 million on behalf of hundreds of defrauded victims of Arthur Nadel's Ponzi scheme. However, the Receiver has been unable to resolve pending matters with Wells Fargo.

2. Wells Fargo contends that it is a secured creditor holding certain security interests and claims against Receivership assets, including the following three¹ properties: (a) 841 South Main Street, Graham, North Carolina (the “**Rite Aid Property**”); (b) approximately 420 acres near Asheville, North Carolina in Buscombe and McDowell counties (the “**Laurel Mountain Property**”); and (c) 464 Golden Gate Point, Unit 703, Sarasota, Florida (the “**Sarasota Property**”) (collectively, the “**Properties**”). (Doc. 740) In support of its contention, the Bank has submitted numerous filings regarding its purported security interests, the claims determination process, and the Court’s jurisdiction over certain Receivership assets. (Docs. 689, 690, 718, 719, 740, 745, 759, 762)

3. Although the Court recently granted the Receiver’s renewed motion to approve the sale of the Rite Aid Property (Doc. 842), the issue of Wells Fargo’s claim against the Property remains pending. Following the sale of the Property, any claim the Bank may have as a secured creditor will simply transfer to the proceeds of the sale and have to be addressed at some point in the future. Similarly, the Bank’s contention that it has valid claims against certain other above-described Properties remains unresolved and will also require the time, attention and resources of the Court and the Parties in the near future.

4. To date, the Receiver and his counsel have spent significant time, money and resources litigating the Bank's purported claims to Receivership assets. Additionally, the Receiver has been engaged in a separate action filed against Wells Fargo for its role in Nadel’s Ponzi scheme.

¹ Wells Fargo also claims to hold a security interest in a fourth property located at 30393 Upper Bear Creek Road, Evergreen, Colorado (the “**Evergreen Property**”). However, as reflected elsewhere in the record, the Evergreen Property is not a Receivership asset and is not included within the Receivership Estate.

5. The Bank itself recently confirmed that as of March 31, 2012, its outside counsel alone has spent in excess of \$436,000 in legal fees disputing its claims. Rather than continue to drain Receivership resources quarreling with Wells Fargo over its purported secured claims and the Bank's role in the Ponzi scheme, the Receiver proposes that the Court direct the Parties to mediate all of the unresolved matters remaining between them. Wells Fargo has agreed to participate in such a mediation.

6. The Receiver believes that the unresolved matters between the Receivership Estate and Wells Fargo can be resolved at a structured mediation if the proper personnel are compelled to attend. While the Receiver initiated two prior attempts to resolve the ongoing disputes between the Receivership Estate and the Bank outside of Court, both efforts proved unsuccessful because Wells Fargo did not involve the appropriate corporate representatives in these discussions. Indeed, when the Receiver personally tried to globally resolve disputes with Wells Fargo, he was advised that, because of the autonomy of various business units within the Bank, it was not possible to discuss a comprehensive resolution that would include all aspects of the matters pending between Wells Fargo and the Receivership. Therefore, the Receiver is requesting that the Court direct a mediation of all matters between the Receiver and Wells Fargo, and that the Court also direct the attendance of those Wells Fargo corporate officers who have authority over the various and/or relevant autonomous business units and are capable of discussing and resolving all pending matters. Due to the significant impending expense to both the Receivership and Wells Fargo in connection with the unresolved matters between them, the Receiver believes that such a mediation is warranted and justified at this time.

7. Upon the entry of an Order directing mediation, the Parties will select an agreed-upon mediator, as well as the date (within the next 45 days), time and location of the mediation.

The Receiver will then notify the Court of the selected mediator, date, time and location of the mediation. In the event that the Parties are unable to agree on any of these specifics, the Receiver may call upon the Court to resolve any such dispute.

WHEREFORE, Burton W. Wiand, as Receiver, respectfully requests that this Honorable Court enter an Order directing the Receiver and Wells Fargo Bank, N.A. to: (1) mediate all unresolved matters between them within forty-five (45) days from the date of the Order, (2) with all Parties to appear at the mediation personally by counsel, (3) for Wells Fargo to also be represented at the mediation by those designated corporate officers who are authorized to resolve all remaining disputes between the Receivership and the Bank, and (4) granting such other and further relief as this Honorable Court may deem just and proper under the circumstances.

Dated: May 14, 2012

Respectfully submitted,

/s/ Jonathan B. Cohen

Jonathan B. Cohen (FBN 0027620)

Sean P. Keefe (FBN 413828)

JAMES, HOYER, NEWCOMER & SMILJANICH, P.A.

One Urban Centre, Suite 550

4830 West Kennedy Blvd.

Tampa, FL 33609

Telephone: (813) 397-2300

Facsimile: (813) 397-2310

jcohen@jameshoyer.com

Attorneys for the Receiver, Burton W. Wiand

LOCAL RULE 3.01(g) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission and is authorized to represent that it does not oppose the relief sought in this

motion. Counsel for the Receiver also conferred with counsel for Wells Fargo Bank, N.A. and is authorized to represent that the Bank does not oppose the relief sought in this motion.

/s/ Jonathan B. Cohen
Attorney for the Receiver, Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send an electronic copy of this Motion for Order Directing Mediation to L. Joseph Shaheen, Jr., Esquire and Steven R. Wirth, Esquire of Akerman Senterfitt, counsel for Wells Fargo Bank, N.A., successor-in-interest to Wachovia Bank, N.A.

/s/ Jonathan B. Cohen
Attorney for the Receiver, Burton W. Wiand