

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

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, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT,

Relief Defendants.

RECEIVER'S MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as Receiver, moves the Court for an order approving settlement of *Burton W. Wiand, as Receiver v. Benjamin Linstead*, JAMS Arbitration Ref. No.: 1440003229 (the "Linstead Action") on the basis of the Settlement Agreement attached as Exhibit A.

MEMORANDUM IN SUPPORT

The Securities and Exchange Commission (the "Commission" or "SEC") instituted this action to "halt [an] ongoing fraud, maintain the status quo, and preserve investor assets . .

..” (Dkt. 1, Compl., ¶ 7.) Burton W. Wiand was appointed by this Court as the Receiver for Defendants other than Arthur Nadel and for Relief Defendants. (See Order Reappointing Receiver (Dkt. 140).) Additionally, the Receivership was expanded to include Venice Jet Center, LLC and Tradewind, LLC (Dkt. 17); Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, the Marguerite J. Nadel Revocable Trust UAD 8/2/07, and the Laurel Mountain Preserve Homeowners Association, Inc. (Dkt. 44); The Guy-Nadel Foundation, Inc. (Dkt. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Dkt. 79); Viking Oil & Gas, LLC (Dkt. 153); Home Front Homes, LLC (Dkt. 172); and Traders Investment Club (Dkt. 454). All of the entities in receivership are collectively identified herein as the Receivership Entities.

Pursuant to the Order Reappointing Receiver (Dkt. 493), the Receiver has the duty and authority to:

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement or profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

Further, the Order Reappointing Receiver (at paragraph 6) authorizes the Receiver to “[d]efend, compromise or settle legal actions . . . in which the Receivership Entities or the Receiver is a party . . . with authorization of this Court”

By an Amended Complaint filed May 2, 2011, the Receiver originally sued Benjamin Linstead (the “Defendant”) to recover sums received from the Receivership Entities with a

view to marshaling assets for an eventual distribution to investors with verifiable claims in an equitable and appropriate manner. *See Wiand, as Receiver v. Linstead*, Case No. 8:10-cv-162-T-17MAP. However, in light of the fact that Defendant resides in the United Kingdom and does not appear to have assets in the United States, there was a question whether this Court had personal jurisdiction over him. To protect the Receivership's interests in the event this Court lacked personal jurisdiction, the Receiver moved to voluntarily dismiss the action against Defendant without prejudice, which the Court granted on October 5, 2011. On October 18, 2011, the Receiver brought his clawback claims against Defendant in an arbitration proceeding (i.e., the Linstead Action).¹ The Receiver sought recovery of "false profits" of \$218,648.

As shown by the attached Settlement Agreement, the Receiver and the Defendant, subject to the approval of this Court, have agreed to settle the Linstead Action for \$202,000.00, to be paid in accordance with a set payment schedule. Mr. Linstead also agreed to the issuance of a "Tomlin Order" by a court in the United Kingdom. The Tomlin Order will allow the Receiver to seek relief in an expedited fashion from a U.K. court, through his counsel in the United Kingdom, in the event the Defendant breaches the settlement

¹ The Receiver decided to proceed with an arbitration after Judge Kovachevich compelled the Receiver to arbitrate his claims in other clawback cases. *See In re Wiand*, 2011 WL 4530203 (M.D. Fla. 2011). Judge Kovachevich concluded that the offering documents at the heart of the scheme underlying this case – which included arbitration clauses – reflected contracts that came into existence and that the Receiver's contract invalidity arguments should be decided by the arbitrator. *See id.* In light of the fact that Defendant was represented by the same counsel that obtained the order compelling arbitration, the Receiver streamlined the process by dismissing the case and proceeding to arbitration in accordance with Judge Kovachevich's order. In other words, the Receiver determined it was futile to attempt to establish jurisdiction because the Defendant would have likely moved to compel arbitration in any event.

agreement. In reaching this agreement, the Receiver considered the risks and expense of litigation.

The settlement reflected by the Settlement Agreement is in the best interests of the Receivership, the investors in the Receivership Entities, and Defendant, because resolution of the claim avoids protracted litigation, conserving Receivership assets and judicial resources, and avoids the cost of litigation to Defendant.

WHEREFORE, the Receiver moves the Court to approve the settlement reflected by the attached Settlement Agreement.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

The undersigned counsel for the Receiver is authorized to represent to the Court that the SEC has no objection to the Court's granting this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 31, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/ Michael S. Lamont

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