

**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.;  
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, LLC,

Relief Defendants.

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**RECEIVER'S UNOPPOSED MOTION FOR LEAVE TO PAY  
ARBITRATION FILING FEES DIRECTLY FROM RECEIVERSHIP ESTATE**

Pursuant to Rule 66 of the Federal Rules of Civil Procedure and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the “**Receiver**”), moves for leave to pay filing fees for arbitration proceedings he will commence shortly with the American Arbitration Association and JAMS directly from funds in the Receivership Estate. Those proceedings are part of the Receiver’s continued efforts to recover money and other assets for the Receivership Estate so that they may be re-distributed

in an equitable manner to investors who were injured by the fraudulent scheme underlying this case and to other creditors. The Court previously approved similar relief for court filing fees shortly before the Receiver filed in this Court the bulk of his “clawback” cases to recover assets for the Receivership Estate (the “**Clawback Cases**”). (See Doc. 298.)

Pursuant to the Order Reappointing Receiver (Doc. 140), the Receiver has the duty and authority to:

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 those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Receivership Entities, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or 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 of 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.

Order Reappointing Receiver ¶ 2.

In fulfillment of his responsibilities, the Receiver commenced numerous Clawback Cases. As the Receiver previously informed the Court (*see* Docs. 668 & 671), the defendants in 24 of the Clawback Cases (the “**Defendants**”) successfully moved to compel arbitration under arbitration language in the offering documents used to attract investors into the scheme

underlying this case.<sup>1</sup> Based on a number of considerations, the Receiver plans to consolidate his claims against the Defendants into 9 separate arbitrations.

In the aggregate, the Receiver's claims against the Defendants will seek to recover approximately \$36 million, excluding pre-judgment interest and costs. Of that sum, approximately \$10 million represent the "false profits" received by the Defendants (*i.e.*, the amount they received from the scheme in excess of the amount they invested). The balance of the amount sought represents distributions to Defendants who are professional or otherwise sophisticated investors whom, for various reasons, were or should have been aware of "red flags" surrounding the scheme underlying this case. In light of the amounts that will be sought in the arbitrations, if successful those proceedings will generate significant assets for the Receivership Estate and, in turn, for investors injured by the scheme. The filing fees for the nine arbitrations are, collectively, approximately \$65,000. Although these fees are significantly higher than those for filing cases in federal court, they pale in comparison to the benefits the Receivership Estate would obtain from recoveries in those proceedings.<sup>2</sup>

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<sup>1</sup> With the Court's permission, the Receiver attempted to pursue appeals of the orders compelling arbitration. (*See* Docs. 668, 669, 671, 672.) As the Receiver had foreseen as a possibility, the U.S. Circuit Court of Appeals for the Eleventh Circuit concluded the orders compelling arbitration and staying the court cases were not final appealable orders and thus dismissed the appeals. To hedge against that possibility, the Receiver had also moved in this Court for a certification to pursue an interlocutory appeal under 28 U.S.C. § 1292(b) (*see* Doc. 668 at 9), but those motions were denied (*see, e.g., Wiand, as Receiver v. Munson Family Partners, Ltd.*, Case No. 8:10-cv-221-T-17MAP, Doc. 56). As such, the Receiver has no choice but to proceed to arbitration.

<sup>2</sup> The higher cost of arbitration as compared to proceeding in this Court was one of the reasons why the Receiver concluded that it was in the Receivership Estate's best interest to pursue an appeal of the orders compelling arbitration. (*See* Doc. 668 at 4.)

Aside from being authorized by the Order Reappointing Receiver, the Receiver's efforts are consistent with the overarching equitable nature of this proceeding. "Equality is equity,"<sup>3</sup> and for the Receiver to treat similarly situated investors equally he must proceed with arbitration proceedings against the Defendants because, unlike the vast majority of defendants in the Clawback Cases, they have refused to return to the Receivership Estate proceeds of the scheme that were transferred to them. As explained in the Receiver's Motion For Leave To Pay Civil Filing Fees Directly From Receivership Estate (Doc. 297 at 4 to 5) and in his Interim Reports, the Receiver has pursued several steps to try to resolve all Clawback Cases in an efficient manner. While those efforts have been successful in the vast majority of cases, they have not been successful with respect to the Clawback Cases against the Defendants. Indeed, not only have those efforts been unsuccessful, but rather than having the Court decide the merits of their arguments and defenses, the Defendants made the additional effort of compelling arbitration.

Not pursuing the claims against the Defendants in arbitration would be against the best interests of the Receivership Estate and inequitable both to investors with losses and to the large number of defendants in Clawback Cases who agreed to return scheme proceeds that were improperly transferred to them. If the Defendants are not pursued in arbitration, the settling defendants will be effectively penalized for agreeing to return scheme proceeds. Further, as previously noted the arbitration could generate a significant amount of money for

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<sup>3</sup> *SEC v. Elliott*, 953 F.2d 1560, 1570 (11th Cir. 1992) (citation omitted).

the Receivership Estate. As such, not pursuing the Defendants would significantly decrease the potential money available to distribute to losing investors through the claims process.

Pursuant to the rules of the American Arbitration Association and JAMS, the commencement of the Receiver's arbitrations will require payment of filing fees of approximately \$65,000, collectively. While this amount is significant, the Receiver believes it is in the best interests of the Receivership Estate to proceed with those arbitrations in light of the merits of the claims that would be asserted and the potential recovery. Pursuant to paragraph 4 of the Order Reappointing Receiver, the Receiver seeks leave to pay those fees directly out of accounts held by the Receivership Estate.<sup>4</sup> *See Elliott*, 953 F.2d at 1566 (“The district court has broad powers and wide discretion to determine relief in an equity receivership.”).

WHEREFORE, the Receiver respectfully requests that the Court grant him leave to pay filing fees for arbitration proceedings directly from funds in the Receivership Estate.

**LOCAL RULE 3.01(g) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that the SEC does not object to the relief requested in this motion.

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<sup>4</sup> In relevant part, that paragraph authorizes the Receiver to pay all reasonable expenses associated with “exercising the power granted by” the Order Reappointing Receiver subject to the Court's approval. Without approval from the Court, the filing fees would have to be paid by the Receiver's and his counsel's law firm (which would then seek reimbursement). Consistent with the law firm's policy requiring clients to directly pay significant costs, the Receiver seeks leave to pay the filing fees directly out of the Receivership Estate.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on June 29, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**s/Gianluca Morello**

Gianluca Morello, FBN 034997

[gmorello@wiandlaw.com](mailto:gmorello@wiandlaw.com)

WIAND GUERRA KING P.L.

3000 Bayport Drive

Suite 600

Tampa, FL 33607

Tel. 813.347.5100

Fax 813.347.5198

*Attorneys for the Receiver, Burton W. Wiand*