

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,

Relief Defendants.

THE RECEIVER'S VERIFIED OPPOSITION TO THE *PRO SE* MOTION OF NON-PARTY MARGUERITE J. NADEL FOR RELIEF FROM FREEZE ON ASSETS

On June 21, 2012, Marguerite J. Nadel (“**Mrs. Nadel**”) moved for relief from certain aspects of the asset freeze entered by the Court at the inception of this Receivership proceeding (the “**Motion**”) (Doc. 871).¹ Mrs. Nadel – the wife of Defendant Arthur Nadel (“**Nadel**”) – seeks an order transferring to her all funds

¹ Mrs. Nadel filed the same motion on May 22, 2012 (*see* Doc. 861), but the Court denied it without prejudice for failure to comply with Local Rule 3.01(g) (*see* Doc. 862). Counsel for the Receiver and Mrs. Nadel subsequently conferred, and counsel for the Receiver informed her that the Receiver was opposed to the requested relief but proposed a way to resolve the dispute. Mrs. Nadel proceeded with filing the Motion.

contained in three bank accounts that are currently frozen: (1) approximately \$19,000 in a Northern Trust Bank account ending with numbers 6432 (the “**NT 6432 Account**”); (2) approximately \$4,000 in a Northern Trust Bank account ending with numbers 8757² (the “**NT 8757 Account**”); and (3) approximately \$4,500 in a First Citizens Bank account ending with numbers 6524 (the “**FC 6524 Account**”) (these three bank accounts are collectively referred to as the “**Accounts**”).³ Each of these accounts was held jointly in Nadel and Mrs. Nadel’s name.

The Motion is premised on a representation that is wrong, and for that reason alone it should be denied. Although Mrs. Nadel contends the money in those accounts belongs to her and is not connected in any way with the Ponzi scheme underlying this case (the “**scheme**”), that representation is wrong. In reality, the information in the Receiver’s possession shows the vast majority of the money in the Accounts came directly from the scheme. Mrs. Nadel also premises the Motion on her financial hardship (*see* Marguerite Nadel Aff. at 1 (Doc. 871) (the “**Affidavit**”)), but she cites no authority showing that such hardship can ever trump the critical issue surrounding her Motion: the source of the money in the Accounts. Indeed, Mrs. Nadel’s financial hardship is no different (and in some respects is better) than the financial predicament

² The Motion refers to this account as 171005875, but that reference omits the last digit of the correct account number (which is 7).

³ There are several other accounts with relatively low amounts of money or securities of little or no value that were frozen by the asset freeze entered in this case. The Receiver is in discussions with those financial institutions and will move the Court for an order transferring those assets to the Receivership Estate at the appropriate time.

reported to the Receiver by many of Nadel's investor-victims and does not justify favorable treatment. For these reasons, the Motion should be denied.

ARGUMENT

Of critical importance here, the Motion states that "the funds held in [the Accounts] ... are solely those of [Mrs. Nadel] ... and are in no way owned by or connected with Arthur Nadel or an[y] of the actions that have given rise to this Action." Mot. at 2. Further, Mrs. Nadel's Affidavit states that the NT 8757 Account and the FC 5243 Account were funded from her personal checking account (*i.e.*, the NT 4320 Account). Aff. at 2. All of these representations are either wrong or incomplete – in truth, the vast majority of the funds in the Accounts were proceeds of the scheme.⁴

The NT 4320 Account. This account was originally held only in Mrs. Nadel's name. Morello Decl.⁵ Ex. A, M. Nadel Dep. Tr. 112:9-112:11 & 148:8-149:13.⁶ She

⁴ The Affidavit also states that a home on Fruitville Road in Sarasota, Florida (which is part of this Receivership) was purchased with Mrs. Nadel's "own money." Aff. at 1. As shown in the Receiver's 2009 motion for possession of that home and supporting declaration, that representation also is wrong. (*See* Docs. 146 at 5-7 & 147.) As those filings show, the bulk of the cash paid at the closing of the Nadel's purchase of that home came directly from one of Nadel's entities.

⁵ "**Morello Declaration**" refers to the Declaration of Gianluca Morello In Support Of The Receiver's Opposition To Motions For Partial Summary Judgment As To Count I – Florida Statutes Section 726.105(1)(a) Of Receiver's Amended Complaint which was originally filed on August 22, 2011, in *Wiand, as Receiver v. Sarasota Opera Ass'n*, Case No. 8:10-cv-248-T-17MAP (M.D. Fla.) – one of the Receiver's "clawback" cases – a copy of which is being filed as **Exhibit 1** to this Opposition.

⁶ In relevant part, Mrs. Nadel testified:

A: After we were married – and I thought this is what all married people do – I put [Nadel] . . . on as a signer to my account

Q: At Northern Trust you had an account which was formerly in your name. And then following your marriage to Art Nadel, you added Art Nadel as a signatory - -

A: Correct.

subsequently married Nadel and he was added to that account in July 2002. Morello Decl. Ex. A, M. Nadel Dep. Tr. 112:9-112:11; Wiand Decl.⁷ Ex. B. Specifically, the NT 4320 Account became titled in both Nadel's and Mrs. Nadel's name, and they held it as joint tenants with rights of survivorship. Wiand Decl. Ex. B. Although Mrs. Nadel characterizes the NT 4320 Account as her "personal checking account" (*see generally* Aff.), the evidence shows it was held by the Nadels as joint tenants with rights of survivorship.

According to records in the Receiver's possession, the vast majority of money deposited into that account came from the scheme either through (1) exorbitant "wages" paid to Mrs. Nadel by an entity at the heart of the scheme (*i.e.*, Receivership Entity Scoop Management, Inc. ("**Scoop Management**")) or (2) other transfers of money from Scoop Management and from another entity at the heart of the scheme (*i.e.*, Receivership Entity Scoop Capital, LLC ("**Scoop Capital**")). With respect to Mrs. Nadel's "wages," before Nadel's scheme collapsed, Mrs. Nadel was employed by Scoop Management – one of the purported "investment managers" or "investment advisers" created, owned, and controlled by Nadel.⁸ Wiand Decl. ¶¶ 7-8; *see* Morello Decl. Ex. A, M. Nadel Dep. Tr. 56:24 – 59:8.

Q: - - to that account.

Morello Decl. Ex. A, M. Nadel Dep. Tr. 112:9-112:11 & 148:8-149:13.

⁷ "**Wiand Declaration**" refers to the Declaration of Burton W. Wiand In Support Of The Receiver's Opposition To Motions For Partial Summary Judgment As To Count I – Florida Statutes Section 726.105(1)(a) Of Receiver's Amended Complaint which was originally filed on August 22, 2011, in *Wiand, as Receiver v. Sarasota Opera Ass'n*, a copy of which is being filed as **Exhibit 2** to this Opposition.

⁸ Specifically, in relevant part Scoop Management was the purported investment adviser for Receivership entities Valhalla Management, Inc., and Viking Management, LLC. In that capacity, Scoop Management purportedly provided trading, research, and operational services for Receivership hedge funds Valhalla Investment Partners, L.P., Viking Fund, LLC, and Viking IRA Fund, LLC. Similarly, Scoop Management was also the purported investment adviser for Scoop Capital. Nadel created, owned, and controlled Scoop Capital and was its President and Managing Member. Scoop Capital was, in turn, the General Partner of Receivership hedge funds Victory Fund, Ltd., Victory IRA Fund, Ltd., and Scoop Real Estate, L.P.

Nadel was a Director of Scoop Management as well as its President and Secretary, and he used Scoop Management to perpetrate his scheme through the Hedge Funds. Wiand Decl. ¶ 7. As the “investment adviser” for each of the Receivership Hedge Funds, Scoop Management’s revenues consisted of “fees” paid by the Hedge Funds for purported investment management and investment advisory services. *Id.* ¶¶ 9, 10. Specifically, Scoop Management received a profit incentive fee that was linked to the performance of the Hedge Funds. *Id.* Because Nadel fabricated performance figures, however, Scoop Management was paid millions that it did not earn. *Id.* Further, Scoop Management received a fee that was linked to assets under management, but this management fee was also grossly inflated because Nadel misrepresented the true value of the Hedge Funds. *Id.* These fees were paid from money invested in the Hedge Funds by their investors. *Id.* In other words, Scoop Management’s revenues consisted of proceeds of Nadel’s scheme. For example, between 2002 and 2008, the Hedge Funds paid Scoop Management \$64,214,099.22 in total “fees.” Price Decl.⁹ ¶ 9.

Mrs. Nadel’s job with Scoop Management consisted essentially of “babysitting” Scoop Management employees and performing whatever ministerial tasks were necessary. In relevant part, she testified as follows:

A: ...if there were any correspondence or any paperwork – or I’d find out from everybody else what they had done or what needed to be done.

(collectively, all of the Receivership hedge funds are referred to as the “**Hedge Funds**”). In its capacity as purported investment adviser for Scoop Capital, Scoop Management purportedly provided trading, research, and operational services to Victory Fund, Victory IRA Fund, and Scoop Real Estate. Wiand Decl. ¶ 9.

⁹ “**Price Declaration**” refers to the Declaration of William E. Price In Support Of The Receiver’s Opposition To Motions For Partial Summary Judgment As To Count I – Florida Statutes Section 726.105(1)(a) Of Receiver’s Amended Complaint which was originally filed on August 22, 2011, in *Wiand, as Receiver v. Sarasota Opera Ass’n*, a copy of which is being filed as **Exhibit 3** to this Opposition.

Sometimes run the vacuum cleaner. (Morello Decl. Ex. A, M. Nadel Dep. Tr. 57:7-57:11.)

A: [In response to a question about her specific duties with Scoop Management] Not having any specific duties or handling any part of the business of the investments, but the business of running the office. (Morello Decl. Ex. A, M. Nadel Dep. Tr. 57:22–57:25.)

A. ... everyone who worked in that office, they were all very young adults. They all knew each other from high school, and they, most of the time, forgot that they were not still in high school. So there was a lot of personnel management that I was doing. (Morello Decl. Ex. A, M. Nadel Dep. Tr. 59:1-59:6.)

Mrs. Nadel could not articulate any recurring work for which she was actually responsible at Scoop Management. *Id.* 67:8 – 69:2. And she also testified that Scoop Management’s office “pretty much [ran] . . . itself.” *Id.* 75:21.

Significantly, she also testified that most of her “work” focused on the Venice Jet Center, Home Front Homes, and the development of real estate in North Carolina.¹⁰ *Id.* 66:25 – 69:2 (admitting that it would be “fair” to say that she devoted more time to non-Hedge Fund businesses during 2007 and 2008 than to the Hedge Funds). As Mrs. Nadel admitted, none of these businesses and assets were owned in any way by any of the Hedge Funds. *Id.* 67:19 – 68:18 (“Q: But those businesses were separate from the business of the hedge funds? A: Yes, they were.”). Instead, they were businesses and assets purchased by Nadel with Ponzi scheme proceeds for his and his wife’s personal affairs. Wiand Decl. ¶ 12.

Despite only performing random ministerial tasks and spending significant time on matters completely unrelated to the Hedge Funds, Mrs. Nadel collected an exorbitant amount

¹⁰ The Venice Jet Center was a fixed-base operator at the municipal airport in Venice, Florida; Home Front Homes was in the business of erecting pre-fabricated homes; and the North Carolina real estate consisted of a mountain the Nadels acquired and were developing as a residential community. These businesses and real estate were also placed in receivership. Wiand Decl. ¶ 12.

of “wages” from Scoop Management. Specifically, between 2002 and 2008, as detailed in the following table, Mrs. Nadel received \$1,225,870.77 from Scoop Management.

Year	W-2 Wages
2002	\$47,260.27
2003	\$161,148.66
2004	\$171,307.73
2005	\$223,076.96
2006	\$225,961.58
2007	\$163,461.62
2008	\$233,653.95
Total	\$1,225,870.77

See Wiand Decl. ¶ 13 & Ex. A; Morello Ex. A, M. Nadel Dep. Tr. 107:15 – 107:24 (testifying that information on W-2 was correct). These wages were deposited into the NT 4320 Account. Morello Ex. A, M. Nadel Dep. Tr. 149:2 – 149:7¹¹ & 122:3 – 122:15 (“Well, what paid our salary was the fees paid to Scoop Management . . .”).

Mrs. Nadel’s wages, however, represented only a small portion of the scheme proceeds deposited in the NT 4320 Account. For example, between 2002 and 2008

¹¹ In relevant part, Mrs. Nadel testified as follows:

Q: Is that the same account in which your - - I’ll refer to that account as your joint account. Was that joint account the same account into which your salary was directly deposited during the time you worked for Scoop Management?

A: That is correct.

approximately \$15 million was transferred directly from Scoop Management to the NT 4320 Account. Price Decl. ¶ 11. An additional approximately \$4 million was transferred directly from Scoop Capital to that account. *Id.* ¶ 12. Scoop Capital had received \$4,512,996.84 as purported “fees” from Hedge Funds. *Id.* ¶ 10.

In short, contrary to the representation in the Motion, the NT 4320 Account was funded with large amounts of proceeds of the scheme, and Mrs. Nadel has not shown that any of the money in that account belonged to her. As such, the money left in that account should be transferred to the Receivership Estate. That a portion of that money was “wages” paid to Mrs. Nadel does not justify a different outcome. All \$1,225,870.77 that Mrs. Nadel received as “wages” were proceeds of the scheme, and they amounted to average annual wages of \$175,124.40 per year. But as discussed above, to the extent Mrs. Nadel performed any services for Scoop Management and the Hedge Funds, they were clerical and did not justify or merit a salary that was anywhere close to the amount she was paid. Because no value was provided for the excess wages, Mrs. Nadel was not entitled to receive that money. Indeed, the Receiver is entitled to recover that sum as a fraudulent transfer. *See In re Churchill Mortgage Inv. Corp.*, 256 B.R. 664, 682 (Bankr. S.D.N.Y. 2000) (“Fraudulent conveyance law is grounded in equity and is designed to enable a trustee or creditors to avoid a transfer in a transaction where the transferee received more from the debtor than the debtor received from the transferee. The remedy of avoidance seeks to rectify the disparity between that which the transferee gave and that which the transferee got in the transaction. It is this disparity that makes it equitable to require the transferee to repay the excess in value of what he received over what he gave up in the transaction.”); *cf. In re*

Bernard L. Madoff Inv. Sec. LLC, 2011 WL 4434632, *12 (Bankr. S.D.N.Y. 2011) (“The Defendants unsuccessfully argue that their services constituted reasonably equivalent value and fair consideration given to BLMIS in exchange for their salaries.”). These excess wages far exceed the approximately \$19,000 left in that account. And of course, all of this does not even take into account the rest of the financial benefits Mrs. Nadel received from the scheme by virtue of being married to Nadel.

NT 8757 Account. According to records in the Receiver’s possession, this account was opened in July 2004 and also held jointly by Nadel and Mrs. Nadel. Contrary to Mrs. Nadel’s contention, this account also was funded with scheme proceeds. First, Mrs. Nadel’s Affidavit’s claim that this account “was funded from [her] ... personal checking account” (*i.e.*, the NT 4320 Account) (Aff. at 2) is partially correct: this account received deposits totaling \$186,043, and \$76,000 of that amount was transferred from the NT 4320 Account. As explained above, the NT 4320 Account was funded with scheme proceeds, and thus this account was too. Second, this account received \$85,000 directly from accounts held in the name of either Scoop Management or Scoop Capital, and those funds also were scheme proceeds. Of the remaining \$25,043 deposited into this account, all but \$1,041 came from rent paid by tenants of the Fruitville Road home mentioned above in footnote 4 (which was funded with scheme proceeds), and Mrs. Nadel has not provided any proof that those funds or the other \$1,041 deposited into that account belong to her.

FC 5243 Account. According to records in the Receiver’s possession, this account was opened by Mrs. Nadel in June 2004, and in May 2005 Nadel was added to it. Mrs. Nadel’s contention that the money in this account is solely hers and is not connected to the

scheme also is wrong. It is wrong because, as discussed above, the NT 4320 Account was funded with scheme proceeds, and Mrs. Nadel admits this account was funded with transfers from the NT 4320 Account. Aff. at 2 (“This account was also funded from my personal checking account.”). According to the information in the Receiver’s possession, this account received deposits totaling \$108,758.85, and \$97,000 of that amount came from the NT 4320 Account. Another \$3,000 came directly from an account held in Nadel’s name which also was funded with scheme proceeds. Approximately half of the rest of the money deposited into this account was rent paid by tenants of the Nadel’s home in North Carolina, which home was purchased with scheme proceeds (*see* Docs. 98, 99), and Mrs. Nadel has not shown that any of those funds or any of the remaining \$4,500 deposited into this account belonged to her as she claims.

The Money In The Accounts Should Be Transferred To The Receivership Estate. The Court’s power to supervise an equity receivership and determine the appropriate action to be taken in its administration is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court’s wide discretion derives from the inherent powers of an equity court to fashion relief. *Id.* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)). Here, the Receiver was appointed by Order dated January 21, 2009 (Doc. 8), to, among other things, “marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors.” Paragraph 23 of the order provides as follows:

23. In the event that the Receiver discovers that funds of persons who have invested in the Defendants or Relief Defendants have been transferred to other

persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds


Nadel admitted perpetrating the fraudulent scheme underlying this case by pleading guilty on February 24, 2010, to all counts in his indictment, which charged him with perpetrating the scheme from 1999 forward. (A copy of the indictment and Nadel's agreement to plead guilty are attached as **Composite Exhibit 4**.) That guilty plea establishes in a dispositive manner the existence of the scheme from 1999 forward. *See, e.g., Raiford v. Abney*, 695 F.2d 521 (11th Cir. 1983). As discussed above, the Accounts were funded almost entirely from proceeds of the scheme, and thus, rather than being given to Mrs. Nadel, the money left in those accounts should be transferred to the Receivership Estate.

CONCLUSION

For these reasons, the *Pro Se* Motion of Non-Party Marguerite J. Nadel for Relief From Freeze on Assets (Doc. 871) should be denied, and the funds in the three Accounts should be transferred to the Receivership Estate. The majority of the money deposited into those accounts was proceeds of the scheme underlying this case, and Mrs. Nadel has not established any entitlement to the money remaining in those accounts.

VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.



Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on July 3, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I **FURTHER CERTIFY** that on July 3, 2012, a true and correct copy of the foregoing document was furnished by first-class mail delivery to:

Marguerite J. Nadel, *pro se*
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s/Gianluca Morello

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