

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. EFG Bank f/k/a EFG Private Bank SA and D&E Unit Trust Associates*, Case No.: 8:10-cv-241-T-17MAP (M.D. Fla.) (the "EFG Bank 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. 493).) 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 a Second Amended Complaint filed April 8, 2011, the Receiver sued EFG Bank f/k/a EFG Private Bank SA (“EFG Bank”) and D&E Unit Trust Associates (“D&E”) 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. Specifically, the Receiver sought recovery of “false profits” (as defined in the second amended complaint) of \$1,098,676.49. The Receiver subsequently determined that claims also could have been asserted against M. Beckman, Ltd. (“M. Beckman”), Douglas Bay Investment Company, Ltd. (“Douglas Bay”), and Infinity Financial, Ltd. (“Infinity”) in the EFG Bank Action because of their receipt of certain funds (EFG Bank, D&E, M. Beckman, Douglas Bay, and Infinity are collectively referred to as the “Defendants”). M. Beckman, however, also invested in one or more Receivership Entities through a separate “account” and incurred a loss of \$500,000 in connection with that “account.” As a result of this loss, M. Beckman submitted a Proof of Claim Form in connection with the claims process instituted in this case (the “M. Beckman Claim”).

As shown by the attached Settlement Agreement, the Defendants, subject to the approval of this Court, have agreed to pay \$811,828.84, to be paid within 14 days after approval of this settlement by the Court. M. Beckman also has agreed to waive the M. Beckman Claim and any entitlement to funds from the Receivership Entities. In reaching this agreement, the Receiver considered the risks and expense of litigation and the expense of resolving a disputed claim in the claims process. The settlement reflected by the Settlement Agreement is in the best interests of the Receivership, the investors in the Receivership Entities, and the Defendants because resolution of the claims avoids protracted litigation, conserving Receivership assets and judicial resources, and avoids the cost of litigation to the Defendants.

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 July 19, 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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