

**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.

**RECEIVER'S MOTION TO EXPAND THE SCOPE OF
RECEIVERSHIP TO INCLUDE RESPIRO, INC.
AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to 28 U.S.C. § 754, Rule 66 of the Federal Rules of Civil Procedure, and Local Rule 3.01, Burton W. Wiand, as Receiver (the “**Receiver**”), moves the Court to expand the scope of this Receivership to include Respiro, Inc. (“**Respiro**”). The Receiver’s investigation has revealed that Christopher Moody (“**Chris Moody**”) funded Respiro with proceeds from Arthur Nadel’s (“**Nadel**”) Ponzi scheme (the “**scheme**”) and that the majority of Respiro’s shares are held by Chris Moody’s wife, Tamara Moody.

As discussed in more detail below, Chris Moody:

- (i) was an officer, director, and/or principal of two fund management companies used to perpetrate the scheme;
- (ii) was a principal and fiduciary for three hedge funds used to perpetrate the scheme;
- (iii) received more than \$19 million of scheme proceeds as “fees” for purported services between 2003 and 2008; and
- (iv) has chosen not to contest claims of federal securities fraud brought by the Securities and Exchange Commission in an enforcement action arising from his conduct in connection with the scheme, and has consented to the entry of a permanent injunction against him and to disgorgement of ill-gotten gains.

In light of the large sums of scheme proceeds that flowed to Chris Moody, his uncontested, severely reckless role in the scheme, and his use of scheme proceeds to fund Respiro, the company should be added to this Receivership to bring its assets under the Receiver’s control and to preserve them for the benefit of defrauded investors. Contemporaneously with this motion, the Receiver is filing the Declaration Of Burton W. Wiand In Support Of The Receiver’s Motion To Expand The Scope Of Receivership To Include Respiro, Inc. (the “**Wiand Declaration**”) and the Affidavit Of Christopher D. Moody (the “**Moody Affidavit**”). The Receiver has advised Respiro’s representatives of the relief sought herein.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (the “**Commission**”) initiated this action to prevent the Defendants from further defrauding investors in hedge funds managed by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC (“**Scoop Capital**”) and Scoop Management, Inc. (“**Scoop Management**”) and Relief Defendants Scoop Real Estate, L.P.

(“**Scoop Real Estate**”); Valhalla Investment Partners, L.P. (“**Valhalla Investment**”); Valhalla Management, Inc. (“**Valhalla Management**”); Victory Fund, Ltd. (“**Victory Fund**”); Victory IRA Fund, Ltd. (“**Victory IRA Fund**”); Viking IRA Fund, LLC (“**Viking IRA Fund**”); Viking Fund, LLC (“**Viking Fund**”); and Viking Management, LLC (“**Viking Management**”).¹ See Order Appointing Receiver (Doc. 8).

The Court subsequently granted seven motions to expand the scope of the Receivership to include the following entities and businesses, which were funded with scheme proceeds:

- Venice Jet Center, LLC, and Tradewind, LLC (Order, Jan. 27, 2009 (Doc. 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. (Order, Feb. 11, 2009 (Doc. 44));
- The Guy-Nadel Foundation, Inc. (Order, Mar. 9, 2009 (Doc. 68));
- Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Amended Order, Mar. 17, 2009 (Doc. 81));
- Viking Oil & Gas, LLC (Order, July 15, 2009 (Doc. 153));
- Home Front Homes, LLC (Order, Aug. 10, 2009 (Doc. 172)); and
- Traders Investment Club (Order, Aug. 9, 2010 (Doc. 454)).

¹ Relief Defendants Scoop Real Estate, Valhalla Investment Partners, Victory IRA Fund, Victory Fund, Viking IRA Fund, and Viking Fund are collectively referred to as the “**Hedge Funds.**” Defendants Scoop Capital and Scoop Management and Relief Defendants Valhalla Management and Viking Management are collectively referred to as the “**Fund Managers.**”

All of the entities in receivership are referred to collectively as the “**Receivership Entities.**” The Receiver was reappointed as Receiver for the Receivership Entities by Orders dated June 3, 2009 (Doc. 140), January 19, 2010 (Doc. 316), and September 23, 2010 (Doc. 493).²

Pursuant to the Orders Appointing Receiver, the Receiver has the duty and authority to: “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; 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.” *See* Orders Appointing Receiver at 1-2.

Respiro

Respiro provides “a full range of home respiratory services and medical equipment products” (*see* respiro.com) and is headquartered in Sarasota, Florida (*see* Moody Aff. ¶ 6). Chris Moody, his wife Tamara Moody, Lyle Warner, and Nathan Warner formed Respiro in December 2007. *See* Wiand Decl. ¶ 13 & Exs. A, B. Each of them served as a Director of Respiro from the company’s inception until Nadel’s scheme collapsed in January 2009. *See id.* Shortly thereafter, Tamara Moody’s title was changed from Director to simply Officer, and Chris Moody was removed as a Director. *See id.* ¶ 14 & Exs. C, D. According to Respiro’s most recent Annual Report, filed April 20, 2012, Lyle and Nathan Warner are Directors of the company, and Tamara Moody is an Officer. *See id.* ¶ 15 & Ex. E. Tamara Moody currently owns 60% of Respiro, while Lyle Warner owns 35%, and Nathan Warner owns 5%. *See* Moody Aff. ¶ 10.

² All Orders appointing and reappointing the Receiver are collectively referred to as the “**Orders Appointing Receiver.**”

Beginning shortly after its formation, as set forth below, Chris Moody funded Respiro with a series of transfers, totaling \$557,500, primarily through his revocable trust.

Date	Amount	Moody Source Account
1/3/08	\$ 2,000.00	Christopher D. Moody Rev. Trust – Landmark Bank #***1689
1/11/08	\$ 20,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
1/28/08	\$ 20,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
2/13/08	\$ 20,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
2/25/08	\$ 20,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
3/10/08	\$ 30,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
4/10/08	\$ 40,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
4/30/08	\$ 40,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
5/15/08	\$ 40,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
6/5/08	\$ 40,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
6/23/08	\$ 40,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
7/15/08	\$ 20,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
7/22/08	\$ 40,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599

8/25/08	\$ 25,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
9/3/08	\$ 10,000.00	Christopher D. Moody Rev. Trust – Landmark Bank #****1689
9/4/08	\$ 15,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
10/8/08	\$ 25,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
11/3/08	\$ 20,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
11/17/08	\$ 25,000.00	Christopher D. Moody Rev. Trust – Northern Trust Bank #*****9599
12/1/08	\$ 25,000.00	Christopher D. Moody Rev. Trust – Landmark Bank #****9239
12/16/08	\$ 15,000.00	Christopher D. Moody Rev. Trust – Landmark Bank #****9239
1/12/09	\$ 15,000.00	Christopher D. Moody Rev. Trust – Landmark Bank #****9239
2/11/09	\$ 10,500.00	Christopher Moody – Regions Bank #*****0133
TOTAL	\$ 557,500.00	

See Wiand Decl. ¶¶ 16, 17, Ex. F; *see also* Moody Aff. ¶ 8. Importantly, all of the funds obtained by Chris Moody and transferred as identified in the above table were proceeds of Nadel’s scheme, and Chris Moody obtained them either (1) directly from Receivership Entities as “fees” or distributions purportedly connected to his investment in the scheme, or (2) through other endeavors that were funded with those scheme proceeds. *See* Moody Aff.

¶ 9. The money that Moody transferred to Respiro represents all of Respiro’s initial funding and almost all of its total funding.³ See Moody Aff. ¶ 11.

Chris Moody’s Money Came From The Scheme

Chris Moody received millions in proceeds from Nadel’s scheme, and a portion of those proceeds funded all the transfers to Respiro detailed above, which created and sustained the company. Chris Moody began working for Valhalla Management and Viking Management in 2003. See Moody Aff. ¶ 2. Specifically, Chris Moody was the Vice-President and Treasurer of Valhalla Management and the Co-Managing Member of Viking Management.⁴ *Id.* Valhalla Management was the General Partner of Valhalla Investment, and Viking Management was the Managing Member of Viking Fund and Viking IRA Fund (collectively, Valhalla Investment, Viking Fund, and Viking IRA Fund are referred to as the “**Moody Funds**”). *Id.*

The Moodys, however, allowed Nadel to control the Moody Funds and to perpetrate his Ponzi scheme through those and the rest of the Hedge Funds. For example, every month during the operation of the scheme, the Moody Funds’ securities clearing firm sent account statements that showed the trading activity and money balance for each of the Moody Funds. Wiand Decl. ¶ 21. During the course of the scheme, the clearing firm would have sent and

³ In addition to the funds provided by Chris Moody, the Receiver understands that Tamara Moody used two personal credit cards to pay certain of Respiro’s expenses. According to the last Respiro balance sheet in the Receiver’s possession, dated July 25, 2011, the total unpaid balance on those two credit cards for expenses incurred in connection with Respiro was \$19,732.50. See Wiand Decl. ¶ 18.

⁴ Chris Moody’s father, Neil Moody (collectively with Chris Moody, the “**Moodys**”), was a principal, Director, and President of Valhalla Management and also was a principal, Managing Member, and President of Viking Management. See Moody Decl. ¶ 3.

the Moody Funds would have received over 260 statements. *Id.* A review of any of those statements would have revealed the large discrepancy between what actually occurred in those accounts and what Nadel and the Moodys represented to investors. *Id.* Chris Moody had access and a legal obligation to review those statements, but at best, he did not review any of them. *Id.* As a result, the Hedge Funds' performance, as represented to investors and potential investors from 1999 forward (as applicable based on then existing Hedge Funds), was false and was based on grossly overstated investment returns, which were fabricated by Nadel. *Id.* The Hedge Funds' actual performance was never reported to investors or potential investors. *Id.*

Based on these fabricated investment returns, Nadel caused the Hedge Funds to pay tens of millions of dollars in fees to the Fund Managers, and ultimately, to Chris Moody and others. *See id.* ¶ 22. Specifically, Valhalla Management charged fees to and collected fees from Valhalla Investment for its purported management services. *Id.* Those fees included (1) a quarterly "Performance Allocation" that was calculated as a percentage of purported net profits from investment and trading activities and (2) a monthly "Management Fee" that was calculated as a percentage of the purported net asset value of the fund. *Id.* Viking Management charged and collected similar fees from Viking Fund and Viking IRA Fund for its purported management services, except that its "Management Fee" was paid quarterly rather than monthly. *Id.* In turn, Chris Moody and his father funneled those fees to themselves. *Id.* Those "fees" were based on grossly inflated returns and represented nothing more than Ponzi scheme proceeds. *Id.* Overall, Chris Moody or his trust received more than \$19 million from Valhalla Management and Viking Management. *Id.*

As a result of Chris Moody's conduct, on January 11, 2010, the Commission brought an enforcement action against him, alleging that he violated antifraud provisions of the federal securities laws in connection with his involvement in the scheme. *See generally SEC v. Neil V. Moody & Christopher D. Moody*, Case No. 8:10-cv-00053-T-33TBM (M.D. Fla.) (the "**Moody SEC Action**"), Compl. (attached as **Exhibit G** to the Wiand Declaration). Specifically, the Commission asserted that Chris Moody misrepresented to the investing public that he actively managed and oversaw the assets of the Moody Funds. In reality, he allowed Nadel to exercise "complete control of the Moody Funds' assets and trading activities without any meaningful oversight or supervision." *Id.* ¶ 44. As such, Chris Moody distributed bogus account statements and baseless offering materials to investors (*id.* ¶ 40); never audited or examined the Moody Funds' securities accounts (*id.* ¶ 44); never reviewed the monthly account statements (*id.*); failed to take any adequate measures to ensure accurate account statements and offering materials (*id.*); and ignored red flags that should have alerted him that Nadel was engaged in the scheme, including by allowing Nadel to provide purported investment advice and to control the Moody Funds even after Nadel both repeatedly threatened to stop providing such advice if the Moodys insisted on auditing the Moody Funds (*id.* ¶ 42) and refused to provide monthly statements to the Moodys' accountant (*id.* ¶ 43). In short, according to the Commission's complaint, Chris Moody's intentional and reckless conduct allowed Nadel to perpetrate his scheme and amounted to fraud.

In addition, Chris Moody has waived his right to deny the allegations in the Moody SEC Action. Specifically, he executed a Consent in which he agreed "not to take any action . . . denying . . . any allegation in the complaint" *See* Moody SEC Action, Consent of

Def. Christopher D. Moody ¶ 3 (“**Consent**”) (attached as **Exhibit H** to the Wiand Declaration). Chris Moody also consented to the entry of a permanent injunction against him and agreed to disgorge all ill-gotten gains upon the Commission’s request. *Id.* ¶ 2. In short, the Commission charged Chris Moody with securities fraud in connection with the scheme, and he agreed not to deny those allegations. Now, he has provided a declaration which makes clear that he funded Respiro with scheme proceeds. *See* Moody Decl. ¶ 9.

Tamara Moody And The Warners Have Refused To Transfer The Shares

Although Chris Moody funded Respiro, no shares were placed in his name. *See* Moody Aff. ¶ 10. Instead, the bulk of the shares were given to his wife Tamara Moody, and the remaining shares were given to the Warners. *Id.* Because Respiro’s shares were not held by Chris Moody (even though he funded the company), those shares were not turned over to the Receiver when Chris Moody turned over all of his assets. *See* Wiand Decl. ¶ 25.

To date, Respiro has failed to repay the purported loan provided by Chris Moody. *See id.* Further, the Receiver attempted to negotiate a repayment plan, but those negotiations have been unsuccessful. *Id.* Now, the Receiver has no choice but to move the Court to expand this Receivership to include Respiro so that the Receiver can preserve its value for the benefit of the Receivership Estate, and ultimately, for defrauded investors in Nadel’s Ponzi scheme. Respiro has been overwhelmingly funded with scheme proceeds, and thus should be part of this Receivership.

ARGUMENT

The Court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership 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.” *Elliott*, 953 F.2d 1560, 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)).

As an exercise of its broad discretion to fashion equitable relief, a district court may expand a receivership to include entities related to those in receivership when the following factors demonstrate “an element of injustice or fundamental unfairness”: (1) comingled funds; (2) intertwined business operations; (3) utilization of identical business offices or addresses; or (4) co-identity of officers, directors, or principals. *See SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 233-34 (D. Nev. 1985), *aff’d*, 805 F.2d 1039 (9th Cir. 1986); *see also Elliott*, 953 F.2d at 1565 n.1 (court may extend equitable receivership over related entities). Receivership courts may also consider: (1) the unauthorized diversion of funds or assets for other than corporate purposes; (2) the treatment by an individual of corporate assets as his own; (3) the diversion of assets from a corporation by or to a stockholder or other person or entity to the detriment of creditors; and (4) the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another. *See Elmas Trading*, 620 F. Supp. at 234.

In determining whether to expand a receivership to include related entities, a federal court has broad discretion to disregard corporate separateness and form and to give effect to the substance of the enterprise. *Id.* at 233. “Under federal law, a corporate entity may be disregarded in the interests of public convenience, fairness, and equity. . . .” *Id.* at 234. In equity receiverships, courts employ a flexible approach because “the Receiver’s primary

objective ... is to ensure that all available assets are brought within the Receivership and may then be properly distributed to creditors.” *Id.*

Here, this Court’s Orders Appointing Receiver expressly contemplate the expansion of the Receivership to encompass entities like Respiro. Those Orders state:

In the event that the Receiver discovers that funds of persons who have invested in the Corporate 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 and, if the Receiver deems it advisable, *extending this receivership over any person or entity holding such investor funds.*

See, e.g., Doc. 8 ¶ 24 (emphasis added). Respiro is an “entity holding ... investor funds” because it was initially and almost exclusively funded with money that Chris Moody obtained from Nadel’s Ponzi scheme. *See* Moody Decl. ¶¶ 9, 11. Nadel fraudulently diverted the Hedge Funds’ money to the Fund Managers, and ultimately, to himself and the Moodys, by fabricating the Hedge Funds’ investment returns and causing the Hedge Funds to pay enormous “fees” based on their inflated asset values. *See* Wiand Decl. ¶ 22. To the detriment of the Hedge Funds’ creditors and for the benefit of himself and his family, Chris Moody used a portion of the diverted money to fund Respiro, and it would be unjust and fundamentally unfair to allow Chris Moody and his wife, Tamara Moody, to continue to benefit from the diverted funds. *See Elmas Trading*, 620 F. Supp. at 234. As such, Respiro should be added to this Receivership so that the Receiver can preserve and realize its value for the benefit of the Receivership Estate.

Importantly, even though the funding for Respiro came overwhelmingly from the scheme, it need not have been funded exclusively with scheme proceeds to warrant its inclusion in this Receivership. Indeed, courts have held that “*any* comingling is enough to

warrant treating all the funds as tainted.” *S.E.C. v. Byers*, 637 F. Supp. 2d 166, 177 (S.D.N.Y. 2009). Because “money is fungible” it is “impossible to differentiate between ‘tainted’ and ‘untainted’ dollars. . . .” *S.E.C. v. Lauer*, 2009 WL 812719, *4-5 (S.D. Fla. 2009). “Once proceeds become tainted, they cannot become untainted.” *United States v. Ward*, 197 F.3d 1076, 1083 (11th Cir. 1999); *c.f. Lauer*, 2009 WL 812719 at *3 (holding that “when tainted funds are used to pay costs associated with maintaining ownership of [a] property, the property itself and its proceeds are tainted by the fraud”) (citing *United States v. One Single Family Residence Located at 15603 85th Ave. North, Lake Park, Palm Beach County, Fla.*, 933 F.2d 976, 982 (11th Cir. 1991)); *In re Fin. Fed. Title & Trust, Inc.*, 347 F.3d 880 (11th Cir. 2003) (imposing constructive trust on property purchased with Ponzi scheme proceeds).

In addition, the fact that Respiro’s current shareholders – Tamara Moody, Lyle Warner, and Nathan Warner – were not involved with Nadel scheme is not relevant to the resolution of this motion. In analogous situations (such as the funding of real estate transactions as opposed to a business entity), courts have repeatedly held that lack of knowledge on the part of an innocent spouse or other third party cannot foreclose equitable remedies if the money used to fund the transaction was fraudulently obtained. *See, e.g., Fin. Fed. Title & Trust*, 347 F.3d at 890 (“[A] lack of knowledge on the part of the person asserting the homestead exemption does not change this analysis, as it is the fraudulent nature of the funds which is of utmost importance.”); *Crawford v. Silette*, 608 F.3d 275, 277 (5th Cir. 2010) (“In this case, [the wife] retired the condominium’s mortgage using

fraudulently obtained money, yet she knew nothing of the scheme. Sadly, both parties are innocent and one party must lose.”).

Because (1) the Court has the authority to expand the Receivership to include Respiro; (2) Chris Moody funded Respiro with money from Nadel’s Ponzi scheme; and (3) expansion of the Receivership is necessary for the protection of defrauded investors and the Receivership Estate, the Receiver respectfully requests that this Court expand the Receivership to include Respiro.

CONCLUSION

For the foregoing reasons, the Court should grant the Receiver’s motion to expand the Receivership to include Respiro.

LOCAL RULE 3.01(g) CERTIFICATION OF COMPLIANCE

The undersigned counsel for the Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that the Commission does not oppose the relief requested in this motion. Counsel for the Receiver has also conferred with counsel for Respiro, and Respiro opposes the relief requested in this motion.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on September 7, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I **FURTHER CERTIFY** that on September 7, 2012, I mailed the foregoing document by first-class mail to the following non-CM/ECF participant(s):

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