

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants,

CASE NO.: 8:09-cv-0087-T-26TBM

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.

**RECEIVER'S MOTION FOR POSSESSION OF AND TITLE TO
REAL PROPERTY LOCATED IN MARSHFIELD, VT**

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, moves the Court for possession of and title to two adjacent parcels of real property located in Marshfield, Vermont (the "**Vermont Properties**"). The Receiver's investigation has revealed that Defendant Arthur Nadel ("**Nadel**") purchased the Vermont Properties in 2004 and 2005 entirely with investor funds unlawfully obtained through his fraudulent scheme which underlies this case (the "**scheme**").

Just a few months before the scheme collapsed, Nadel transferred the Vermont Properties to his son and daughter-in-law. Because the properties were purchased and maintained with proceeds of the scheme, the Receiver moves this Court for possession of and title to the Vermont Properties and entry of an Order in substantially the form of the proposed order attached as **Exhibit A**. This Court has jurisdiction over the Vermont Properties because the Receiver was re-appointed on October 29, 2012 (Doc. 935) and such order of re-appointment and the complaint in this case were filed in the U.S. District Court for the District of Vermont on October 31, 2012. *See* 28 U.S.C. § 754; *SEC v. Nadel et al*, Case No. 2:12-mc-00113 (D. Vt.) Complaint (Doc.1), Order Reappointing Receiver (Doc. 2). The Receiver is not aware of any claim, lien, or encumbrance relating to these properties other than those imposed by the Receiver himself to protect the Receivership's interest.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission ("**Commission**") initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for various entities, including Defendant Scoop Capital, LLC ("**Scoop Capital**") and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; and Viking Fund, LLC (collectively, the "**Hedge Funds**") (the "**Order Appointing Receiver**"). (*See generally* Order Appointing Receiver (Doc. 8).)

The Court subsequently granted several motions to expand the scope of the receivership to include other entities owned or controlled by Arthur Nadel. (*See generally*

Doc.17, Doc. 44, Doc. 68, Doc. 81, Doc. 153, Doc. 172, Doc. 911, Doc. 916). All of the entities and the trust in receivership are hereinafter referred to collectively as the **“Receivership Entities.”**

Pursuant to the Order 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.” (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court

Doc. 8.

By this Motion, the Receiver seeks possession of and title to two adjacent parcels of real property: one located at 3343 U.S. Route 2, Marshfield, VT 05658 (the **“3343 Property”**) and the other located at 3353 U.S. Route 2, Marshfield, VT 05658 (the **“3353 Property”**) (the 3343 Property and 3353 Property are collectively referred to as the **“Vermont Properties”**). Nadel bought these properties in 2004 and 2005, respectively, with proceeds of his scheme, and then transferred their title to his son, Geoffrey Nadel, and his

daughter-in-law, Anne Nadel, on November 7, 2008, shortly before the scheme collapsed. While Geoffrey Nadel has since passed away, Anne Nadel continues to own and inhabit the Vermont Properties, and while not contesting that Nadel purchased them with scheme proceeds, Anne Nadel has refused to voluntarily transfer title to the Receiver.

The Vermont Properties

The 3343 Property

As detailed in the Receiver's Declaration in support of this motion, Nadel purchased the 3343 Property on September 3, 2004 for \$122,000. Receiver's Decl. ¶ 10 being filed with this motion. ("**Receiver's Decl.**") To fund the purchase, Nadel both wrote a check for \$10,000 as a deposit from, and later wired \$117,697.90 for the balance due at closing from, his personal account at SouthTrust Bank (the "**SouthTrust Account**"). (*Id.* ¶¶ 11-12.)

The Receiver's investigation has shown that the funds used for both of these transfers are directly traceable to Receivership Entity Scoop Capital, which in turn received its money from the Hedge Funds at the heart of the scheme. Shortly before Nadel purchased the 3343 Property, Nadel deposited three checks totaling \$235,000 into the SouthTrust Account. (*Id.* ¶¶ 13-14.) These checks were drawn on a Scoop Capital bank account, and were derived from investors. After making the deposits, Nadel then wrote a \$10,000 check to cover the deposit on the 3343 Property, and later initiated a \$117,697.90 wire transfer for the remaining amount due at closing. (*Id.* ¶¶ 11-12.) Nadel's guilty plea to a criminal indictment charging him with perpetrating the scheme through the Hedge Funds from 1999 until 2009 establishes the existence of that scheme for that period. *See United States v. Arthur Nadel*, Case No. 1:09-cr-00433-JGK (S.D.N.Y. Doc. 57); *Scholes v. Lehmann*, 56

F.3d 750, 762 (7th Cir. 1995); *Stenger v. World Harvest Church, Inc.*, 2006 WL 870310, *14 (N.D. Ga. 2006); *In re McCarn's Allstate Fin., Inc.*, 326 B.R. 843, 851 (Bankr. M.D. Fla. 2005); *In re Rothstein Rosenfeldt Adler, P.A.*, 2010 WL 5173796, *5 (S.D. Fla. 2010); *In re Old Naples Secs., Inc.*, 343 B.R. 310, 320 (Bankr. S.D. Fla. 2006); *In re Randy*, 189 B.R. at 439. The Receiver and his professionals have reached the same conclusion based on the evidence.¹ As such, throughout the time of the above-mentioned transfers, Nadel was perpetrating his scheme, and essentially all of his income was derived from that scheme. (*Id.* ¶¶ 14-15.) In sum, information reviewed by the Receiver shows that the 3343 Property was purchased with proceeds of the scheme. (*Id.* ¶ 16.)

Several days after purchasing the property, on September 13, 2004, Nadel transferred ownership of the 3343 Property to himself as Trustee of the Clark/Nadel Revocable Trust Dated September 2, 2004 (the “**Clark/Nadel Trust**”). (*Id.* ¶ 17, Exs. K and L.) This transfer was made without receipt of any consideration from the Clark/Nadel Trust. (*Id.*) Pursuant to the terms of the Clark/Nadel Trust, Geoffrey Nadel was permitted to reside on the 3343 Property without the payment of any rent. (*Id.* ¶ 18.)

On November 7, 2008, only two months before the scheme collapsed, Nadel, as Trustee of the Clark/Nadel Trust, executed a Warranty Deed transferring ownership of the 3343 Property to Geoffrey Nadel and Geoffrey Nadel’s wife, Anne Nadel. (*Id.* ¶ 19, Exs. O and P.) There is no evidence that any money was paid in exchange for the transfer. (*Id.* ¶ 19.)

¹ See generally *Wiand, as Receiver v. Brian L. Meeker*, Case No: 8:10-cv-166-T-17MAP (M.D. Fla.) Decl. of Maria M. Yip (Doc. 91) (Receiver’s forensic accounting expert

The 3353 Property

As also detailed in the Receiver's Declaration, Nadel purchased the 3353 Property on July 29, 2005 for the Clark/Nadel Trust. (*Id.* ¶ 21.) This purchase was also funded with scheme proceeds. Specifically, to fund the purchase of the 3353 Property, Nadel made two wire transfers from the SouthTrust Account: one wire transfer for \$5,000 to cover the initial deposit, and one wire transfer for \$51,883.58 to cover the remaining amount due at closing. (*Id.* ¶¶ 22-23.)

The Receiver's investigation has shown that the funds used for both of these transfers are directly traceable to Receivership Entities used in Nadel's scheme. Shortly before Nadel purchased the 3353 Property, on July 12, 2005, he transferred the money to cover the balance due at closing from a personal brokerage account held through Shoreline Trading Group, LLC (the "**Shoreline Account**") to the SouthTrust Account. (*Id.* ¶ 23.) The Receiver's investigation has revealed that the source of the funds in the Shoreline Account was a \$700,000.00 deposit from the SouthTrust Account on January 9, 2004. (*Id.* ¶ 24.) No other funds were deposited into the Shoreline Account during the relevant time. (*Id.*)

The Receiver's investigation also revealed that, to cover the \$700,000 wire transfer from the SouthTrust Account to the Shoreline Account, Nadel wrote a check to himself in the amount of \$700,000 on January 8, 2004 from an account at SouthTrust Bank in the name of Intex Trading Corporation ("**Intex**"). (*Id.* ¶ 25.) As explained in detail in the Receiver's Declaration, Intex was the General Partner of Scoop Investments, Ltd., which was the name used by Receivership Entity Victory Fund, Ltd. until November 27, 2002. (*Id.* ¶¶ 26-27.)

concluded that Nadel operated a Ponzi scheme through the Hedge Funds from 1999 through

Nadel created Intex and at all times served as its sole director and officer. (*Id.* ¶ 27.) On December 20, 2002, Intex was replaced by Receivership Entity Scoop Capital as Victory Fund's general partner. (*Id.* ¶ 26.) The \$700,000 used to fund the transfer from Intex's SouthTrust Bank account to Nadel's Shoreline Account is directly traceable to the Receivership Entities and Nadel's scheme. (*Id.* ¶¶ 25-28.)

On November 7, 2008, only two months before the scheme collapsed, Nadel, as Trustee of the Clark/Nadel Trust, executed a Warranty Deed transferring ownership of the 3353 Property to Geoffrey Nadel and Anne Nadel. (*Id.* ¶ 30, Exs. FF and GG.) There is no evidence that any money was paid in exchange for the transfer. (*Id.*). At all times during these transfers, Nadel was engaged in his fraudulent scheme, and virtually all of his income was derived from that scheme. (*Id.* ¶¶ 14-15, 31-32; *see supra* at 4 (discussing Nadel's criminal prosecution)). In short, the Receiver's investigation clearly shows that the purchase of the 3353 Property is directly traceable to proceeds of the scheme. (*Id.* ¶ 32).

MEMORANDUM OF LAW

I. The Receiver Is Entitled To Possession Of And Title To The Vermont Properties

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in its administration is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986); *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 at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). Those powers

2009).

include the power to order the transfer of property. *See SEC v. American Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996) (abrogated on other grounds). The relief sought by the Receiver falls squarely within those powers.

Given the Court's wide discretion and authority and the Order Appointing Receiver, the Receiver is entitled to take possession of and title to the Vermont Properties. As discussed above and detailed in the Receiver's Declaration, the evidence uncovered by the Receiver's investigation shows that (1) Nadel used proceeds of his scheme to purchase the Vermont Properties; and (2) Nadel transferred ownership of the Vermont Properties to his son and daughter-in-law for no consideration and when his scheme was on the verge of collapse. Short of taking actual physical possession of and title to the Vermont Properties, the Receiver will not be able to generate any benefit for the Receivership Estate or injured investors and other creditors of the Receivership Entities from those properties.

II. No Proof Exists That Any Value Was Provided For The Vermont Properties

Since shortly after the Receivership began, the Receiver has been monitoring the Vermont Properties and has taken steps to protect the Receivership's interest in them. Further, the Receiver has allowed Anne Nadel to remain on those properties and has had communications with her about voluntarily turning the properties over to the Receivership. However, these communications have not resolved this dispute as Ms. Nadel refuses to transfer the properties to the Receiver. In response to correspondence from the Receiver, Ms. Nadel contended that the funds used by Nadel to purchase the Vermont Properties were "a partial reimbursement for a much larger debt owed my family by him," and thus did not represent a "shelter against Arthur's other potential creditors." A copy of Ms. Nadel's letter

is attached hereto as **Exhibit B**. Specifically, Ms. Nadel claimed that Nadel's transfer of the Vermont Properties to her and her husband was a "partial reimbursement" of (1) a purported child-support obligation to her now-deceased husband, Geoffrey Nadel; and (2) the sale of property allegedly owned by Ms. Nadel that "Arthur stated he was stewarding through conventional investments."

As an initial matter, even assuming these contentions are true, any obligation would be personal to Nadel and would not involve any obligation of a Receivership Entity or, more broadly, anything related to the scheme, and consequently would not justify infringing the Receivership's right to recover investors' funds. Indeed, there is no evidence that any such claimed obligation even arose in 1999 or later (*i.e.*, at a time that the scheme, or any Receivership Entity involved in the scheme, was in existence.)² But more importantly, there is no evidence supporting these contentions. First, although Ms. Nadel stated in her Letter that the 'debts' allegedly owed by Nadel were fully documented, she later informed the Receiver's representative that in reality she has no supporting documentation. (Receiver's Decl. ¶ 33). Second, the Receiver has not found any documentation supporting Ms. Nadel's contentions.³ Third, the transactional documents associated with the transfers of the Vermont Properties are devoid of any indication that Nadel intended the purchase, or subsequent transfer in ownership, of the Vermont Properties to act as satisfaction for any previous

² See Order dated 10/24/2012 denying motion for relief by Nadel's ex-wife who claimed losses from conduct that "predate[d] the ponzi scheme charged in the complaint and ha[s] absolutely no nexus to that scheme." (Doc. 928.)

³ The Receiver has uncovered evidence showing that a property owned by Geoffrey and Anne Nadel in East New Market, Maryland, sold for approximately \$20,000 in June 2002. The Receiver is unaware of other property owned or sold by Geoffrey and/or Anne Nadel.

debt(s). In short, the Receiver has demonstrated that the funds used to purchase the Vermont Properties were proceeds of Nadel's fraud that were stolen from Hedge Fund investors, and there is no evidence that Nadel or anyone else received any value in exchange for the transfer of the Vermont Properties to Geoffrey and Anne Nadel.

In fact, the evidence shows that, aside from the Vermont Properties, Geoffrey and Anne Nadel benefitted in other ways from a substantial amount of additional investor funds. First, Geoffrey Nadel received over \$428,000 of scheme proceeds through the Clark/Nadel Trust (which was controlled and funded by Nadel) between September 2004 and June 2008. (*Id.* ¶ 37.) Second, Geoffrey Nadel received an additional \$28,000 of scheme proceeds from an account controlled by Nadel at Wachovia Bank between 2002 and 2008. (*Id.* ¶ 36.) And third, the Receiver has discovered documentation showing that Nadel made tax and insurance payments totaling approximately \$28,000 owing on the Vermont Properties since their purchase via his personal account at Wachovia Bank and the Wachovia account controlled by the Clark-Nadel Trust, both of which were funded with scheme proceeds. (*Id.* ¶ 38.)

In sum, the evidence shows that Nadel purchased the Vermont Properties with scheme proceeds and transferred them to Geoffrey and Anne Nadel, and that Geoffrey and Anne Nadel also benefitted from at least another \$448,000 of scheme proceeds. On the other hand, there is no evidence of any obligation by Nadel, let alone a Receivership Entity, or any obligation relating to or dating from the scheme, to Geoffrey or Anne Nadel.

CONCLUSION

For the foregoing reasons, the Receiver should be granted title to and possession of the Vermont Properties, and respectfully requests this Court enter an order in substantially

the form of the proposed order attached as **Exhibit A** vesting the Receiver with possession of and title to the real properties located at 3343 U.S. Route 2 and 3353 U.S. Route 2 in Marshfield, Vermont for the reasons provided in this Motion.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

Counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that the SEC does not oppose this motion. Based on the Receiver's representative's communications with Anne Nadel, Anne Nadel objects to the relief requested in this motion.

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants.

Anne Nadel
3343 US Route 2
Marshfield, VT 05658

/s/ Gianluca Morello

Gianluca Morello, FBN 034997
gmorello@wiandlaw.com
Michael S. Lamont, FBN 0527122
mlamont@wiandlaw.com
Jared J. Perez, FBN 0085192
jperez@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