

**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;
and 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.

ORDER

Pending before the Court for resolution is the Receiver's Motion to Clarify Settlement Orders which, as the Court noted in its order entered February 15, 2013, at docket 968, was filed by the Receiver "in reaction to a hearing scheduled on February 22, 2013, in the arbitration proceeding involving World Opportunity Fund, L.P., in which that entity has filed a Motion to Enforce Judgment Credit." World Fund Opportunity, L.P. (World Fund), has filed an objection to the motion, which was adopted by other individuals and entities who are also currently in arbitration proceedings with the

Receiver.¹ Although the Court has scheduled an expedited hearing on the motion, after careful review of the parties' submissions, together with the procedural history of this case, the Court is of the opinion that the motion is due to be denied without the need for a hearing.

The Receiver seeks an order from this Court clarifying the Court's previous Settlement Orders (the Orders) entered at dockets 742, 835, and 922 with regard to settlements reached with Goldman Sachs Execution & Clearing, L.P., Shoreline Trading Group, LLC, and Holland & Knight, LLC (the Settlement Defendants). The Receiver's proposed order granting the motion would, in the Court's view, preclude World Fund, and presumably all other individuals and entities currently involved in arbitration proceedings with the Receiver, from seeking a judgment credit, reduction, or a set-off under the Orders. World Fund offers substantial and meritorious arguments to the motion, contending that (1) the issue of entitlement to a judgment credit is for the arbitration panel to decide and that any ruling by this Court on that issue would be an advisory opinion prohibited by Article III of the United States Constitution and (2) the time for seeking an alteration or amendment to the Orders under Rule 59 of the Federal Rules of Civil Procedure has expired and the requested alterations to the Orders violate World Fund's due process rights and would constitute a judicial taking.

¹ United States District Judge Elizabeth A. Kovachevich previously ordered that the Receiver's "clawback claims" against World Fund and these other individuals and entities be decided in arbitration. See case number 8:10-cv-203-T-17MAP, docket 49.

As World Fund correctly argues, if this Court views the motion to clarify as one seeking to alter the substantive language of the Orders, then the time for seeking such an alteration has clearly expired under Rule 59, such an alteration would substantially affect the rights of the Settling Defendants without their consent, and, finally, such an alteration would irrevocably deprive World Fund of its right to a judgment credit or a claim for relief against the Settlement Defendants. If, however, the Court views the motion to clarify through the procedural prism of requesting the Court to make a legal determination of the consequences of the Settlement Orders, then the effect of granting the motion would interfere with the arbitration panel's jurisdictional authority to decide the legal consequences of the Settlement Orders, the order would be advisory in nature, and the order would violate Judge Kovachevich's stay order entered in connection with her order compelling the Receiver and World Fund to arbitrate the Receiver's "clawback claims."

More fundamentally troubling, however, is the inescapable fact that the Court's entry of the proposed order of clarification in this action, in which World Fund and the other individuals and entities have never been a party or privy, have never had their interests adequately represented, and have never had the opportunity to address and litigate the issue of their entitlement to a judgment credit prior to the entry of the Orders, would have no preclusive effect on World Fund's ability to seek a judgment credit in the arbitration proceedings. See International Ship Repair & Marine Serv., Inc. v. Northern Assurance Co. of America, 2013 WL 28380, at *1 (11th Cir. Jan. 3, 2013) (unpublished) (holding that party which was not a party or privy in an action in which its interests were

never adequately represented, and did not have an opportunity to litigate the issues presented in that action, was not bound by the judgment rendered in that case) (citing and quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 327 n.7, 99 S.Ct. 645, 649 n.7 (1979); Wilson v. Attaway, 757 F.2d 1227, 1237 (11th Cir. 1985)). **ACCORDINGLY**, for the reasons expressed, it is **ORDERED AND ADJUDGED** that the Motion to Clarify Certain Settlement Orders (Dkt. 996) is **denied**. The hearing scheduled for Thursday, February 21, 2013, at 9:00 a.m., is **cancelled**.

DONE AND ORDERED at Tampa, Florida, on February 20, 2013.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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