

**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.

_____/

**BURTON W. WIAND, as Receiver for
Valhalla Investment Partners, L.P.;
Viking Fund, LLC; Viking IRA Fund, LLC;
Victory Fund, Ltd., Victory IRA Fund, LTD,
and Scoop Real Estate, L.P.,**

Plaintiff,

v.

Related Case No. 8:10-cv-092-17MAP

DANCING \$, LLC.,

Defendant.

_____/

**DECLARATION OF ERIC WALDMAN IN SUPPORT OF CLAIMANT ELENOW,
LLC'S MOTION FOR RECONSIDERATION OF CLAIM**

I, Eric Waldman, state under oath the following facts:

1. I am managing member of Claimant Elendow, LLC and the managing member of defendant Dancing \$, LLC in related case *Wiand v. Dancing \$, LLC* in the above-captioned action. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently to them.

2. Dancing \$, LLC is a Montana LLC that had 136 members, consisting entirely of family and friends of mine, each of whom invested various amounts in Dancing \$ and received membership interests proportionate to the amount of their investment. Dancing \$ was required to redeem its limited partnership interest in Scoop Real Estate, L.P. and Valhalla Investment Partners, L.P. (the "Funds"). After receiving the redemptions from the Funds, Dancing \$ made distributions to the members of Dancing \$ in accordance with their membership interests and Dancing \$ closed.

3. Elendow was then created in December 2007 for larger Dancing \$ account holders (as well as a few new members) to reinvest money into previous "successful" alternative investment vehicles used by Dancing \$, primarily leveraged Madoff "feeder funds," as well as Scoop Real Estate, L.P. and Valhalla Investment Partners, L.P. As with Dancing \$, investors received membership interests proportional to the amount of money invested. Elendow was formed to *simplify* investing (by removing a host of smaller investors) and continue Dancing \$ by investing in a nearly identical portfolio, with, as shown, nearly identical (88.55%) investors.

4. 86.78% of the membership interests in Dancing \$ (53 members) used the distributions from Valhalla and Scoop to purchase membership interests in Elendow, comprising a total of \$92,956.94 of the \$107,172.11 in total alleged false profits received from Valhalla and Scoop. Additionally, the majority of the money wired out of Dancing \$'s account as disbursements was

wired back into Elendow's account as purchases --*often on the same day* (or within 24 hours).

5. The balance of the alleged "false profits" of \$14,164.17 was distributed to the remaining 83 members of Dancing \$.

6. Those members from Dancing \$ that invested their distributions from Valhalla and Scoop into Elendow accounted for 88.55% of the membership interests in Elendow. Through Elendow, those members originally in Dancing \$ invested a total of \$619,843.11 back *into* Scoop and Valhalla in 2008 (almost *seven times as much* as they had received through Dancing \$) and lost the entirety of the investment.

7. For example, I am currently in my 60's, and after receiving \$5,712 in alleged "false profits" into my IRA from Dancing \$'s redemption of its limited partnership interests in Valhalla and Scoop, I personally lost over \$40,000 from my IRA in Valhalla and Scoop through Elendow.

8. On or about December 11, 2009, Dancing \$ received a letter from the Receiver dated December 4, 2009, stating that Dancing \$ had received \$107,172.11 in "false profits" from the funds and demanded that it be repaid. I contacted my attorney, Philip Stillman and provided him with the letter that I had received.

9. Because of the overlapping memberships in both Dancing \$ and Elendow, I prepared an Excel spreadsheet showing the member, the member's percentage interest in Dancing \$, the amount invested, the amount distributed, the percentage ownership of that member (if any) in Elendow and the amount invested in Elendow (and lost, as no distributions were received by Elendow). I agreed to provide those spreadsheets to the Receiver's attorney, Michael Lamont and provided them to him directly at some time in late February 2010. Copies of the spreadsheets are attached to the Stillman Declaration as Exhibit 2.

10. At some time during summer of 2010, I apparently was mailed a notice from the Receiver

regarding the need to file a Proof of Claim with the Receiver regarding Elendow prior to September 2, 2010. However, during that time I was attempting to start a new business, as I had lost virtually all of my savings in the Madoff and Nadel schemes, manufacturing “smoothies” and attempting to market the product to health food stores, such as Whole Foods. This required me to be away from home most of each month, travelling around the West Coast and meeting with potential customers. In addition, because I was traveling also traveling outside the country during that time, I did not actually see the notice from the Receiver until September 27, 2010, when I returned home.

11. I immediately contacted my attorney, Mr. Stillman about it by email and then spoke on the telephone. Because Mr. Stillman had been dealing with Mr. Lamont and Dancing \$, Mr. Lamont knew the relationship between Dancing \$ and Elendow, knew that I managed both companies, and finally knew that Mr. Stillman was my attorney, I had thought that Mr. Stillman was receiving all of the notices regarding Elendow as well as Dancing \$. I therefore expected that Mr. Stillman had filed whatever paperwork for Elendow that had been required.

12. However, I discovered on September 27, 2010 that Mr. Stillman had not received any notices regarding Elendow and that he therefore had not filed any claim form with the Receiver. I therefore immediately completed the claim form and sent it to the Receiver.

13. In or about March 2011, I received a letter from the Receiver asking for further information concerning why the claim form was returned to the Receiver late. At some point after receiving that letter, I spoke with Mr. Stillman and Mr. Stillman said that he would check into the situation and handle the explanation. From speaking with him in August 2011, I understood that he had both spoken with someone at the Receiver’s law firm in charge of claims and had written a letter regarding the reason for the late claim.

14. I heard nothing further from the Receiver until December 2011, when I received a letter from the Receiver dated December 9, 2011. That letter gave Elendow a claim number, and stated that the claim was allowed.

15. In particular, the letter sent to Elendow stated that:

My recommended determination of your claim will include an Allowed Amount. The Allowed Amount is the amount to which I have determined the relevant claim is entitled.

A copy of the December 9, 2011 Letter is attached to the Stillman Decl. as Exhibit 5. Although the letter referenced a Motion, nothing indicated to me that the Elendow claim was anything but allowed. I had no reason to assume otherwise and saw no reason to ask Mr. Stillman about it, as it was an allowed claim. Therefore, there was nothing contained in the letter that would indicate to me that I needed to review a “motion.”

16. In fact, to the contrary, a little over a month later, on January 26, 2012, I received a letter from the Department of Justice, stating that Elendow was entitled to \$350,000 as “restitution” from the Nadel scheme. I assumed that \$350,000 was the actual amount of the allowed claim by the Receiver, since I had no reason to expect that Elendow would be made whole, *i.e.*, receive its full amount of losses back. A copy of the DOJ Letter is attached to the Stillman Decl. as Exhibit 6. Coupled with the assignment of a claim number by the Receiver, and the reference to the fact that Elendow was entitled to an “Allowed Amount,” I reasonably believed that the amount represented the allowed claim for Elendow. I therefore never asked Mr. Stillman about the issue.

17. A mediation with the Receiver was scheduled for October 19, 2012, and shortly before the mediation, Mr. Stillman discovered that the Elendow claim had been denied and informed me. I provided Mr. Stillman with the letters that I had received, and Mr. Stillman reviewed the Receiver’s Motion, which listed Elendow’s claim as “allowed” in the amount of “none” in

Exhibit G of the Motion, buried more than 100 pages back in the four part document. [DE 675-7]

18. I find it particularly ironic that in the Receiver objected to treating Dancing \$'s gains and Elendow's undisputed losses as related in order to refuse to offset any alleged "false profits" to Dancing \$ with the significant losses suffered by Elendow, while at the same time, claiming that the relatedness of the two companies was a ground to deny Elendow's claim. I am no lawyer, but to me, that just smacks of gross unfairness. To me, as a victim of Nadel's scheme, it seems only proper that either the Receiver treats both entities separately, thereby allowing Elendow's \$700,000 claim, or he doesn't. It is the epitome of inequity to allow the Receiver to treat the entities in the most convenient way for his claims.

19. Elendow's legitimate claim has now been denied, despite (1) having received a receipt of Elendow's \$700,000 claim from the Receiver, (2) receiving a letter from the Receiver assigning Elendow a claim number and representing that Elendow had an "Allowed Claim" and (3) receiving a letter from U.S. Department of Justice ordering restitution of \$350,000 to Elendow shortly thereafter; all of which led me to believe that Elendow's claim was allowed in this case.

20. Moreover, although I provided documentation to the Receiver's attorneys at the very inception of this case showing the relationship between Dancing \$ and Elendow, my attorney in this case regularly dealt with the Receiver's attorneys and although Dancing \$ had pled offset as a result of the Elendow losses as an affirmative defense of offset, the Receiver's attorneys never contacted Mr. Stillman about the Elendow claim at all, and simply sent what I can only call a misleading and lulling letter indicating that Elendow had an "Allowed Claim," which I now discover is an "Allowed Claim" in the amount of \$0. As a legitimate victim whose only knowledge of the Funds was through communications with Christopher Moody, I had no knowledge that the Funds were a Ponzi scheme and lost my own and my family and friends'

money in the Funds through Elendow. It is a gross miscarriage of justice to allow a judgment against Dancing \$ while denying Elendow's legitimate claim and prohibiting it from getting any of its funds returned, while others similarly situated are reaping the benefits of the Receiver's hard work in recovering assets. The Court should not forget that \$700,000 of Elendow's money went to obtain those assets, and even if equity dictated that the Dancing \$ judgment should be offset by the distributions from the Receiver to Elendow, at least that would provide *some* small compensation for our real and *bona fide* losses.

I declare under the penalty of perjury under the laws of the State of Florida and the United States that the foregoing is true and correct. Signed this 28th day of February, 2013 at Bozeman, Montana.



Eric Waldman

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted, this 1st day of March, 2013.

/s/ Joshua Bleil

By: _____

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SERVICE LIST

Burton W. Wiand, et al. v. Dancing \$, LLC
Case No.: 8:10-cv-092-17MAP
United States District Court/Middle District of Florida

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