

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 UNOPPOSED SIXTH MOTION FOR REAPPOINTMENT

Burton W. Wiand, as Receiver (the “**Receiver**”), by and through his undersigned counsel, moves the Court for an Order Reappointing Receiver in the form attached as **Exhibit A** and would show as follows:

1. 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).)

2. 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.**”

3. 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.

4. The Receiver's investigation has revealed that Neil and Christopher Moody, through Receivership Entities Viking Oil & Gas, LLC and Valhalla Investment Partners, L.P., transferred at least \$5.1 million in the form of capital contributions and loans to Quest Energy Management Group, Inc. ("Quest"). These transfers were made entirely with investor funds unlawfully obtained through the fraudulent scheme that underlies this case.

5. Because Quest was funded with proceeds of the scheme, the Receiver intends to move this Court for an order including it in this Receivership. The purpose of that motion is to "marshal and safeguard all of the assets of the Defendants and Relief Defendants" in order to distribute those assets equitably among investors and other creditors who suffered losses as a result of the investment scheme orchestrated through Receivership Entities.

6. The Receiver makes this motion so that he may satisfy the 10-day requirement of 28 U.S.C. § 754 to provide this Court with jurisdiction over this matter.

MEMORANDUM OF LAW

1. 28 U.S.C. § 754 Allows This Court to Obtain Jurisdiction Over Property Located Outside of This District

For this Court to obtain jurisdiction over property outside the Middle District of Florida, the Receiver must comply with 28 U.S.C. § 754, which states:

A receiver appointed in any civil action or proceeding involving property, real, personal, or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file

such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

Section 754 extends “the territorial jurisdiction of the appointing court . . . to any district of the United States where property believed to be that of the receivership estate is found, provided that the proper documents have been filed in each such district as required by § 754.” *SEC v. Bilzerian*, 378 F.3d 1100, 1104 (D.C. Cir. 2004) (citing *Haile v. Henderson Nat'l Bank*, 657 F.2d 816, 823 (6th Cir. 1981)). Thus, pursuant to 28 U.S.C. §754, to provide this Court with jurisdiction over property outside of this district, the Receiver must file a copy of the complaint in this case and the order appointing the Receiver in the districts in which receivership property is located within 10 days from the date of the order appointing the Receiver. *Bilzerian*, 378 F.3d at 1103.

Reappointment of a receiver for the purpose of re-starting the 10-day time limit under § 754 has been expressly approved by the courts. *See Bilzerian*, 378 F.3d at 1105 (citing *SEC v. Vision Communications, Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996)) (“On remand, the court may reappoint the receiver and start the ten-day clock ticking once again.”); *SEC v. Aquacell Batteries, Inc.*, 2008 WL 2915064, at *3 (M.D. Fla. July 24, 2008) (citing *Warfield v. Arpe*, 2007 WL 549467, at *12 (N.D. Tex. Feb. 22, 2007)) (“A district court may reappoint a federal equity receiver in a securities fraud case in order to ‘reset’ the 10-day clock under § 754”); *Terry v. June*, 2003 WL 21738299, at *3 (W.D. Va. July 21, 2003) (“Courts having addressed this issue unanimously suggest that an order of reappointment will renew the ten-day filing deadline mandated by section 754.”); *SEC v. Heartland Group, Inc.*, 2003 WL 21000363, at *5 (N.D. Ill. May 2, 2003) (“[T]he court can easily correct [the Receiver's] failure to file such a claim by merely reappointing the Receiver and thereby starting the 10-

day time period under § 754 ticking once more.”). “Permitting a receiver to reassume jurisdiction in this manner is consistent with the role and purpose of a federal receivership. Were this not the rule, a receiver would be forced to file the required documentation in all ninety-four federal districts to protect jurisdiction over any potential, but presently unknown, receivership assets—a result that would produce a needless waste of time and lead to dissipation of assets otherwise returnable to defrauded investors.” *Terry v. June*, 2003 WL 21738299, at *3 (citing *Heartland Group*, 2003 WL 21000363, at *5; *SEC v. Infinity Group Corp.*, 27 F. Supp. 2d 559, 563 (E.D. Pa. 1998)). This Court previously granted substantively identical motions. *See* Docs. 140, 316, 493, 935.

Before seeking relief from the Court, the Receiver tried to resolve the matter involving Quest, but those efforts have been unsuccessful. In fact, Quest entered into a settlement agreement with the Receiver but then failed to make the required settlement payment. As such, the Receiver has no choice but to seek relief from the Court with respect to the millions of dollars of scheme proceeds used to fund Quest, but before he can do that, he must comply with the requirements of 28 U.S.C. § 754 to provide this Court with jurisdiction. In the instant case, the Receiver has identified substantial scheme proceeds that were transferred to the Northern District of Texas. Thus, the Receiver requests an order reappointing him as Receiver so that he may timely file the requisite papers in the United States District Court for the Northern District of Texas (and any other pertinent jurisdiction) as required by Section 754 to obtain jurisdiction over the property the Receiver seeks to obtain.

WHEREFORE, the Receiver moves the Court to reappoint him as Receiver over all

of the Receivership Entities by Order in the form attached as **Exhibit A** and for such other relief as the Court deems appropriate.

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 March 6, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

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