

**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, LLC,

Relief Defendants.

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THE RECEIVER'S STATUS REPORT

On November 19, 2018, the Court ordered Burton W. Wiand (the “**Receiver**”) to file a report regarding the status of this proceeding and the necessity of further judicial involvement.¹ Doc. 1371. As explained below, this proceeding involves two separate and

¹ The Receiver filed his Twenty-Second Interim Report on August 21, 2018, which contains detailed information about the Receiver’s activities from April 1, 2017 through April 30, 2018. *See* Doc. 1361. The Receiver has also substantially completed his Twenty-Third Interim Report, which will detail his activities from May 1, 2018 through October 31, 2018. The Receiver will file the Twenty-Third Interim Report before the end of the year. In the
(footnote cont’d)

independent receiverships. The Court established the original receivership in 2009 following the collapse of Arthur Nadel's Ponzi scheme ("Nadel" and the "Nadel Receivership"). *See, e.g.*, Doc. 8. Specifically, from 1999 through 2008, Nadel raised approximately \$330 million through six hedge funds and four management companies in connection with more than 700 investor accounts. Since his appointment in January 2009, the Receiver and professionals retained by him have worked diligently to uncover and unwind Nadel's fraud. They have, for example:

- Expanded the receivership to include an additional 15 entities that were funded with scheme proceeds or otherwise associated with Nadel;
- Reached agreements to settle with 159 profiteers and non-profit organizations and obtained 19 judgments against profiteers and non-profit organizations for a total combined amount of \$32,077,470.74 (plus additional non-cash assets);
- Prevailed on six summary judgment motions in this Court, resulting in the entry of judgments against profiteers for a total amount of \$2,869,015.43;
- Successfully defended those judgments multiple times before the Eleventh Circuit and demonstrated the Receiver's right to recover prejudgment interest on cross-appeal (*see, e.g., Wiand v. Lee*, 753 F.3d 1194 (11th Cir. 2014); *Wiand v. Dancing \$, LLC*, 578 F. App'x 938 (11th Cir. 2014); *Wiand v. Meeker*, 572 F. App'x 689 (11th Cir. 2014));
- Obtained two arbitration awards in favor of the Receiver in the total combined amount of \$2,417,979.83, and enforced one of those awards through litigation in the British Virgin Islands under international treaties;
- Reached an agreement to settle litigation with Holland & Knight LLP, pursuant to which that firm paid \$25,000,000 to the Receiver;
- Reached an agreement to settle litigation with Goldman Sachs Execution & Clearing, L.P., pursuant to which that firm paid \$9,850,000 to the Receiver;

meantime, this status report responds directly to the Court's order and summarizes several issues likely to require further judicial involvement.

- Reached an agreement to settle litigation with Shoreline Trading Group, LLC, pursuant to which that firm paid \$2,500,000 to the Receiver;
- Recovered approximately \$7,959,062.64 in federal tax refunds issued for Nadel, his wife, and certain of his associates;
- Obtained possession of more than 426 acres and numerous parcels of real property located in Georgia, North Carolina, Mississippi, Ohio, Colorado, Tennessee, and Florida;
- Seized and operated and/or liquidated businesses ranging from a florist to a medical device retailer to a small airport/jet center; and
- Established a claims process that involved the distribution of 1,250 claims packages and resulted in the submission of more than 500 completed claims.

Due to these and other efforts, the Receiver has made seven interim distributions to defrauded investors and other claimants for a total of approximately **\$67 million**, representing an aggregate recovery of approximately 52% of those claimants' losses. Put simply, the complexity of the Nadel Receivership has necessitated its length, but as explained in Section I below, only a few tasks remain to be accomplished, and those tasks should require minimal judicial intervention.

In 2013, the Court established a second receivership over Quest Energy Management Group, Inc. ("**Quest**") – an oil and gas business located in Texas – because, among other reasons, certain individuals used diverted proceeds from Nadel's scheme to fund that company (the "**Quest Receivership**"). *See* Docs. 993, 1024. Upon further investigation, the Receiver determined that those individuals also operated Quest as a Ponzi scheme and committed other violations of law. Judge Lazzara initially expressed concern that Quest could negatively impact the Nadel Receivership, but to avoid that result, the Receiver informed the Court that he would administer and operate Quest separately. As such, the

Quest Receivership has its own claims process and a separate pool of claimants, including taxing authorities, secured creditors, and defrauded investors. *See, e.g.*, Docs. 1240, 1241. As explained in Section II below, the Quest Receivership faces certain challenges that will require the Court's attention, including the completion of its independent claims process.

I. THE NADEL RECEIVERSHIP

Activities that will require further judicial involvement in connection with the Nadel Receivership can be grouped into three categories: (1) litigation; (2) asset disposition; and (3) termination of the receivership, including a final distribution to claimants. As described below, the Receiver will ask the Court to approve any additional settlements or asset sales. If the remaining assets cannot be maintained or sold in a profitable, commercially-reasonable manner, the Receiver will ask the Court for authorization to abandon them. Finally, the Receiver will ask the Court to approve an eighth and final distribution to claimants and to close the Nadel Receivership. The Receiver believes these tasks can be accomplished in 2019 and is working diligently toward that end.

A. Litigation

The Receiver has initiated and resolved approximately 150 separate actions, generating litigation income of \$68,179,943.10. As of the date of this status report, the Receiver is only actively litigating one matter, which arose from a "clawback" action against Vernon M. Lee, individually and as trustee of the Vernon M. Lee Trust. *See Wiand v. Lee et al.*, Case No. 8:10-cv-0092-EAK-MAP (the "**Lee Dispute**"). The procedural history of the Lee Dispute is detailed in the Receiver's Interim Reports. In sum, the Receiver obtained a judgment of \$935,631.51 against Lee and his trust in January 2013. Appeals to the Eleventh

Circuit, post-judgment discovery, and further litigation in the district court regarding the Receiver's entitlement to prejudgment interest ensued. The Receiver generally prevailed on these matters, and Lee subsequently initiated a Chapter 7 bankruptcy proceeding. The Receiver then sought and successfully obtained an equitable lien and constructive trust in the amount of \$336,891.39 on Lee's residence. The district court affirmed the bankruptcy court's order imposing the equitable lien and constructive trust, but Lee appealed the matter to the Eleventh Circuit, where it is currently pending, subject to the resolution of certain jurisdictional issues and the merits of the appeal. The parties have also recently concluded an unsuccessful appellate mediation. If the Eleventh Circuit affirms the lower courts' orders, the Receiver intends to seek turnover of the property or otherwise foreclose the equitable lien. The Receiver will seek that relief either from this Court or in the original clawback action, as procedurally appropriate. These matters are discussed in more detail at pages 28 through 30 of the Twenty-Second Interim Report and will be updated further in the Twenty-Third Interim Report.

B. Asset Disposition

Since the inception of the Nadel Receivership through October 31, 2018 (in addition to the litigation proceeds discussed above), the Receiver has recovered \$9,006,258.99 in business income from the operation of some Receivership Entities (as defined in the Interim Reports); \$2,066,501.32 in cash and securities; \$1,178,632.56 in interest/dividend income; \$7,799,143.58 from the liquidation of business assets; \$120,000.00 from the liquidation of personal assets; and \$11,046,088.00 in other income. As explained below, the remaining assets are few, but they suffer from liquidity or other issues that have prevented their sale:

- **Laurel Mountain:** The Receiver has managed and continues to manage hundreds of acres of mountainous land in North Carolina, which Nadel purchased with scheme proceeds. The Receiver has disposed of certain tracts and parcels through settlements with secured creditors (*see* Docs. 1291, 1296), private sales (*see* Doc. 1370), and where appropriate, foreclosures (*see* Doc. 1364). Lots with a potential aggregate value of approximately \$1 million remain. The Receiver is awaiting distribution of approximately \$200,000 from a recent sale. The Receiver is actively marketing one large parcel and several additional lots with the assistance of a local real estate agent. *See also* 22d IR at 9-11.
- **Neil and Christopher Moody Assets:** The Receiver recovered numerous assets and purported investments from Neil and Christopher Moody (the “**Moody’s**”) – Nadel’s former business partners. The Receiver has generally reported the status and value of those assets in Exhibits C and D to his Interim Reports. Most of the companies in which the Moodys invested failed, filed bankruptcy, or are otherwise worthless. The Receiver anticipates moving the Court to abandon those “assets.” A limited number of investments, however, might have material or even substantial value, but the pertinent investments are not liquid, and no active public market exists. The Receiver is exploring all options to monetize these investments, including private sales.
- **Bradenton Real Estate:** Receivership Entity Summer Place Development Corporation owns 1.7 acres of undeveloped land in Bradenton, Florida. For various reasons, this land has drawn little to no interest from potential purchasers. The Receiver is continuing to market the land for sale and is considering other options, including an auction or abandonment if a commercially reasonable solution cannot be found.
- **Judgments:** The Receiver holds several default and other judgments obtained in connection with litigation. He is attempting to sell them, although they likely have little value.

The foregoing briefly describes the material assets remaining in the Nadel Receivership. The Receiver is working diligently to dispose of them so that he can make the final distribution discussed below and close the receivership. The Receiver will seek the Court’s approval for any pertinent sales of these assets, which motions have historically been unopposed. If the assets cannot be sold in a commercially-reasonable manner, the Receiver will seek the Court’s authorization to abandon them.

C. Final Distribution and Termination of Nadel Receivership

The Receiver has distributed a total of approximately \$67 million to claimants with allowed claims, representing a total recovery of approximately 52% for those claimants. As of October 31, 2018, all receivership accounts contained \$611,040.26. The Receiver anticipates limited additional recoveries through litigation and the disposition of assets, as described above, and limited additional expenditures due to administrative fees and costs. The Receiver will move the Court to approve a final distribution to claimants before or contemporaneous with the closure of the Nadel Receivership.

II. THE QUEST RECEIVERSHIP

The Receiver and professionals retained by him currently manage Quest's daily operations, which include maintaining and operating oil and gas wells, selling the wells' production, and collecting receivables from purchasers. Quest has its own bank accounts and funds its own operations, including administrative fees and costs. Quest is not involved in any third-party litigation. Instead, it faces two significant, interrelated issues: (1) completion of the Quest claims process, and (2) sale of Quest or its assets.

A. Completion of the Quest Claims Process

On June 15, 2016, the Receiver filed a motion to initiate the Quest claims process. The motion sought the Court's approval of (1) a proof of claim form and procedure to administer claims, (2) a deadline for the filing of proofs of claim, and (3) notice by mail and publication ("**Quest Claims Motion**"). *See* Doc. 1240. On June 17, 2016, the Court granted the Quest Claims Motion in its entirety. Doc. 1241. Investors and other potential creditors

then submitted 95 claims, seeking a total approximately \$15,804,250.21.² The Receiver has completed his review of those claims and substantially prepared a motion to approve his determinations and a proposed objection procedure. The Receiver intends to file this motion shortly. Importantly, Quest is subject to substantial claims from taxing authorities and secured creditors, both of which are entitled to certain priorities under pertinent law. At present, Quest generates enough money to fund its daily operations, but the Receiver's ability to satisfy any claims is entirely dependent on the sale of Quest or its assets.

B. The Sale Of Quest Or Its Assets

Although Quest owns a small office building (former funeral home) and certain drilling equipment, its primary assets are its oil and gas leases. The Receiver has marketed Quest and its assets for sale since the establishment of the Quest Receivership, including by retaining a business broker. *See* Docs. 1144, 1148. Potential purchasers have shown interest in the company and even executed letters of intent, but subsequent negotiations have not resulted in a sale of Quest or its assets for various reasons. Unsurprisingly, interest in Quest tends to wax and wane with pertinent oil and gas prices, which are presently slumping. The sale of Quest or its assets at any commercially reasonable price will be insufficient to distribute a material amount of money (if any) to its unsecured creditors. The Receiver will continue his marketing efforts and move the Court to approve any sale.

As noted above, the claims process has revealed large claims from taxing authorities and secured creditors. These claims and the continued burden of operating Quest may lead to

² Because this number represents the aggregate amount claimed, it is higher (perhaps substantially so) than the amount the Receiver will recommend the Court approve.

the conclusion that any continued operation is unfeasible and lead the Receiver to request authorization from the Court to abandon Quest and its assets. This decision will be made in the coming months and will depend on the success of several ongoing negotiations for the sale of the lease assets, regulatory concerns, and negotiations with secured creditors. As previously noted, Quest's principals operated the company as a Ponzi scheme and were themselves subject to an SEC enforcement action as a result. *See S.E.C. v. P. Downey et al.*, Case No. 1:14-cv-185 (N.D. Tex.). The principals' fraud has complicated the Receiver's resolution of the Quest Receivership and disposition of the company's assets.

CONCLUSION

The Nadel Receivership is substantially complete subject to the matters discussed herein, and aside from the Lee Dispute, the remaining matters can likely be resolved without substantial motion practice or judicial involvement. Given the uncertainty regarding the ability to sell Quest, the price of any such sale, and the impact of the price on the Quest claims process, the Quest Receivership presents a more challenging situation. The Receiver will further update these matters in his soon-to-be-filed Twenty-Third Interim Report.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on November 26, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Jared J. Perez

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