

**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,  
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,

Relief Defendants.

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**AFFIDAVIT OF BURTON W. WIAND IN SUPPORT  
OF RECEIVER'S MOTION TO APPROVE SETTLEMENT**

STATE OF FLORIDA                    )  
  )  
COUNTY OF HILLSBOROUGH        )

BEFORE ME, the undersigned authority, appeared Burton W. Wiand, who, first being duly sworn, deposes and says:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida. I make this affidavit in support of the Receiver's Motion To Approve Settlement (the "Motion") with

Goldman Sachs Execution & Clearing, L.P. (“**GSEC**”). I make this affidavit based on information personally known to me or gathered by me or by others at my request.

2. I was appointed by the Court in *Securities and Exchange Commission v. Arthur Nadel et al.*, Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (the “**Commission Proceeding**”), as the Receiver for various entities, including 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. (collectively the “**Hedge Funds**”). In that capacity, the Court authorized me to:

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

3. My investigation has established that Arthur Nadel (“**Nadel**”) operated the Hedge Funds and other entities as part of a Ponzi scheme from 1999 forward.

4. Nadel used certain financial institutions in connection with his Ponzi scheme. GSEC (formerly known as Spear, Leeds & Kellogg, L.P.) was one such institution. GSEC provided clearing services for Shoreline Trading Group LLC (“**Shoreline**”), an introducing Broker/Dealer that dealt directly with Nadel and the Hedge Funds.

5. I gathered information relating to Nadel’s transactions and contacted GSEC to discuss its role in providing such services to Nadel and the Hedge Funds. From the

beginning, GSEC cooperated with me and, in fact, produced a large volume of documents and was responsive to all requests for documents over time.

6. In November 2010, GSEC entered into a tolling agreement, at my request, so the parties could fully investigate matters and work to resolve them in an amicable fashion without concern for applicable statutes of limitation.

7. My investigation revealed information indicating that while GSEC had no actual knowledge of Nadel's scheme and provided only customary prime brokerage services at the request of Shoreline, GSEC may have failed to appropriately respond to certain "red flags" that could, upon further inquiry, have revealed Nadel's scheme. In addition, I determined that GSEC may have failed to raise certain questions with respect to accounts controlled by Nadel. Based upon those conclusions, I determined to seek compensation for the Receivership estate from GSEC.

8. Once GSEC and I had exchanged significant amounts of information and had communicated our various views with respect to GSEC's potential liability, GSEC's counsel and I engaged in negotiations with respect to the specifics of a potential resolution of the dispute. These negotiations focused on potential liability, defenses, and risk to the parties, as well as the potential valuation of the claims against GSEC.

9. In determining to accept \$9,850,000 from GSEC in resolution of all claims against that entity, I considered a number of significant factors. First, I considered the risks associated with litigating the claims. Primary among those risks is the fact that GSEC is a clearing firm and not an introducing broker (here, the introducing broker is Shoreline). As explained in the Motion, because introducing brokers serve as intermediaries between clients

and clearing firms, courts have held that, absent special circumstances, clearing firms are generally insulated from many potential claims.

10. I also recognized that GSEC is an entity that is financially able to vigorously defend itself against claims. Consequently, litigation would likely require expenditure of substantial Receivership resources. If litigation was unsuccessful, defrauded investors would recover nothing instead of the \$9,850,000 proposed in the Settlement Agreement and the resources expended would be lost.

11. Second, I considered the potential value of the claims against GSEC. I could have attempted to hold GSEC responsible for its portion of all investor losses arising from Nadel's scheme, which amount is approximately \$168 million, according to GSEC's comparative fault, but I am aware that establishing liability against a clearing firm for all losses arising from a Ponzi scheme is very difficult.

12. In addition, I considered the amount of money that Nadel transferred from the Hedge Funds' official accounts at GSEC to Nadel's imposter accounts at Wachovia Bank, N.A. ("**Wachovia**"). In that regard, my investigation determined that Nadel used "shadow" accounts at Wachovia to perpetrate and perpetuate his scheme. Specifically, Nadel opened accounts in a "doing business as" capacity to mimic the names of Hedge Funds, including Valhalla Investment Partners, Viking Fund, and Viking IRA Fund – *i.e.*, "Arthur Nadel dba Valhalla Investments" and "Arthur Nadel dba Viking Fund". Nadel was not an officer, director, or principal of these three Hedge Funds and otherwise did not have authority to open accounts on their behalf. Nevertheless, GSEC followed Nadel's instructions, as provided to GSEC by Shoreline, to transfer money from the Hedge Funds' "official" trading

accounts at GSEC to Nadel's imposter accounts at Wachovia. During the course of the scheme, such transfers totaled approximately \$10 million. I have concluded that such transfers were improper and that GSEC did not follow relevant guidelines and internal policies and procedures applicable to third-party transfers. I believe there is potential liability to GSEC for this conduct as well as potential liability for the transfers themselves.

13. Finally, I considered the fees and margin interest that GSEC earned for providing clearing services to the Hedge Funds. In that regard, the Hedge Funds paid approximately \$13.5 million in fees and interest to GSEC and Shoreline, collectively (a large portion of which went to Shoreline rather than to GSEC). Based on the information that I have reviewed, the settlement reached with GSEC constitutes a recovery by the Receivership of an amount well in excess of all revenues earned by GSEC as a result of its indirect dealings with Nadel.

14. Litigation of claims against GSEC could easily cost the Receivership in excess of \$1 million and would in no way guarantee the significant benefit to the Receivership estate that will occur as a result of the settlement reached with GSEC. In light of the funds that this settlement would provide, I believe it would be imprudent to reject the settlement.

15. It is my opinion that the amount of this settlement constitutes a fair valuation of any potential liability that GSEC might have as a result of its involvement with any accounts controlled by Nadel, given the applicable claims, defenses, and risks.

16. As such, the settlement reflected by the Settlement Agreement is in the best interests of the Receivership and the investors in the Hedge Funds. Specifically, the

settlement is in the best interests of the investors because it represents a substantial recovery to the Receivership estate – 50% as much as the amount I have recovered to date through clawback lawsuits (without the expense and risk of litigation) – which will ultimately compensate investors with approved claims through the claims process.

17. To ensure finality and for the other reasons set forth in the Motion, GSEC has requested that the Court, in addition to approving the Settlement Agreement, enter an order barring any additional claims against GSEC by investors in the Hedge Funds or by potential joint tortfeasors, including claims for contribution or indemnity (the “**Bar Order**”). I am not aware of any existing or impending claims by investors against GSEC. My analysis considers the fact that potential claims against GSEC by others have little, if any, likelihood of success, and Florida statutes bar claims of other tortfeasors. It is my firm opinion that the Bar Order will have little impact on anyone, and the settlement provides great benefit to defrauded investors.

18. I will provide actual notice of the requested Bar Order to the investors in the Hedge Funds and other receivership entities and to known potential joint tortfeasors – *i.e.*, the individuals and entities whose conduct is to be enjoined. A copy of the proposed notice to investors and potential joint tortfeasors (the “**Notice**”) is attached to the Motion To Approve Proposed Notice Of Settlement, which is being filed along with the Motion, and an abbreviated notice for publication is described in the Notice motion. The Notice sets forth the terms of the Settlement Agreement and advises recipients that they may object or otherwise respond to the Motion in writing by January 17, 2012. As such, the Notice will

provide investors (and others) with actual notice of the proposed Settlement Agreement and Bar Order as well as an opportunity to seek relief from the Court.

19. For the reasons set forth in the Motion, I have concluded that investors and potential joint tortfeasors are unlikely to be prejudiced by the entry of the Bar Order. Individual investors are unlikely to be able to obtain a greater recovery from GSEC than that reflected in the Settlement Agreement.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
BURTON W. WIAND

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgements in the state aforesaid and in the county aforesaid, BURTON W. WIAND personally appeared to me, who is personally known to me to be the person described herein and executed the foregoing and acknowledged before me that he executed the same.

SWORN TO AND SUBSCRIBED before the undersigned this 9<sup>th</sup> day of December, 2011.

  
NOTARY PUBLIC

Print name: Diane Burnette  
My Commission Expires: 5.15.14

