

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 FUNDS, LTD.,
VIKING IRA FUND, LLC,
VIKING FIND, LLC,
VIKING MANAGEMENT,
VENICE JET, LLC, and
TRADEWIND, LLC.

Relief Defendants.

**MOTION TO INTERVENE AND OPPOSITION TO MOTION TO PAY ATTORNEY FEES
FILED BY ARTHUR NADEL AND MEMORANDUM IN SUPPORT OF MOTION TO
INTERVENE AND OPPOSITION TO MOTION TO PAY ATTORNEY FEES**

Intervenors, Bruce Bell, Carri Bell, Beatrice Bienaime, Jean-Jacques Bienaime, Charles Daukas, Angela Daukas, Worth Helms, Harvey Hinrichs, Bettye Hinrichs, David Ingalls, Harold Johnson, Krista Toomre, Barrant Merrill, Adams Moore, Patrick Peavy, Donna Pickard, Louis Paolino, Ronald Rennick, Scott Shumway, Celt, Inc., Lineberger & Co., LLC and Robert Wilkes (jointly "Intervenors") file this Motion to Intervene and Opposition to Motion to Pay Attorney Fees filed by Arthur Nadel ("Motion") pursuant to Rule 24 of the Federal Rules of Civil Procedure. In support of its Motion the Intervenors state:

1. On January 21, 2009, this Court entered its Order of Preliminary Injunction and Other Relief as to Defendant Arthur Nadel (“Freeze Order”) [DE 7] stating:

A. Nadel, his directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with anyone or more of them, and each of them, who receive notice of this order by personal service, mail, facsimile transmission or otherwise, except any Receiver this Court appoints, be and hereby are, restrained from, directly or indirectly, transferring, setting off receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including, but not limited to, cash, free credit balances, fully paid lor securities, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, in the possession of, or held for the benefit of Nadel, any of the Defendants, or any of the Relief Defendants in this action.

B. Any financial or brokerage institution or other person or entity located within the jurisdiction or the United States Courts and holding any such funds or other assets, in the name, for the benefit or under the control of Nadel, directly or indirectly, held jointly or singly, and which receives actual notice of this order by personal service, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

2. Also on January 21, 2009, the Court entered an Order Appointing Receiver [DE 8] which states at Paragraph 15:

During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Defendants or Relief Defendants;

3. Intervenor are investors in the entities and funds managed and controlled by Arthur Nadel. Intervenor have lost substantial sums of money through Nadel’s misrepresentations and misappropriation of their money.

4. On March 6, 2009, Defendant Arthur Nadel filed a Motion to Modify Asset Freeze to Permit Payment of Reasonable Attorneys' Fees. [DE 64].

5. On March 10, 2009, Defendant Arthur Nadel filed an Amended Motion for Payment of Reasonable Attorney Fees. [DE 69].

6. Nadel's wife Marguerite ("Peg") is subject to the Freeze Order. Nadel's counsel tried to circumvent the Freeze Order by having Peg assign a mortgage and note to Nadel's counsel. *A true and correct copy of this assignment is attached as Exhibit 1.*

7. Nadel now seeks permission to do precisely the same thing again by modifying the Asset Freeze to permit payment of reasonable attorneys' fees.

8. The payments that Nadel's counsel will receive from the mortgage and note are in excess of \$130,000, which is much more than the fees they request.

9. Intervenors' interests would be directly affected should the Modification of the Asset Freeze be granted.

10. The Intervenors' claim an interest in the property that is the subject of this action.

11. Allowing intervention would save judicial resources and would bring all interested parties before this Court.

12. Intervenors should be allowed to file responsive pleadings to the Complaint and to participate fully in the proceedings.

MEMORANDUM

Intervenors seek to preserve sufficient funds for potential disgorgement pending resolution of the case on its merits. The Freeze Order entered by this Court is a proper step in that direction. The Eleventh Circuit in S.E.C. v. ETS Payphones, Inc., 408 F.3d. 727, 735-736 (11th Cir. 2005) found that it was proper that the District Court had frozen all of the defendant's assets because a full asset freeze was necessary to preserve enough funds for the potential disgorgement. Further, "... a

swindler in securities markets cannot use the victims' assets to hire counsel who help him retain the gleanings of crime." S.E.C. v. Quinn, 997 F.2d 287, 289 (7th Cir. 1993).

After proper entry of a full asset freeze order, such as the one entered by this Court, the burden is on the party seeking to unfreeze assets to show that those assets do not include and were not derived from tainted funds. See, e.g., S.E.C. v. Belmonte, 1991 WL 214252 (S.D. Fla. April 25, 1991) (refusing to release funds from sale of home, even though home had been acquired prior to alleged fraud, because there had been no showing that ill-gotten funds had not been used to subsidize mortgage payments or improve home); S.E.C. v. Coates, 1994 WL 455558, at *3 (S.D.N.Y. Aug.23, 1994) "where the court held that a defendant is not entitled to foot his legal bill with funds that are tainted by his fraud."

To establish an untainted source, Nadel will have to show that the funds were acquired between 1995 and 2002. In 1995, Nadel filed a financial affidavit (copy attached as Exhibit "2") alleging no assets. The fraud scheme at issue began at least by 2002. The only period of time, then, that Nadel assets could be untainted is between 1995 and 2002.

Here, Nadel's counsel filed a Supplement To Motion For Payment Of Reasonable Attorney's Fees, [DE 74], in which Nadel seeks to unfreeze any one of a number of sources. However, Nadel's counsel fails to offer any evidence to show that the sources contain untainted assets. For this reason alone, the Amended Motion must be denied.

Even if Nadel's counsel had made the proper showing, the Amended Motion should still be denied on the bases of the unclean hands doctrine. Ironically, Nadel's counsel cites S.E.C. v Lauer, 445 F. Supp. 2d 1362 (S.D. Fla 2006), in which the Court found that the unclean hands of the defendant, Lauer, barred his attempt for relief from the preliminary injunction order which imposed an asset freeze. Lauer brought several motions for modification of the asset freeze order to release

funds for payment of attorneys' fees. Lauer failed to disclose assets, and he diverted assets in direct violation of the Freeze Order.

By having Nadel's wife, Marguerite "Peg" Nadel, execute an Assignment of a Note and Mortgage to themselves (see Ex. 1), Nadel's counsel have diverted an asset in violation of the very same Order which Nadel's counsel now seeks to modify for their benefit. As a result, Peg Nadel actions are in concert with Arthur Nadel and subject to the Freeze Order. "A cardinal rule of equity is he who comes into equity must come with clean hands [i]t is a self-imposed ordinance that closes the door... to one tainted with inequity or bad faith relative to the matter in which he seeks relief." Precision Instrument v. Automotive Maintenance Machinery, 324 U.S. 806, 814 (1945).

Additionally, even if Nadel's wife were not subject to the Freeze Order, the expected payment from the mortgage and note assigned to Nadel's counsel is in excess of \$130,000, which is much more than the fees requested in the Supplement to the Amended Motion. Thus, the assignment makes modification of the Freeze Order unnecessary.

WHEREFORE Bruce Bell, Carri Bell, Beatrice Bienaime, Jean-Jacques Bienaime, Charles Daukas, Angela Daukas, Worth Helms, Harvey Hinrichs, Bettye Hinrichs, David Ingalls, Harold Johnson, Krista Toomre, Barrant Merrill, Adams Moore, Patrick Peavy, Donna Pickard, Louis Paolino, Ronald Rennick, Scott Shumway, Celt, Inc., Lineberger & Co., LLC and Robert Wilkes, (jointly "Intervenors") respectfully request that this Court grant their Motion:

- (a) To intervene in this cause as respondents and to participate fully in the proceedings;
- and
- (b) To deny Nadel's Motion to modify asset freeze and grant the payment of reasonable attorneys' fees; and
 - (c) That the Court award such other and further relief as it deems just and proper.

LOCAL RULE 3.01 (G) CERTIFICATE OF COMPLIANCE

In accordance with Local Rule 3.01(g), the undersigned has conferred with counsel for the Securities and Exchange Commission (“SEC”) and they have indicated to the undersigned that the SEC opposes this motion. In accordance with Local Rule 3.01(g), counsel for Nadel has expressed no opposition to the Motion. The Receiver has not responded to inquiries.

WILLIAMS, PARKER, HARRISON
DIETZ & GETZEN

/s/ Morgan R. Bentley
Morgan R. Bentley, Esq.
Florida Bar No. 962287
200 S. Orange Avenue
Sarasota, Florida 34236
941-329-6624 (telephone)
941-552-7172 (facsimile)
mbentley@williamsparker.com
Attorneys for Intervenors

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 17, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send an electronic notice to **Todd A. Foster, Esq.**, Counsel for Defendants, Cohen, Jayson & Foster, P.A., 201 E. Kennedy Blvd., Suite 1000, Tampa, FL 33672-2538, **Carl R. Nelson, Esq.**, Counsel for Receiver, Fowler White Boggs, PA, 501 E. Kennedy Blvd., Suite 1700, Tampa, FL 33601, **Burton W. Wiand, Esq.**, c/o Carl R. Nelson, Esq. and **Scott Masel, Senior Trial Counsel**, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

/s/ Morgan R. Bentley
Morgan R. Bentley, Esq.
Florida Bar No. 0962287
200 S. Orange Avenue
Sarasota, Florida 34236
941-329-6624 (telephone)
941-552-7172 (facsimile)
mbentley@williamsparker.com
Attorneys for Intervenors

967226_1.doc

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E
This instrument was prepared without the benefit of title work, by and return to:
Richard W. Radke, Esquire
Barnett, Bolt, Kirkwood, Long & McBride
601 Bayshore Boulevard, Suite 700
Tampa, Florida 33606

RECORDED IN OFFICIAL RECORDS
INSTRUMENT # 2009018115 1 PG
2009 FEB 13 12:55 PM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FLORIDA
DCOURSEY Receipt#1134588

ASSIGNMENT OF NOTE AND MORTGAGE

MARGUERITE NADEL (hereinafter referred to as the "Assignor"), for valuable consideration received from COHEN, JAYSON & FOSTER, P.A., a Florida professional services corporation (hereinafter referred to as the "Assignee"), whose mailing address is 201 E. Kennedy Blvd., Suite 1000, Tampa, FL 33602, the receipt and sufficiency whereof is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto the Assignee, that certain Real Estate Mortgage, dated November 16, 2007, made by MICHAEL K. NITZSCHE, in favor of Assignor, which was recorded on December 10, 2007, as Instrument #2007182574, of the Public Records of Sarasota County, Florida (the "Mortgage"), upon the following described parcel of land, situate and being in said County and State, to-wit:

UNIT 744, PAGE IV, JEFFERSON PINES II, A CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM RECORDED IN O. R. BOOK 1753, PAGE 1695 THROUGH 1756, INCLUSIVE, AND SUBSEQUENT AMENDMENTS THERETO, AND AS PER PLAT THEREOF RECORDED IN CONDOMINIUM BOOK 24, PAGES 4 AND 4A, AND AS PER PLAT THEREOF RECORDED IN CONDOMINIUM BOOK 28, PAGE 49 AND 49A, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

Together with that certain Promissory Note in favor of Assignor described in and attached to said Mortgage, and the moneys due and to become due thereon, with interest from the date hereof.

Assignor represents and warrants to Assignee that: Assignor is the sole owner and holder of the Note and Mortgage; Assignor has not transferred any interest in the Note and Mortgage to any other party; the Note and Mortgage are free and clear of all claims, liens, charges, encumbrances and security interests; as of the date hereof, the principal balance due under the Note is \$124,637.64, the amount of interest outstanding under the Note is \$5457.66, and the last payment of principal and interest was made on 6-15-08.

TO HAVE AND TO HOLD the same unto the Assignee, their successors and assigns forever.

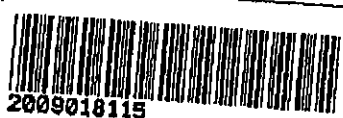
IN WITNESS WHEREOF, the Assignor has executed this Assignment and affixed his seal as of the 9th day of February, 2009.

Signed, sealed and delivered in the presence of:

Witness #1 [Signature]
Print Name: ELLIOTT BUCHMAN


Marguerite Nadel
MARGUERITE NADEL
(Seal)

Witness #2 [Signature]
Print Name: KEVIN K. KALWARY
As to Assignor

"Assignor"

2009018115

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 9th day of February, 2009, by MARGUERITE NADEL, who [] is personally known to me or who [X] has produced a Florida driver's license as identification.

(Notarial Seal)

BULKDOCS4043491

Mary E. Danielowicz
NOTARY PUBLIC, State of Florida
My Commission Expires: _____
My Commission Number: _____

ALL-STATE LEGAL
EXHIBIT
1

RECORDED IN OFFICIAL RECORDS
INSTRUMENT # 2007182574 5 PGS

2007 DEC 10 04:26 PM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FLORIDA
CBETHEL Receipt#992739

Doc Stamp-Mort: 442.40
Intang. Tax: 252.78

This Document Prepared By and Return to:
Parker & Associates, P.A.
2033 Main Street Ste 100
Sarasota, FL 34237

4400
442.40
252.78



Real Estate Mortgage

THIS MORTGAGE made this 16th day of November A.D. 2007 between Michael K. Nitzsche

herein called Mortgagor, in consideration of the sum named in the promissory note herein described received from Marguerite Nadel

herein called Mortgagee, (the terms "Mortgagor" and "Mortgagee" include all parties in each capacity to this instrument and their respective heirs, personal representatives, successors and assigns; the term "note" includes all promissory notes described herein) Mortgagor hereby mortgages to Mortgagee the real property in Sarasota County, Florida, described as:

Unit 774, Phase IV, JEFFERSON PINES II, a condominium, according to the Declaration of Condominium recorded in OR Book 1753, Page 1695 through 1756, inclusive, and subsequent amendments thereto, and as per plat thereof recorded in Condominium Book 24, Page 4 and 4A, and as per plat thereof recorded in Condominium Book 28, Page 49 and 49A, Public Records of Sarasota County, Florida.

Any decree of foreclosure of this mortgage shall include all costs, expenses, and fees, including reasonable attorneys' fees and cost of title search. In case such foreclosure suit is settled before judgment is recorded therein such costs, expenses and fees shall nevertheless be paid by Mortgagor

If the mortgaged property or any part thereof shall be condemned and taken under the power of eminent domain, all damages and awards for the property so taken, to the amount then unpaid on the indebtedness hereby secured, shall be paid to the Mortgagee, and such amount shall be credited on the indebtedness secured hereby and may, at the option of the Mortgagee, be applied to the last maturing installments. The balance of such damages and awards, if any, shall be paid to Mortgagor.

(Continued on Attached)

TOGETHER with all easements, connected therewith, improvements now or hereafter made thereon, fixtures attached thereto, any furniture or furnishings located thereon or therein and any reversions, remainders, rents, issues and profits thereof as security for the payment of the promissory note, a copy of which is attached.

AND Mortgagor hereby covenants:

1. That Mortgagor is in actual possession and seized of said real property in fee simple with full power and lawful right to mortgage the same; that said property is free from all liens and encumbrances except as set forth herein; that Mortgagor fully warrants the title to said real property and will defend the same against lawful claims of all persons whatsoever.
2. To pay all money required by said note and this mortgage, or either, promptly when due.
3. To pay all taxes, assessments, levies, liabilities, obligations and encumbrances of every description now on or which may hereafter accrue on said property, this mortgage and the debt secured hereby, or any of these, when due. If any part thereof is not paid when due, Mortgagee may pay it without waiving the option to foreclose this mortgage or any other right hereunder.
4. To pay all costs and expenses together with reasonable attorney's fees (including appellate proceedings) incurred by Mortgagee because of any default by Mortgagor under this mortgage and said note, or either.
5. To keep the improvements now or hereafter on said property insured against loss by fire or other hazards included in the terms "extended coverage" and "other perils" in the amount secured by this mortgage by an insurer approved by Mortgagee. The policy shall be held by and made payable to Mortgagee by standard New York mortgagee clause without contribution as Mortgagee's interest may appear. If any money becomes payable under such policy, then all checks for said money will be made payable to Mortgagor and Mortgagee and the proceeds shall be first applied to restore the mortgaged property to the condition it was immediately before the loss occurred and if there be any excess or if the property not so restored then Mortgagee may apply the same to the payments last due on the debt secured hereby or may permit Mortgagor to use it, or any part thereof, for other purposes without waiving or impairing any lien or right hereunder. If Mortgagor fails to obtain such policy, Mortgagee may procure it and pay therefor without waiving the option to foreclose this mortgage or any other right hereunder.
6. To permit, commit or suffer no waste, impairment or deterioration of said property or any part thereof.
7. That if said property, or any part thereof, is taken by eminent domain, Mortgagee shall have the right to receive and apply all money paid for such taking to the payments last due on the debt secured hereby or may permit Mortgagor to use it, or any part thereof, for other purposes without waiving or impairing any lien or right under this mortgage. If the remaining part of said property is inadequate security for the unpaid balance of said debt, Mortgagee may accelerate payment thereof immediately.
8. That if Mortgagee shall hold another mortgage or lien on said property, a default under such other mortgage or lien shall constitute a default under this mortgage also. Any default under this mortgage shall likewise constitute a default under such other mortgage or lien. If foreclosure proceedings under any mortgage or lien (whether held by Mortgagee or another) affecting said property are instituted, this shall constitute a default under this mortgage.
9. That Mortgagee may forbear to enforce defaults under this mortgage and said note, or either, or may extend the time for payment of any money secured hereby or may take other or additional security and may deal directly with any owner of said property in all respects pertaining to this mortgage and said note, or either, without notice to or the consent of any person liable under this mortgage and said note, or either, and without discharging or affecting the liability of any person liable under this mortgage and said note, or either.

Real Estate Mortgage - Page 2

10. That the rents, profits, income, issues and revenues of said property (including any personal property located thereon or therein) are assigned and pledged as further security for the payment of the debt secured hereby with the right (but no duty) on the part of Mortgagee to demand and receive and apply them on said debt at any time after a default hereunder. If suit is instituted to foreclose or reform this mortgage or to determine the validity or priority thereof, Mortgagee shall be entitled to appointment of a receiver pendente lite without notice for said property and of all rents, income, profits, issues and revenue thereof. It is covenanted and agreed that the court shall forthwith appoint a receiver of said property and of such rents, income, profits, issues and revenues. Such appointment shall be made as a matter of strict right to Mortgagee without reference to the adequacy or inadequacy of the value of the property hereby mortgaged or to the solvency or insolvency of Mortgagor.

11. That if any dispute arises involving said note and this mortgage, or either, wherein Mortgagee incurs any costs (regardless of whether or not legal proceedings are instituted) or if any action or proceeding (including appellate proceedings) shall be maintained by any person other than Mortgagee wherein Mortgagee is made a party, all expenses incurred by Mortgagee to prosecute or defend the rights created by this mortgage and said note, or either, together with reasonable attorney's fees and costs, whether same be rendered for negotiation, trial or appellate work, shall be paid by Mortgagor.

12. That if any money secured hereby is not fully paid within FIFTEEN (15) days after it becomes due, or if any covenant or agreement of said note and this mortgage, or either, is breached, Mortgagee shall have the option to accelerate payment of the entire principal and any other money secured hereby as immediately due and payable without notice. Time is of the essence of this mortgage. Any payment made by Mortgagee under paragraphs 3, 4, 5, or 11 shall bear interest at the maximum legal rate from the date of payment and shall be secured by this mortgage. No waiver of or failure to enforce any default or obligation under this mortgage and said note, or either, shall constitute a waiver of any subsequent default or of the terms of either instrument. If there is any conflict between the terms of this mortgage and said note, the terms of this mortgage shall prevail.

In Witness Whereof, the mortgagor has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Printed Name: Kathy L. Morgan
Witness

Printed Name: Ted Parker
Witness

Michael K. Nitzsche (Seal)
Michael K. Nitzsche
P.O. Address:

STATE OF Florida
COUNTY OF Sarasota

The foregoing instrument was acknowledged before me this 16th day of November, 2007 by Michael K. Nitzsche

he is personally known to me or he has produced his Florida driver's license as identification.

NOTARY PUBLIC
KATHY L. MORGAN
MY COMMISSION # DD 830221
EXPIRES: February 10, 2011
Bonded Through Notary Services

Michael K. Nitzsche
Printed Name:
Notary Public
My Commission Expires:

Real Estate Mortgage - Page 3

THIS IS A PURCHASE MONEY FIRST MORTGAGE.

If a conveyance should be made by the Mortgagor of the premises herein described, or any part thereof, without prior written consent of the Mortgagee and upon the terms and at such rate as Mortgagee shall request, then in such event, and at the option of the Mortgagee, all sums of money secured hereby shall immediately and concurrently with such conveyance become due and payable.

Failure by the Mortgagors herein to comply with the tax and insurance requirements set forth herein shall be a material breach of this mortgage, for which the Mortgagee would have the right to foreclosure.

Mortgagor will provide to Mortgagee proof of renewal of insurance coverage at each renewal period.

PROMISSORY NOTE

\$126,388.50

November 16, 2007
Sarasota, Florida

For value received, the undersigned, hereinafter referred to as "Maker, promises to pay to **Marguerite Nadel**, hereinafter referred to as "Payee," or order, in lawful money of the United States of America, at **1618 Main Street, Sarasota, Florida 34236**, or such other place as Payee may hereafter designate in writing, the principal sum of **One Hundred Twenty Six Thousand Five Hundred Fifty Six and 24/100 Dollars (\$126,556.24)**, together with interest on the principal balance hereof from time to time existing at the following per annum rate, to wit:

Six and a half percent (6.5%)

Principal and interest hereunder shall be payable in the following manner:

Equal consecutive monthly installments of **\$799.92** the first of which shall be due and payable one (1) month from the date hereof and a like installment shall be due and payable on the same day of each month thereafter until **Three Hundred and Sixty (360)** months from the date hereof, at which time all principal together with accrued interest thereon shall be due and payable in full. Payments shall be applied first to interest and then to principal.

The prepayment penalty shall be 20% of the sale price of the real property after deduction of any outstanding principal on this Note; or, 20% of the value of the real property securing this Note at Note payment.

Time is of the essence hereto.

In the event of default continuing for fifteen (15) days in the payment of any installment of principal or interest coming due hereunder Payee shall have the option of accelerating the balance of this indebtedness and the accrued interest hereon, without notice, and demanding full payment of the same. Payee has the right to accept partial payments after default and acceleration without waiving the acceleration and any such partial payments shall be applied first to the costs of enforcement of collection of this Note set forth below, then to interest due pursuant to this Note and finally to principal due under this Note. In the event Payee elects to renew this Note either as an alternative to accelerating the balance of this indebtedness, or prior to such acceleration, Maker shall pay all costs and expenses incurred by Payee in connection with such renewal.

In the event it becomes necessary to enforce the collection of this Note, Maker hereby agrees to pay (and there shall be included in any judgment or decree related to the same) all costs of such enforcement, including but not limited to, court costs, appellate costs,

reasonable attorneys' fees, paralegals' fees, legal assistants' fees and costs together with any other such similar fees and costs which may be incurred by Payee subsequent to the rendition of a judgment or decree in connection with the collection of any sums due thereunder including, by way of illustration and not by way of limitation, attorneys' fees, paralegals' fees, legal assistants' fees and costs related to a determination of the amount of such fees and costs to which Payee is entitled, and subpoenas for depositions in aid of execution, court reporters' fees and all costs associated with the delivery or execution upon assets or funds sought to be recovered in satisfaction of said judgment or decree. The foregoing shall also include but not be limited to such similar costs and fees incurred by Payee in connection with the acts or actions taken by Payee in any Bankruptcy Court having jurisdiction over the Maker's obligations to Payee or over property securing such obligations. Interest after default and post-judgment interest shall be at the highest rate allowable by law, inclusive of prepayment penalties.

MAKER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS NOTE OR UNDER ANY AGREEMENT SECURING THIS NOTE.

Maker hereby waives all rights of presentment, demand for payment, protest, notice of protest and notice of dishonor, and consents that this Note or any part hereof may be extended without notice, and further agrees that any release, exchange, surrender, sale or other disposition of any or all of the security for the payment of this Note shall not release Maker from liable under this Note.

This Note is secured by a real property Mortgage of even date encumbering real estate located in Sarasota County, Florida. The obligation of each party liable under this Note may be enforced in any action to foreclose said Mortgage or by separate action hereon. State of Florida documentary stamps in the amount required by law are affixed to the Mortgage securing this Note.

In the event Payee has not received the full amount of any installment by the end of Fifteen (15) calendar days from the date it is due, Maker shall pay a late charge to Payee. The amount of the charge will be five percent (5%) of the overdue installment. The late charge shall be due and payable immediately but shall be paid only once on each late payment.

This Note shall be construed in accordance with the laws of the State of Florida.


Michael K. Nitzsche

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

IN RE: The Marriage Of:

EMELIE ZACK,

Wife,

and

CASE NO.: 95-1437-CA-01

ARTHUR NADEL,

Husband.

_____ /

AMENDED FINANCIAL AFFIDAVIT

STATE OF FLORIDA }
COUNTY OF SARASOTA }

BEFORE ME, this day personally appeared the Husband, ARTHUR NADEL, who being duly sworn, deposes and says that the following information is true and correct according to his best knowledge and belief:

EMPLOYMENT AND INCOME

OCCUPATION: Unemployed
EMPLOYMENT BY: None
ADDRESS:
SOC. SEC. NO.: 060-26-4425
RATE OF PAY: None
PAY PERIOD: None

AVERAGE GROSS MONTHLY INCOME: \$ NONE
Bonuses, commissions, allowances, overtime, tips, and similar payments \$ None
Business income from sources such as self-employment, partnership, close corporations and/or independent contracts (gross receipts minus ordinary and necessary expenses required to produce income.) \$ None
Disability benefits \$ None
Worker's Compensation \$ None
Unemployment Compensation \$ None
Pension, Retirements or Annuity Payments \$ None
Social Security Benefits \$ None
Spousal Support Received from previous marriage \$ None
Interest and Dividends \$ None
Rental Income (gross receipts minus ordinary and necessary expenses required to produce income.) \$ None



Exhibit "A"

95-1437CA

Income from royalties, trusts or estates: \$ 0.00
 Reimbursed expenses and in kind payments to the extent that they reduce personal living expenses: \$ 0.00
 Gains derived from dealing in property (not including nonrecurring gains): \$ 0.00
 Itemize any other income of a recurring nature: \$ 0.00

TOTAL GROSS MONTHLY INCOME \$NONE

LESS DEDUCTIONS:

Federal, state and local income taxes (corrected for filing status and actual number of withholding allowances): \$ 0.00
 FICA or self-employment tax (annualized): \$ 0.00
 Mandatory union dues: \$ 0.00
 Mandatory retirement: \$ 0.00
 Health insurance payments: \$ 0.00
 Court ordered support payments for the children actually paid: \$ 0.00

TOTAL DEDUCTIONS: \$ NONE

ITEM 2: AVERAGE MONTHLY EXPENSES

HOUSEHOLD:

Mtg. or rent payment: \$550.00
 Property taxes/insurance: \$ 0.00
 Electricity: \$ 40.00
 Water/Sewer & Garbage: \$ 0.00
 Telephone: \$ 60.00
 Fuel oil or natural gas: \$ 0.00
 Repairs & Maintenance: \$ 0.00
 Lawn and pool care: \$ 0.00
 Pest Control: \$ 0.00
 Miscellaneous Household: \$ 50.00
 Food & grocery items: \$250.00
 Meals outside home: \$ 40.00
 Cable Television: \$ 40.00

AUTOMOBILE:

Gasoline & Oil: \$65.00
 Repairs: \$60.00
 Auto Tags & License: \$ 8.00
 Insurance: \$29.00
 Car Payment: \$ 0.00

INSURANCE:

Health: \$160.00
 Life: \$ 79.00
 Other: \$ 0.00

EXPENSES NOT LISTED:

Dry Cleaning/Lau. \$ 30.00
 Affiant's clothing: \$ 30.00
 Affiant's medical/
 Dental Prescription: \$ 35.00
 Affiant's beauty shop: \$20.00
 Affiant's gifts: \$ 0.00
 Pets: Grooming: \$ 0.00
 Veterinarian: \$ 0.00
 Membership Dues: \$ 0.00
 Professional Dues: \$ 0.00
 Social Dues: \$ 0.00

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| | | | |
|---|--------|-------------------------------|-------------------|
| CHILDREN'S EXPENSES: | | Entertainment: | \$ 0.00 |
| Nursery/babysitting: | \$0.00 | Vacations: | \$ 0.00 |
| School Tuition: | \$0.00 | Publication: | \$ 0.00 |
| School Supplies: | \$0.00 | Religious Orgs: | \$0.00 |
| Lunch Money: | \$0.00 | Charity: | \$0.00 |
| Allowance: | \$0.00 | | |
| Clothing: | \$0.00 | | |
| Medical/dental/ ocular prescription: | \$0.00 | Miscellaneous: | \$0.00 |
| Vitamins: | \$0.00 | (Cosmetics, personal hygiene) | |
| Barber/Beauty Shop: | \$0.00 | | |
| Cosmetics/toiletries: | \$0.00 | | |
| Gifts for special holidays: | \$0.00 | | |
| | | TOTAL ABOVE EXPENSES: | \$1,546.00 |

| <u>TO WHOM:</u> | <u>BALANCE DUE:</u> | <u>MONTHLY PAYMENT:</u> |
|----------------------|---------------------|-------------------------|
| Clampitt Enterprises | \$9,483.00 | \$200.00 |
| African Hut | 1,675.00 | 50.00 |
| Jeffrey Harris | 2,059.00 | 100.00 |
| Arthur Ginsburg | 1,090.00 | 100.00 |
| Out of Africa | 2,012.00 | 100.00 |
| Mayan Image | 1,300.00 | 100.00 |
| Virginia Hoffman | 14,000.00 | 250.00 |
| Anna Nadel | | 300.00 |
| HFC | 7,000.00 | 148.00 |
| IRS | 2,186.00 | |
| Chevy Chase SB | 4,196.00 | |
| American Express | 4,600.00 | |
| Citicorp | 2,346.00 | |
| Nationsbank | 7,128.00 | |
| Business Creditors | 9,000.00 | |
| Medical bills | 1,000.00 | |
| Heinz Weseloh | 60,000.00 | |

TOTAL MONTHLY PAYMENT TO CREDITORS: \$1,348.00

TOTAL MONTHLY EXPENSES: \$2,894.00

TOTAL NET INCOME: \$ NONE

TOTAL DEFICIT: (\$4,242.00)

ITEM 3. ASSETS (Ownership: if joint, allocate equally)

| <u>Description</u> | <u>Value</u> | <u>Husband</u> | <u>Wife</u> |
|-----------------------------|--------------|----------------|-------------|
| Cash (on hand or in banks): | 0.00 | 0.00 | |

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| | | |
|-----------------------|------|------|
| Stocks/bonds/notes: | 0.00 | 0.00 |
| Real Estate (equity): | 0.00 | 0.00 |

Automobile:

| | | |
|-----------|--------|--------|
| 1979 Ford | 300.00 | 300.00 |
|-----------|--------|--------|

Other Personal Property:

| | | |
|------------------------------------|--------|--------|
| Contents of Home: | 700.00 | 700.00 |
| Jewelry: | 0.00 | 0.00 |
| Life ins./cash surrender value: | 0.00 | 0.00 |

Other Assets:

NONE

TOTAL ASSETS:

ITEM 4.

LIABILITIES

| <u>Creditor</u> | <u>Security</u> | <u>Balance</u> | <u>Husband</u> | <u>Wife</u> |
|----------------------|-----------------|----------------|----------------|-------------|
| Clampitt Enterprises | | \$9,483.00 | \$200.00 | |
| African Hut | | 1,675.00 | 50.00 | |
| Jeffrey Harris | | 2,059.00 | 100.00 | |
| Arthur Ginsburg | | 1,090.00 | 100.00 | |
| Out of Africa | | 2,012.00 | 100.00 | |
| Mayan Image | | 1,300.00 | 100.00 | |
| Virginia Hoffman | | 14,000.00 | 250.00 | |
| Anna Nadel | | | 300.00 | |
| HFC | | 7,000.00 | 148.00 | |
| IRS | | 2,186.00 | | |
| Chevy Chase SB | | 4,196.00 | | |
| American Express | | 4,600.00 | | |
| Citicorp | | 2,346.00 | | |
| Nationsbank | | 7,128.00 | | |
| Business Creditors | | 9,000.00 | | |
| Medical bills | | 1,000.00 | | |
| Heinz Weseloh | | 60,000.00 | | |

| | |
|---------------------------|---------------------|
| TOTAL LIABILITIES: | \$129,075.00 |
|---------------------------|---------------------|

95-1437-CA01

Arthur Nadel
ARTHUR NADEL

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 30th day of August, 1995, by ARTHUR NADEL, who has produced a Florida Driver's License as identification bearing number N340-047-33-001-0.

Marybeth Tilicky
Notary Public

MARYBETH TILICKY
Typed or Printed Name



My Commission Expires: May 15, 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Financial Affidavit has been furnished by ~~U. S. Mail, postage pre-paid~~ to: Michael A. Moran, Esq., of JOY & MORAN, at 1800 Second Street, Suite 850 Sarasota, Florida 34236, on this 31st day of August, 1995.

*
FAX
941-954-7101

LAW OFFICES OF
NICHOLAS P. SARDELIS, JR., CHARTERED
527 South Washington Boulevard
Sarasota, Florida 34236
(941) 952-1661
Florida Bar No. 337587

By: Nicholas P. Sardelis, Jr.