

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

CASE NO.:

8'09cv00087-T 26TBM

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

FILED

PLAINTIFF'S EMERGENCY MOTION AND MEMORANDUM OF LAW IN SUPPORT  
OF TEMPORARY RESTRAINING ORDER AND OTHER EMERGENCY RELIEF

Plaintiff Securities and Exchange Commission moves this Court for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure and Middle District of Florida Local Rule 4.05, and other emergency relief, as outlined below, to prevent Defendant Arthur Nadel from continuing to violate the antifraud provisions of the federal securities laws in connection with his fraudulent offer and sale of securities, and to prevent him from misappropriating investors' funds:

- 1) a Temporary Restraining Order;
- 2) an Order to Show Cause Why a Preliminary Injunction Should Not be Granted;
- 3) an Order Freezing Nadel's Assets;
- 4) an Order Requiring a Sworn Accounting;
- 5) an Order Prohibiting Destruction of Documents;
- 6) an Order Expediting Discovery
- 7) a Repatriation Order; and
- 8) an Order requiring Nadel to surrender his passport temporarily and prohibiting him from traveling outside the United States.

The grounds for this Motion are fully set forth in the accompanying Memorandum of Law. The Commission also submits a proposed order.

## MEMORANDUM OF LAW

### I. INTRODUCTION

From at least January 2008 through the present, Defendant Arthur Nadel defrauded investors in six hedge funds by massively overstating the value of investors' interests in them even as each of the hedge funds lost money for almost every month in 2008. Nadel, who controlled the hedge fund advisers and managers, used bogus account values and performance figures to attract and defraud investors in six private hedge funds: Scoop Real Estate, L.P. ("Scoop Real Estate"), Valhalla Investment Partners, L.P. ("Valhalla Investment Partners"), Victory IRA Fund, Ltd ("Victory IRA Fund"), Victory Fund, Ltd ("Victory Fund"), Viking IRA Fund, LLC ("Viking IRA Fund"), and Viking Fund, LLC ("Viking Fund") (collectively, the "Hedge Funds"). He has now fled, revealing the true disparity between the fantastic profits he showed investors and the hugely diminished value of the Hedge Funds in just this past year.

Through his conduct, Nadel has violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a); and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. Based on the ongoing nature of his violations and the scienter he has demonstrated through his willful and wanton disregard for the federal securities laws, Nadel has shown he will continue to violate the law unless the Court grants the injunctive and other relief the Commission seeks.

## **II. NADEL'S FRAUD**

On Thursday, January 15, 2009, prior counsel for the Hedge Funds and others involved in their operations contacted the Commission's Enforcement Division to report that Nadel had disappeared. They also reported they had learned Nadel had established secret bank accounts, which only he had controlled, in the names of at least two of the Hedge Funds, and that he had recently transferred out \$1,250,000 belonging to those two funds.

### **A. Nadel and the Entities**

Nadel controlled Scoop Management and Scoop Capital. Declaration of Michelle Lama attached as Exhibit 1, attachments J-O; Declaration of Christopher Moody attached as Exhibit 7; Declaration of Neil Moody attached as Exhibit 8. Both Scoop Capital and Scoop Management are Florida entities based in Sarasota, Florida. Exhibit 1, attachments J-O. Scoop Management is a Florida corporation incorporated on April 17, 2001, with its principal place of business in Sarasota, Florida.

Nadel is the President, Secretary and a Director of Scoop Management. Scoop Real Estate is a Delaware limited partnership formed on October 15, 2003. According to the Scoop Real Estate PPM, Scoop Capital is its general partner. Exhibit 1, attachment O.

Valhalla Investment Partners is a Delaware limited partnership formed on October 15, 2003. Exhibit 1, attachment L. According to the Valhalla Investment Partners PPM, Valhalla Management, Inc. is its general partner, and its principal place of business is Sarasota, Florida. *Id.* Valhalla Management is a Florida corporation organized on February 16, 1999, with its principal place of business is Sarasota, Florida. *Id.*

Victory IRA Fund is a Florida limited partnership formed on April 3, 2003, with its principal place of business in Sarasota, Florida. Exhibit 1, attachments J-N. Scoop Capital is the general partner of Victory IRA Fund. *Id.* Victory Fund is a Florida limited partnership formed on May 1, 2005, with its principal place of business in Sarasota, Florida. *Id.* Scoop Capital is the general partner of Victory Fund. *Id.*

Viking IRA Fund is a Florida limited liability company organized on March 27, 2001, with its principal place of business in Sarasota, Florida. *Id.* Viking Management, LLC (“Viking Management”) is its sole managing member. Exhibit 1, attachment K. Viking Management is a Florida limited liability company organized on May 21, 2001, with its principal place of business in Sarasota, Florida. *Id.* Viking Fund is a Florida limited liability company organized on March 23, 2001, with its principal place of business in Sarasota, Florida, with Viking Management as its sole managing member. *Id.*

The Private Placement Memoranda (“PPMs”) for the Hedge Funds describe the interests offered as securities. *Id.*

#### **B. Formation of the Scoop and Victory Entities**

According to offering materials provided to investors, Nadel has managed one or more hedge funds since 1999. Exhibit 1, attachments G-I. Scoop Capital formed Scoop Real Estate in 2003 to acquire interests in vacant land and residential, commercial, office and industrial real

estate properties. Exhibit 1, attachment O. Scoop Capital was responsible for managing Scoop Real Estate's portfolio and day-to-day operations, with Nadel responsible for investment decisions. Exhibit 7; Exhibit 8.

In 2005, Scoop Capital formed Victory IRA Fund and Victory Fund. The investment objective of these two Funds was to invest or trade in securities. Exhibit 1, attachments M and N. Nadel, with Defendants Scoop Capital and Scoop Management, offered investments in the Scoop Real Estate, Victory IRA, and Victory Funds pursuant to PPMs mailed to investors, which described the Funds' purported investment strategies and operations. Exhibit 7. According to the PPMs for Victory IRA Fund and Victory Fund, Scoop Capital was responsible for the management of those funds' portfolios and their day to day operations, with Nadel responsible for their day-to-day investment decisions. Exhibit 1, attachments M, N, O; Exhibit 7. These PPMs also stated Scoop Capital would invest Victory IRA Fund and Victory Fund assets according to "trading signals and other technical and fundamental principles" developed by the Fund's investment manager, Scoop Management. Exhibit 1, attachments M, N, O.

The Victory IRA Fund and Victory Fund PPMs further represented to investors that Scoop Management had been engaged in market research and developing technical and proprietary trading systems used by other hedge funds since 1999. Exhibit 1, attachments M and N. The PPMs stated the Victory IRA Fund and Victory Fund would pay quarterly management fees to Scoop Capital and Scoop Management based upon a percentage of those funds' net assets. *Id.* at attachments M and N.

**C. Formation of Valhalla Investment Partners, Viking Fund, and Viking IRA Fund**

In 1999, Valhalla Management formed Valhalla Investment Partners to invest in and trade in securities. Exhibit 1, attachment L. In 2001, Viking Management formed Viking IRA

Fund and Viking Fund, with both intending to invest or trade in the securities of medium to large cap companies. *Id.* at attachments J and K.

According to the PPMs, Viking Management and Valhalla Management were responsible for all of the investment decisions for their respective funds. *Id.* However, the PPMs also stated that Viking Management and Valhalla Management would rely upon the investment advice, signals, and other principles developed by Scoop Management. *Id.* More specifically, the Viking Fund and Viking IRA Fund PPMs stated Scoop Management would provide trading signals, market data, computer investment and trading programs, technical and fundamental research, and entry of trades for them. *Id.* Scoop Management also was to provide Viking Management and Valhalla Management with office management and technical services in connection with the Viking IRA and Viking Funds' operations, including the use of office space, facilities, and bookkeeping. *Id.*

According to these same PPMs, the Viking IRA Fund and Viking Fund would pay Valhalla Management and Viking Management a management and performance fee, and also pay Scoop Management a monthly advisory fee of \$5,000. *Id.* The PPMs also explained that Valhalla Management and Viking Management would share their management and performance fees with Scoop Management. *Id.*

**D. Misrepresentations to the Hedge Funds'  
Investors Concerning the Value of the Funds' Assets**

The Hedge Funds' internal books and records falsely indicate the value of the Funds' assets exceeds \$200 million. Exhibit 1, attachment C. However, the actual value of the Hedge Funds' total assets does not exceed approximately \$515,000. Dumornay Supplemental Declaration, attached as Exhibit 9. Securities account statements show the following values for the Hedge Funds as of January 14, 2009:

- (a) Victory Fund - \$1,901.31;
- (b) Scoop Real Estate - \$2,119.81;
- (c) Viking IRA Fund - \$2,923.58;
- (d) Viking Fund - \$917.70;
- (e) Valhalla Investment Partners - \$4,413.66;
- (f) Victory IRA Fund - \$2,938.86.

*Id.* Thus, the total value of the Hedge Funds' securities holdings as of January 14, 2009 actually is \$15,214.92.

According to the principals of Viking Management and Valhalla Management, bank account statements examined after Nadel's disappearance show the following bank account balances for the Hedge Funds as of January 16, 2009:

- (a) Victory Fund - \$78,764.37;
- (b) Scoop Real Estate - \$122,830.40;
- (c) Viking IRA Fund - \$77,025.20;
- (d) Viking Fund - \$65,708.33;
- (e) Valhalla Investment Partners - \$16,158.05;
- (f) Victory IRA Fund - \$131,139.52.

*Id.* Thus, the total cash balance in the Funds' bank accounts is \$491,625.87. Nadel, with and through Defendants Scoop Capital and Scoop Management, therefore has grossly misrepresented to investors the value of their accounts with the Hedge Funds by providing them completely false account statements. Exhibit 7; Declaration of Chester Vincentz attached as Exhibit 2; Declaration of Michael Sullivan, attached as Exhibit 3; Declaration of David Cava, attached as Exhibit 4; Declaration of Patricia Vincentz, attached as Exhibit 5.

For example, Nadel and the Scoop entities mailed one Virginia investor in the Victory IRA Fund an October 2008 statement indicating his investment was valued at \$599,551.55 and a November 2008 statement indicating his investment was valued at \$602,965.39. Exhibit 2. This same investor made a second investment in Victory IRA Fund through another account and the Defendants subsequently mailed him an October 2008 statement indicating this additional investment was valued at \$172,354.07 and a November 2008 statement indicating his investment was valued at \$173,335.45. *Id.* All of these statements were false because Victory IRA Fund's securities account statements indicate that fund's overall value was only \$2,938.86 at the end of October and November 2008. Exhibit 1, attachment A.

This same Virginia investor also invested in Scoop Real Estate. Exhibit 2. Nadel, Scoop Management, and Scoop Capital sent him account statements for October and November 2008 indicating his Scoop Real Estate account was valued at \$586,862.54 and \$590,321.18, respectively. Exhibit 2. These statements were false because Scoop Real Estate's securities account statements indicate that fund's overall value was only \$8,088.35 at the end of October and \$198,224.13 at the end of November 2008. Exhibit 1, attachment A.

The Virginia investor's wife also made two separate investments of her own in the Victory IRA Fund and received statements mailed from the Defendants for October and November 2008 which grossly misrepresented the value of her investments in that fund. Exhibit 5. She also invested in the Victory Fund, and the Defendants mailed her an account statement for November 2008 misrepresenting the value of her investment as \$419,824.89. *Id.* This also was utterly false because Victory Fund's securities account statements indicate its overall value was only \$91,823.49 at the end of November 2008. Exhibit 1, attachment A.

Another investor from California also received false account statements for October and November 2008 for his investments in Victory IRA Fund and Scoop Real Estate. Exhibit 4.

**E. Misrepresentations in Connection with the Offer or Sale of the Hedge Funds' Securities**

In addition to misrepresenting to the Hedge Funds' investors the actual value of investors' accounts, Nadel misrepresented the Hedge Funds' yearly historical returns and total capital invested to investors and prospective investors. Exhibit 1, attachments A, D, E, F, G, H, and I; Exhibit 7. From at least 2008, Nadel, through and with Defendants Scoop Capital and Scoop Management, prepared, approved or disseminated offering materials to investors containing materially false and misleading information concerning yearly historical returns and the total capital invested in the Funds. Exhibit 1, at attachments G, H, and I; Exhibit 6; Exhibit 7.

The offering materials Nadel prepared with and through Scoop Capital and Scoop Management misrepresented the Hedge Funds' yearly historical returns and total invested capital. Exhibit 1, at attachments, G and H; Exhibit 7. In particular, the offering materials for the Victory Fund and Victory IRA Fund, represented that the Funds had approximately \$342 million in capital as of November 30, 2008. Exhibit 1, at attachments G, H, and I. In fact, the total value of the Hedge Funds' assets through the end of November 2008, according to their securities account statements was \$963,123.85. Exhibit 1, at attachment A. The offering materials also represented that the Hedge Funds had generated investment returns ranging from 10.97% to 11.82% between January and November of 2008. *Id.* at attachments G, H, and I. In fact, these claimed returns were bogus, since brokerage account statements for the Hedge Funds show at least three of the Hedge Funds lost money on their investments from January through November 2008, and a fourth reported lower returns. *Id.* at attachment A.

### III. ARGUMENT

#### A. Standard for Obtaining a Temporary Restraining Order

Section 20(b) of the Securities Act, 15 U.S.C. § 77t, and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), provide that in Commission actions the Court shall grant injunctive relief upon a proper showing. SEC v. Unifund SAL, 910 F.2d 1028, 1035 (2d Cir. 1990); SEC v. Lybrand, No. 00#Civ.1387, 2000 WL 913894 \*1, \*9 (S.D.N.Y. July 6, 2000); SEC v. Unique Fin. Concepts, Inc., 119 F. Supp. 2d 1332, 1338 (S.D. Fla. 1998), aff'd, 196 F.3d 1195 (11th Cir. 1999). This “proper showing” has been described as “a justifiable basis for believing, derived from reasonable inquiry or other credible information, that such state of facts probably existed as reasonably would lead the SEC to believe that the defendants were engaged in violations of the statutes involved.” SEC v. Gen. Refractories Co., 400 F. Supp. 1248, 1254 (D.D.C. 1975).

The Commission is entitled to a temporary restraining order if it establishes: (1) a *prima facie* case showing the Defendants have violated the securities laws, and (2) a reasonable likelihood they will repeat the wrong. Unique Fin. Concepts, 119 F. Supp. 2d at 1338; SEC v. Management Dynamics, Inc., 515 F.2d 801, 807 (2d Cir. 1975). The Commission appears “not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws.” Management Dynamics, 515 F.2d at 808. The Commission faces a lower burden than a private litigant when seeking an injunction, and need not meet the requirements for an injunction imposed by traditional equity jurisprudence. Hecht Co. v. Bowles, 321 U.S. 321, 331 (1944); accord SEC v. International Loan Network, Inc., 770 F. Supp. 678, 688 (D.D.C. 1991), aff'd, 968 F.2d 1304 (D.C. Cir. 1992). Unlike private litigants, the Commission need not demonstrate irreparable harm or the unavailability of an adequate remedy at law. Unique Fin. Concepts, 119 F. Supp. 2d at 1338; Lybrand, 2000 WL 913894 at \*9.

