

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO.:

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.

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

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**PLAINTIFF'S EMERGENCY MOTION FOR APPOINTMENT
OF RECEIVER AND MEMORANDUM OF LAW**

Plaintiff Securities and Exchange Commission moves this Court for an Order appointing a Receiver for Defendants Scoop Capital LLC and Scoop Management Inc. ("Defendants"), and Relief 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") with full and exclusive power, 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. The grounds for this motion are fully set forth in the memorandum of law below. As additional support for this motion, the Commission incorporates the factual discussion in its Emergency Motion and Memorandum of Law in Support of Temporary Restraining Order and Other Emergency Relief ("TRO Motion").

The Commission's staff has solicited expressions of interest from three potential receivers it believes are well-suited to handle this matter. After considering these candidates, the Commission's staff believes the interests of defrauded investors would best be served by appointing Burton Wiand, Esq., to serve as Receiver over the Defendants and Relief Defendants. Mr. Wiand's credentials are attached as Exhibit 1.

As Mr. Wiand's letter and resume indicate, he is a partner with the law firm of Fowler White Boggs in Tampa. In addition to extensive experience litigating in securities cases in general and Commission enforcement actions specifically – both as a Commission attorney and representing defendants – he has previous receivership experience. Most significantly, Mr. Wiand was the Court-appointed Receiver in case of *SEC v. HKW Trading, et al.*, Case No. Case No. 8:05-CV-1076-T-24MSS, in the Tampa Division of the Middle District of Florida. Like this case, that action involved allegations of a failed hedge fund and a manager who was not present (in *HKW*, the hedge fund manager died shortly before the Commission sued). Mr. Wiand's experience from that case in pursuing and collecting assets from third parties will likely prove valuable in this case if the Court accepts the Commission's recommendation.

If appointed Receiver, Mr. Wiand intends to use, only as necessary, several attorneys at Fowler White who have experience in Commission receivership actions, securities litigation, and

asset recovery. As he indicates in his letter seeking this appointment, he will be cognizant of costs and expenses in order to maximize the return of funds to defrauded investors.

Mr. Wiand has agreed to significantly discount his normal hourly billable rate from \$450 to \$350, a discount of more than 20 percent. In addition, he has offered to discount the rates of other attorneys who may work on this matter from Fowler White by 10 percent. Finally, Mr. Wiand has informed the Commission that no conflict of interest exists in this matter, and he is ready, willing and able to serve as Receiver. Indeed, he is currently coordinating with the Commission staff on this matter so that, if appointed, he and his team of can immediately proceed to discharge their duties.

For all those reasons, the Commission recommends the Court select Mr. Wiand as the Receiver over the Defendants and Relief Defendants. As we indicated previously, we sought expressions of interest to serve from two additional candidates, both of whom are also well-qualified and able to serve as receivers. Both, along with their respective firms, have also agreed to significantly discount their fees. Accordingly, if the Court does not agree with the Commission's recommendation, the Commission suggests the Court appoint either Frederick Schriels, Esq., with the firm of Gray-Robinson, or, third, Hans Beyer, Esq., with the firm of Saxon Gilmore. Their letters of interest and resumes are attached as Exhibits 2 and 3, respectively.¹

MEMORANDUM OF LAW

The appointment of a Receiver is a well-established equitable remedy available to the Commission in civil enforcement proceedings for injunctive relief. *See, e.g., SEC v. First Financial*

¹ As the letters indicate, both Mr. Schriels and Mr. Beyer have offered to serve at rates less than Mr. Wiand. We believe despite that the Court should appoint Mr. Wiand, due to his experience in similar matters and the need to move as quickly as possible here.

Group of Texas, 645 F.2d 429, 438 (5th Cir. 1981); Section 22(a) of the Securities Act of 1933, 15 U.S.C. § 77v(a); and Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa.

An appointment of a Receiver is particularly appropriate in cases where a defendant, through its management, has defrauded members of the investing public. *First Financial Group of Texas*, 645 F.2d at 438. In such cases, without the appointment of a Receiver to maintain the status quo, the corporate assets will be subject to diversion and waste to the detriment of those who were induced to invest in the corporate scheme. *Id.*; see also *SEC v. R.J. Allen & Associates, Inc.*, 386 F. Supp. 866, 878-79 (S.D. Fla. 1974). A Receiver is appropriate to protect the public interest when it is obvious that those in control of an entity who have inflicted serious detriment in the past must be ousted. *SEC v. Bowler*, 427 F.2d 190, 198 (4th Cir. 1970).

Here, as discussed in more detail in the TRO Motion and our complaint, the Defendants in this matter for at least the last year, if not longer, made materially false and misleading statements to investors in hedge funds they managed by grossly exaggerating the value of the amounts investors held in their individual accounts. The Defendants also materially overstated the hedge funds' historical investment returns and the value of the funds' assets in statements to prospective investors to persuade them to invest.

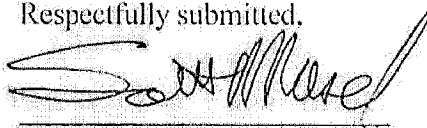
For example, at the end of November 2008, private placement memoranda seeking investments in three of the funds that the Defendants distributed to investors represented the three funds had approximately \$342 million in capital. In reality, the value of the funds' assets was less than \$1 million. The same offering materials represented that the Funds generated investment returns of 11 percent and more in 2008, when, in reality, all of the Funds lost significant amounts in 2008.

All of the misrepresentations and omissions described in the Commission's complaint and TRO motion occurred under the auspices of Defendants Scoop Management and Scoop Capital and Arthur Nadel. Nadel, as described in more detail in our TRO motion, has disappeared. Therefore, the risk of dissipation of funds is great if Nadel remains at large and has any access to the accounts of the other Defendants and Relief Defendants. Therefore, the best interest of investors would be served by appointing a Receiver to take possession of the Defendants and the Relief Defendants and their accounts, and marshal their assets for the benefits of investors.

WHEREFORE, for the foregoing reasons, the Commission requests that the Court appoint Burton Wiand, Esq. or any other suitable person, as Receiver for the Defendants and the Relief Defendants.

January 21, 2009

Respectfully submitted,



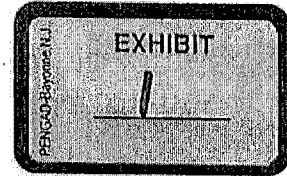
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January 19, 2009

BY ELECTRONIC MAIL (dumornayc@sec.gov)
AND OVERNIGHT MAIL

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Assistant Regional Director
Securities and Exchange Commission
Miami Regional
801 Brickell Avenue, Suite 1800
Miami, Florida 33131

Re: *Potential Receivership for Scoop Capital, LLC
and related entities*

Dear Mr. Dumornay:

This letter is submitted as my proposal to serve as Receiver over the assets and activities of Scoop Management Inc. and their related entities (collectively "Scoop"). I appreciate the opportunity to submit this proposal and your consideration of me to act in this capacity.

My background is well-suited to serve as the Receiver in this matter. A copy of my resume is attached for your reference. Specifically, I spent 14 years with the Division of Enforcement of the SEC where I instituted and participated in enforcement proceedings. I served as Assistant Chief Trial Attorney for the last several years of my career with the Division. Since leaving the Commission, I have focused my practice on securities litigation. I have extensive experience in litigating claims involving inappropriate conduct by securities firms, licensed individuals, and financial institutions.

In 2005 I was appointed Receiver in a Commission action involving a failed hedge fund, (*SEC v. Howard Waxenberg*). During the period of time since this matter was instituted as Receiver, I have instituted numerous lawsuits and collected over \$11 million that will shortly be delivered to investors. This case involved a failed Ponzi scheme hedge fund and has provided Fowler White with broad experience with and in dealing with such matters. We have not only

FOWLER WHITE BOGGS P.A.

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