

**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.

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

Burton W. Wiand declares as follows:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida. I make this declaration in support of the Receiver's Motion To Approve Settlement (the "**Motion**") with Shoreline Trading Group, LLC ("**Shoreline**"). I make this declaration 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, including Shoreline. Shoreline was an introducing Broker/Dealer that dealt directly with Nadel’s and the Hedge Funds’ securities transactions. Shoreline’s brokerage transactions were cleared by Goldman Sachs Execution & Clearing, LLC (“**GSEC**”).

5. I gathered information relating to Nadel’s transactions and contacted Shoreline to discuss its role in providing such services to Nadel and the Hedge Funds. Shoreline cooperated with me and, in fact, produced a large volume of documents and was responsive to all requests for documents over time and promptly accommodated my requests

to speak with the Shoreline registered representative who had primary responsibility for the Nadel relationship.

6. In October 2010, Shoreline 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 that Shoreline may have failed to appropriately respond to certain "red flags" that could have revealed Nadel's scheme. In addition, I determined that Shoreline 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 Shoreline.

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

9. In determining to accept \$2,500,000 from Shoreline in resolution of all claims, I considered a number of significant factors. I considered the risks associated with litigating the claims and ability to collect on any potential judgment against Shoreline. Shoreline provided its Focus Reports to me dated December 2011, which revealed that it has a total net capital of approximately \$2,450,000. Thus, the settlement amount is slightly greater than Shoreline's net capital. Shoreline has no applicable insurance and it is unlikely that a

litigated result, and its substantial expense to the Receivership estate, could yield a larger recovery.

10. I also recognized that Shoreline 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 \$2,500,000 proposed in the Settlement Agreement and the resources expended would be lost. Moreover, the expenditure of funds in defense of this action by Shoreline would likely decrease assets available for potential recovery by the Receivership estate.

11. Second, I considered the potential value of the claims against Shoreline. I could have attempted to hold Shoreline responsible for its portion of all investor losses arising from Nadel's scheme, which amount is approximately \$168 million, according to Shoreline's comparative fault.

12. In addition, I considered the amount of money that Nadel transferred from the Hedge Funds' official accounts 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, Shoreline followed Nadel's instructions to

transfer money from the Hedge Funds' "official" trading accounts 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 Shoreline did not follow relevant guidelines and internal policies and procedures applicable to third-party transfers. I believe there is potential liability to Shoreline for this conduct as well as potential liability for the transfers themselves.

13. Finally, I considered the fees and margin interest that Shoreline earned for providing brokerage 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.

14. Litigation of claims against Shoreline 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 Shoreline. 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 settlement of any potential liability that Shoreline might have as a result of its involvement with any accounts controlled by Nadel, given the applicable claims, defenses, risks, and ability to collect on any potential judgment.

16. As such, it is my opinion that 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

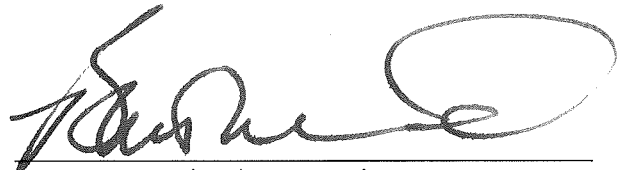
substantial recovery to the Receivership estate, which will ultimately compensate investors with approved claims through the claims process.

17. To ensure finality and for the other reasons set forth in the Motion, Shoreline has requested that the Court, in addition to approving the Settlement Agreement, enter an order barring any additional claims against Shoreline by investors in the Hedge Funds or by potential joint tortfeasors, including claims for contribution or indemnity, which relate in any way to Nadel's Ponzi scheme (the "**Bar Order**"). I am not aware of any existing or impending claims against Shoreline. My analysis considers the fact that potential claims against Shoreline 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 (the "**Notice Motion**"), 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 May 3, 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 Shoreline than that reflected in the Settlement Agreement.

I DECLARE under the penalty of perjury that the foregoing is true and correct and is executed this 29th day of March, 2012.



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