

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants.

CASE NO.: 8:09-cv-0087-T-26TBM

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, LLC.

Relief Defendants.

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**RECEIVER'S UNOPPOSED VERIFIED MOTION TO
APPROVE THE SALE OF YAMAHA BABY GRAND PIANO**

Pursuant to 28 U.S.C. §§ 754, 2001, and 2004, Fed. R. Civ. P. 66, and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the “**Receiver**”), respectfully moves the Court for entry of an order in substantially the form attached hereto as **Exhibit 1**, granting the Receiver authority to sell a Yamaha Baby Grand Piano.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (“Commission”) initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC (“Scoop Capital”) and Scoop Management, Inc. (“Scoop Management”) and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the “Order Appointing Receiver”). (*See generally* Order Appointing Receiver (Doc. 8).) The Court subsequently granted several motions to expand the scope of the receivership to include other entities owned or controlled by Arthur Nadel (“Nadel”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454). All of the entities and the trust in receivership are hereinafter referred to collectively as the “Receivership Entities.”

Pursuant to the Order Appointing Receiver, the Receiver has the 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.” (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other

securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court

(*Id.* at 2.)

The Yamaha Grand Piano (bearing serial number 6208304) (the “Asset”) was purchased by Nadel in 2008 for \$19,900.00. Marguerite J. Nadel (“Mrs. Nadel”) – the wife of Nadel - was notified by the Receiver in September 2009 that his investigation revealed Nadel purchased the Asset with proceeds of the fraudulent scheme underlying this case and, in October 2009, Mrs. Nadel voluntarily relinquished possession of the Asset to the Receiver. The Receiver is not aware of any liens or encumbrances on the Asset, and no claims have been filed in the Receivership claims process with respect to the Asset.

VALUE OF THE ASSET AND RECEIVER’S MARKETING EFFORTS

The Receiver obtained an opinion as to the value of the Asset from the retailer who sold it to Nadel. The Receiver also researched the value this Asset on the Internet. Taking all factors into consideration, the Receiver believed the Asset’s estimated value was \$16,000.00 and listed the Asset for sale on E-Bay and Craig’s List. The Asset was also posted on the Receivership website, www.nadelreceivership.com.

The Receiver’s marketing efforts resulted in no bids or offers until July 2012 when he was offered \$7,000.00 for the Asset. After negotiating with the prospective buyer, the Receiver accepted an offer of \$9,900.00, contingent upon this Court’s approval. The Receiver believes that accepting the offer of \$9,900.00 is in the best interest of the Receivership Estate as it fairly represents the current value of the Asset. Furthermore, the

buyer is in a position to complete the sale and purchase of the Asset contingent upon this Court's approval. The buyer has provided the Receiver with a \$500.00 deposit and has agreed to pay the balance of the purchase price in the form of a certified check following this Court's approval of the sale. In light of the foregoing, the Receiver respectfully requests that this Court enter an order approving the sale of the Asset.

MEMORANDUM OF LAW

I. SALE OF THE ASSET IN THE RECEIVERSHIP ESTATE'S BEST INTEREST

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The Court, by imposing a receivership, assumed custody and control of all assets and property of the Receivership, and it has broad authority to issue all orders necessary for the proper administration of the Receivership estate. *See SEC v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *SEC v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief (*Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)), and it may enter such orders as may be appropriate and necessary for the Receiver to fulfill the duty to preserve and maintain the property and funds within the Receivership estate (*see, e.g., Official Comm. of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006); *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997)). The goal of the

Receiver, having been charged in relevant part with liquidating assets, is to obtain the best value for the estate available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996). And the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

The relief sought by the Receiver falls squarely within those powers. In light of the considerations discussed above, sale of the Asset is in the best interest of the Receivership estate, and would result in the recovery of \$9,900.00 for the benefit of defrauded investors. As a result, the Receiver respectfully requests that the Court grant the relief requested in this motion and enter the proposed order attached as Exhibit 1.

II. TO THE EXTENT 28 U.S.C. § 2001 AND 2004 GOVERN THIS MATTER, THE COURT HAS THE AUTHORITY TO WAIVE THOSE REQUIREMENTS, AND THE CIRCUMSTANCES HERE WARRANT SUCH WAIVER

28 U.S.C. §§ 2001 and 2004 governs the “sale” of property. However, these statutory requirements can be and are often waived by courts. 28 U.S.C. § 2004 (“Section 2004”) governs the sale of personal property and provides as follows:

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with Section 2001 of this Title, unless the court orders otherwise.

28 U.S.C. § 2004 (emphasis added). 28 U.S.C. § 2001(b) (“**Section 2001(b)**”) addresses private sales and provides as follows:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or

other consideration and upon such terms and conditions as the court approves, if it finds that the best interest of the estate will be conserved thereby. Before confirmation of any private sale, the Court shall appoint three disinterested persons to appraise such property or different groups or three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the Court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the Court, which guarantees at least a ten percentum increase over the price offered in the private sale.

28 U.S.C. § 2001(b). Thus, “unless the Court orders otherwise” pursuant to Section 2004, Section 2001(b) requires a court to appoint three disinterested persons as appraisers and to direct in which newspaper a notice of proposed sale be published prior to confirmation of a sale. Using the discretion afforded by Section 2004, the Court should “order otherwise” in this instance with regard to (i) the need for three appraisals and (ii) the publication in newspapers of notice of any sale. The Court’s authority to deviate from the requirements of Section 2004 is supported by caselaw and is in the best interests of the Receivership estate.

In light of the Receiver’s marketing efforts, the Receiver is in position to appropriately evaluate the value of the Asset. The delay and expense associated with obtaining independent appraisals of the Asset are not warranted under these circumstances, and neither is the cost and delay associated with publishing notice as these requirements would only significantly offset the net sale proceeds.

Courts have recognized the discretion afforded to them by Section 2004 in approving a discretionary deviation from the requirements of Section 2001. *See, e.g., Tanzer United States v. Stonehill*, 83 F.3d 1156, 1160 (9th Cir. 1996) (emphasizing statutory language, “unless the court orders otherwise,” and concluding that “it is at the district court’s discretion

whether to obtain appraisals [in sales of] personal property”); *see also SEC v. Kirkland*, 2008 WL 4264532, *2 (M.D. Fla. 2008) (approving sale of personalty without appraisals or publication where costs of compliance would significantly offset the purchase offer); *United States v. Kerner*, 2003 WL 22905202, *2 (E.D. Mich. 2003) (“Under...28 U.S.C. § 2004, which states that the requirements of section 2001 must be followed ‘unless the court orders otherwise,’ the Court clearly has the discretionary authority to confirm the private sale [made without strict adherence to the requirements in Section 2001].”).

Further, Courts have specifically exercised their authority to deviate from the requirements of Section 2001 when faced with the proposed sale of personal property by a receiver under Section 2004. *See Wells Fargo Capital Finance, Inc. v. North Pacific Group*, No. CV10-65-KI, Order on Receiver’s Motion for Order Authorizing Sale of Accounts Receivable (D. Ore. Jan. 24, 2012) (excusing receiver from “compliance with 28 U.S.C. § 2004 concerning sales of personal property through federal court proceedings”); *SEC v. Billion Coupons, Inc.*, 2009 WL 2143531, *4 (D. Hawai’i 2009) (finding good cause to exercise discretion and permit receiver to sell personal and real property in manner other than as provided by federal statute, including 28 U.S.C. §§ 2001, 2004); *Federal Trade Commission v. Jeremy Johnson et. al.*, No. 2:10-cv-02203-RLH-GWF, Order (D. Nev. August 25, 2011) (allowing receiver to liquidate private limited liability membership interest and authorizing deviation from sale and publication procedures of 28 U.S.C. §§ 2001 and 2004); *SEC v. Lydia Capital, LLC, et al.*, No. 1:07-cv-10712-RGS, Order Granting Receiver’s Motion for Authorization to Sell Asset of the Receivership Estate (D. Mass. March 16, 2011) (“Given the Receiver’s efforts in marketing the portfolio of policies,

including the Sale Policy, the third-party offers the Receiver obtained from disinterested bidders in the marketplace, and the notices provided to all interested parties, neither an independent appraisal or publication is necessary under 28 U.S.C. §§ 2001 and 2004") (emphasis added).

III. THERE EXIST NO OTHER KNOWN CLAIMS OR INTERESTS IN THE ASSET

Deviation from the requirements of Section 2001(b) is not only warranted by the circumstances, but it also would not raise any issues because there are no known outstanding claims, liens, or encumbrances relating to the Asset. Although the Receiver is not aware of any claims, liens, or encumbrances relating to the Asset, nevertheless to eliminate any risk whatsoever, the Receiver seeks an Order allowing him to transfer the Asset free and clear of any and all liens, encumbrances, and claims. This Court's broad authority over the Receivership estate includes the equitable power to "sell property free of liens, transferring the liens to the proceeds." *Seaboard Nat'l Bank v. Rogers Milk Products Co.*, 21 F.2d 414, 416 (2d Cir. 1927); *see also Quilling v. Trade Partners, Inc.*, 2007 WL 296211 (W.D. Mich. 2007) (approving receiver's sale of property free and clear of all liens and encumbrances and ordering that any liens or claims associated with the property would attach to the proceeds of the sale).

Finally, because no known claim, lien, or encumbrance affecting the Receivership estate's interests in the Asset remains outstanding, no hearing on this Motion is necessary. Instead, aside from filing this Motion in the public docket, the Motion and supporting papers will be posted and easily accessible to any interested party on the Receivership's website (www.nadelreceivership.com) promptly after they are filed. This procedure will provide any

interested party with sufficient notice and opportunity to be heard in accordance with Section 2001(b). *See, e.g., North Pacific Group, Inc.*, No. CV10-65-KI (D. Ore. Jan. 24, 2012) (“no other or further notice of the Motion or the entry of this sale order is required”); *Lydia Capital, LLC, et al.*, No. 1:07-cv-10712-RGS (D. Mass. March 16, 2011) (provision of motion and proposed order to parties, investors, and creditors of receivership, along with posting copy on receiver’s website, was sufficient and reasonable where time was of the essence); *Albert Fase Kaleta et al.*, No. 4:09-cv-3674 (S.D. Tex. August 10, 2010) (granting emergency motion waiving receiver’s compliance with Section 2004, including notice requirements).

CONCLUSION

For these reasons, the Receiver respectfully moves the Court for entry of an Order in substantially the form of the proposed order attached as Exhibit 1 approving the sale of the Asset and, to the extent 28 U.S.C. § 2001 and 2004 govern the sale of the Asset, waiving any appraisal and publication requirements and allowing the Receiver to transfer the Asset free and clear of any and all claims, liens, and encumbrances.

VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.

A handwritten signature in cursive script, appearing to read "Burton W. Wiand", written in dark ink.

Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE UNDER LOCAL RULE 3.01(g)

Undersigned counsel has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 1, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

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