

Respondent's Request for a 180 day stay in the Matter re: Feathers 3-15755

On July 15, 2019, Respondent was notified that, on his request, a motion hearing date on a Rule 60 motion had been reserved for him with the court of Hon. Edward J. Davila, and in the matter of CV12-0327-EJD, which is the predicate civil action to this OIP (see Exhibit 1). That motion hearing was also for consideration of legal fees of \$200,000 to be awarded to Respondent, who was *pro se* in the civil action, from a legal fees reserve prior established by the court. Approximately two days after Respondent received a hearing date, and not by coincidence, it appears, the Receiver in the civil action submitted a motion to extinguish the Receivership in the predicate civil action (see Exhibit 2 "NOTICE OF MOTION AND MOTION TO CONCLUDE RECEIVERSHIP AND FOR ORDER: APPROVING POST CLOSING ACCOUNTING AND REPORT; RELEASING FEATHERS RESERVE FUNDS; AUTHORIZING PAYMENT OF PROFESSIONAL FEES; AND DISCHARGING RECEIVER").

On August 9th, 2019, the Court approved the Receiver's motion to conclude the Receivership (see Exhibit 3). In so doing, the court noted that "Defendant Mark Feathers filed an opposition on August 8, 2019 in which he represents that on July 15, 2019, he reserved a hearing date of December 12, 2019 for his anticipated motion for approval of his own legal fees and motion to challenge the Receiver's accounting and financial analysis. Dkt. No. 1276). Pursuant to the undersigned's Standing Order For Civil Cases, motions must be filed and noticed within 14 calendar days of reserving a hearing date. Accordingly, Feathers' motion(s) were due July 29, 2019. To date, Feathers has not filed any motion."

Respondent's hearing date was 12/12/19. Respondent thought that he had to submit his pleadings within 30 days of that date. He failed to make himself fully aware of local rules that "motions must be filed within 14 calendar days of reserving a hearing date". So, Respondent had a procedural failure, and on that basis, lost his opportunity for a motion hearing, and an opportunity to employ counsel from a reserve that had been established for a favorable Rule 60 finding to reverse a prior adverse summary judgment against him. The "Stalker Report", which this court by now is familiar with, was to be argued by Respondent as the basis for Respondent's Rule 60 hearing. Respondent has held reliance that **this court** would accept the Stalker Report, and on this basis, at some later date, civil court would consider that Respondent had equitably tolled consideration of these matters. However, this court, on appearance, appears to be abusing its discretion in that it is employing means to aid Enforcement in not allowing arguments concerning the Stalker Report, as Respondent has argued here in prior pleadings. On that basis, Respondent submitted on this date a request to civil court for a Rule 60 motion hearing date (see Exhibit 3). Respondent will do his best to follow that court's local rules, and will make reference in his arguments to the Stalker Report, which civil court has on file, but has not reviewed for findings per jurisdictional matters of district court prior outlined by Respondent in this OIP.

On the basis of Respondent's actions now underway in civil court, and on the basis that the findings of civil court may present material issues of consideration in this OIP, Respondent respectfully asks this court for a 180 day stay in proceedings for motion filings, arguments, and findings/orders in civil court. Respondent respectfully requests that Enforcement be allowed a response to this motion, so that Enforcement may not raise technical issues in circuit court in the future to overturn a decision which may be adverse to it. All parties, including this court and the public, may benefit with a stay in these proceedings at this time.

Respectfully,



Mark Feathers, *pro se*, Respondent

Dated 7-30-20

RE: Motion Scheduling Inquiry for Hon. Edward J. Davila for CV12-03237-EJD

From: CRD EJD (ejdcrd@cand.uscourts.gov)

To: markfeathers@sbcglobal.net

Date: Monday, July 15, 2019, 12:33 PM PDT

Date reserved. Thank you.

Adriana M. Kratzmann

Courtroom Deputy to Honorable Edward J. Davila
United States District Court for the Northern District of
California

San Jose Division
280 South First Street, Rm 2112
San Jose, CA 95113
adriana_kratzmann@cand.uscourts.gov
<http://www.cand.uscourts.gov/ejd>
Direct Dial: (408) 535-5356

From: Mark Feathers <markfeathers@sbcglobal.net>

Sent: Monday, July 15, 2019 11:36 AM

To: CRD EJD <EJDCRD@cand.uscourts.gov>

Subject: Re: Motion Scheduling Inquiry for Hon. Edward J. Davila for CV12-03237-EJD

Thank you, I notified the opposing side last week on the same day that you informed me of that date being available.

I will mail the Clerk of the Court an address update today, thank you.

Regards,

Mark Feathers

Defendant

CV12-03237-EJD

On Monday, July 15, 2019, 10:39:10 AM PDT, CRD EJD <EJDCRD@cand.uscourts.gov> wrote:

Good morning,

Did you confirm the date with opposing side? If so, date is reserved for 12/12/2019 at 9am. Also, any party is required to file with the Court an address change so the Case Systems Administrator can UPDATE the docket to record the correct contact information such as address etc., Please do that.

Thank you.

Adriana M. Kratzmann

Courtroom Deputy to Honorable Edward J. Davila
United States District Court for the Northern
District of California

San Jose Division
280 South First Street, Rm 2112
San Jose, CA 95113
adriana_kratzmann@cand.uscourts.gov
<http://www.cand.uscourts.gov/ejd>
Direct Dial: (408) 535-5356

From: Mark Feathers <markfeathers@sbcglobal.net>

Sent: Friday, July 12, 2019 4:44 PM

To: CRD EJD <EJDCRD@cand.uscourts.gov>

Subject: Re: Motion Scheduling Inquiry for Hon. Edward J. Davila for CV12-03237-EJD

Sorry I should have asked with that email, can you please confirm back that the date is being held? Thank you.

On Friday, July 12, 2019, 4:42:56 PM PDT, Mark Feathers <markfeathers@sbcglobal.net> wrote:

Can you please hold the 12/12 date for me? Also, my current address is:

205 MacArthur Blvd.

Oakland, CA. 94610

I'm not sure that address is reflected at this time in District Court Records.

Thank you very much.

Mark Feathers

Defendant

CV12-03237-EJD

ph. 510-778-0175

On Friday, July 12, 2019, 1:59:01 PM PDT, CRD EJD <EJDCRD@cand.uscourts.gov> wrote:

Good afternoon,

The next available hearing dates for the list you indicated below are: 12/12 or 12/19 at 9am.

1. awarding of legal fees
2. request to engage in discovery

And then the next date for the Rule 60 would be 3/19 at 9am.

Please clear the December dates with the opposing side prior to obtaining the reservation to avoid any calendar conflicts. Once date has been confirmed please let me know which date you would like to reserve.

Thank you.

Adriana M. Kratzmann

Courtroom Deputy to Honorable Edward J. Davila
United States District Court for the Northern
District of California

San Jose Division
280 South First Street, Rm 2112
San Jose, CA 95113
adriana_kratzmann@cand.uscourts.gov
<http://www.cand.uscourts.gov/ejd>
Direct Dial: (408) 535-5356

From: Mark Feathers <markfeathers@sbcglobal.net>

Sent: Friday, July 12, 2019 12:56 PM

To: CRD EJD <EJDCRD@cand.uscourts.gov>

Subject: Re: Motion Scheduling Inquiry for Hon. Edward J. Davila for CV12-03237-EJD

Hello Again,

The purpose of the motions are for matters relating to an additional motion which I intend to submit for a Rule 60 motion hearing with Hon. Judge Davila. However, the first two issues below must be addressed. I anticipate that I will be ready to submit a Rule 60 motion within 90 days of the hearing dates for the below motions. Can you please reserve another motion hearing date for a Rule 60 Motion at this time, as well?

Thank you,

Mark Feathers

Defendant

On Friday, July 12, 2019, 12:52:17 PM PDT, Mark Feathers <markfeathers@sbcglobal.net> wrote:

RE: CV12-03237-EJD

Hello,

My name is Mark Feathers, and I would like to know the next available date for a motion hearing with Hon. Judge Davila. The motions which will be submitted are for:

1. awarding of legal fees
2. request to engage in discovery

Can you please advise what hearing dates are available?

Thank you very much.

Mark Feathers

Defendant

ph. 510-778-0175

1 DAVID R. ZARO (BAR NO. 124334)
EDWARD G. FATES (BAR NO. 227809)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
tfates@allenmatkins.com

6 Attorneys for Receiver
7 THOMAS A. SEAMAN

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13
14 vs.

15 SMALL BUSINESS CAPITAL CORP.;
16 MARK FEATHERS; INVESTORS
PRIME FUND, LLC; AND SBC
17 PORTFOLIO FUND, LLC,

18 Defendants.
19

Case No. CV12-03237-EJD

NOTICE OF MOTION AND MOTION
OF RECEIVER, THOMAS A.
SEAMAN, FOR ORDER MODIFYING
ORDER CONCLUDING
RECEIVERSHIP
AS MODIFIED [DKT. NO. 1277]

[[Proposed] Order submitted concurrently
herewith]

Date: September 24, 2020
Time: 9:00 a.m.
Ctm: 4
Judge Hon. Edward J. Davila

20 TO THE HON. EDWARD J. DAVILA, JUDGE OF THE UNITED STATES
21 DISTRICT COURT, INTERESTED PARTIES, AND THEIR COUNSEL OF
22 RECORD:

23 Thomas A. Seaman ("Receiver"), the Court-appointed receiver for Small
24 Business Capital Corp., Investors Prime Fund, LLC, SBC Portfolio Fund, LLC, and
25 their subsidiaries and affiliates, including Small Business Capital, LLC and
26 SBC Senior Commercial Mortgage Fund, LLC (collectively "Receivership
27 Entities"), hereby moves this Court, via the instant motion (the "Motion"), for an
28 Order Modifying its Order Concluding Receivership: Approving Post-Closing

1 Accounting and Report; Releasing Feathers Reserve Funds; Authorizing Payment of
2 Professional Fees; and Discharging Receiver ****As Modified**** [Dkt. No. 1277] (the
3 "Concluding Order") to permit the Receiver to destroy the Receivership Entities'
4 documents and records.

5 By way of this Motion, the Receiver respectfully requests that the Court
6 modify Paragraph 8(b) of its Concluding Order (for convenience the original
7 Concluding Order is attached hereto as **Exhibit A**), to authorize the Receiver to
8 immediately destroy the documents and electronic records in his possession relating
9 to the Receivership Entities and the instant receivership (collectively, the
10 "Documents"). The original Concluding Order called upon the Receiver to turn the
11 Documents over to the United States Attorney's Office (the "USAO"), presumably
12 for use in connection with its criminal prosecution of Mark Feathers and Natalie
13 Feathers (collectively, "Feathers"). Ultimately, the criminal case against Feathers
14 was resolved by the time the Concluding Order was entered. Since then, the USAO
15 has failed to take possession of the Documents, despite the Receiver's repeated
16 requests that they take the Documents. Since the USAO does not want the records,
17 and it is costly for the Receiver to store the records, the Receiver believes it is time
18 to destroy the records.

19 Therefore, the Receiver requests to be relieved of the duty to turn over the
20 Documents to the USAO and instead be permitted to destroy the Receivership
21 Entities' Documents.

22 **I. RELEVANT FACTUAL BACKGROUND.**

23 On August 2, 2019, the Receiver filed his Motion to Conclude Receivership
24 and for Order: Approving Post-Closing Accounting and Report; Releasing Feathers
25 Reserve Funds; Authorizing Payment of Professional Fees; and Discharging
26 Receiver [Dkt. No. 1274] (the "Concluding Motion"), in accordance with this
27 Court's Order Granting Receiver's Motion to Conclude Receivership [Dkt.
28 No. 1238]. On August 8, 2019, the Receiver filed a Notice of Errata [Dkt.

1 No. 1275] in connection with the Concluding Motion, notifying the Court, in
2 pertinent part, that "[i]n Section VII, at page 7; lines 23-28 of the [Concluding]
3 Motion, the Receiver stated that he intended to make Documents available to the
4 United States Attorney's Office in connection with their pending criminal action.
5 This was an error since the criminal case has been resolved." See Dkt. No. 1275.
6 Accordingly, and as set forth in the Notice of Errata, the Receiver sought authority
7 to immediately destroy the Documents in his possession relating to the Receivership
8 Entities, following his final distribution of funds to investors, instead of turning such
9 records over to the USAO. The following day, on August 9, 2019, the Court entered
10 the Concluding Order, which obligated the Receiver to turn over the Receivership
11 Entities' Documents to the USAO.

12 Since that time, the Receiver has made several attempts to turn over the
13 Documents to USAO. In each case, the USAO has failed to take any steps to take
14 the Documents or authorize the Receiver to destroy the Documents. It costs the
15 Receiver to retain the Documents because they are being held in a storage facility at
16 a cost of \$150.00 per month. The Receiver has met and conferred with the
17 Securities and Exchange Commission (the "Commission") and they do not want the
18 Documents and they have no objection to this Motion.

19 Since neither the Commission nor the USAO wants the Documents, the
20 Receiver requests permission to destroy them.

21 **II. DISCUSSION.**

22 A district court's power to administer an equity receivership is extremely
23 broad. SEC v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986); SEC v. Forex Asset
24 Mgmt., LLC, 242 F.3d 325, 331 (5th Cir. 2001). Indeed, the Ninth Circuit has
25 explained:

26 A district court's power to supervise an equity receivership
27 and to determine the appropriate action to be taken in the
28 administration of the receivership is extremely broad. The

1 district court has broad powers and wide discretion to
2 determine the appropriate relief in an equity receivership.
3 The basis for this broad deference to the district court's
4 supervisory role in equity receiverships arises out of the
5 fact that most receiverships involve multiple parties and
6 complex transactions.

7 SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005) (citations
8 omitted); see also CFTC v. Topworth Int'l, Ltd., 205 F.3d 1107, 1115 (9th Cir.
9 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we
10 generally uphold reasonable procedures instituted by the district court that serve
11 th[e] purpose' of orderly and efficient administration of the receivership for the
12 benefit of creditors").

13 Accordingly, this Court has broad equitable powers and discretion in
14 determining appropriate relief in this receivership, including the power to modify its
15 Concluding Order to authorize the Receiver to destroy the Documents in his
16 possession relating to the Receivership Entities and the instant receivership. Given
17 that the USAO's criminal case against Feather's has been resolved, and because the
18 Receiver has completed all tasks associated with the instant receivership, including
19 his final distribution of funds to investors, the Receiver submits that it is now
20 appropriate for him to destroy the Receivership Entities' Documents.

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EXHIBIT A

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SMALL BUSINESS CAPITAL CORP.;
MARK FEATHERS; INVESTORS
PRIME FUND, LLC; AND SBC
PORTFOLIO FUND, LLC,

Defendants.

Case No. 5:12-CV-03237-EJD

~~[PROPOSED]~~ ORDER CONCLUDING
RECEIVERSHIP; APPROVING POST
CLOSING ACCOUNTING AND
REPORT; RELEASING FEATHERS
RESERVE FUNDS; AUTHORIZING
PAYMENT OF PROFESSIONAL FEES;
AND DISCHARGING RECEIVER
AS MODIFIED

Hon. Edward J. Davila
Courtroom 4

1 The Motion to Conclude Receivership and for an Order: Approving the
2 Receiver's Post-Closing Accounting and Report; Releasing the Defense Counsel
3 Reserve Funds; Authorizing Payment of Professional Fees; and Discharging the
4 Receiver ("Motion") of Thomas A. Seaman ("Receiver"), Court-appointed
5 permanent receiver for Small Business Capital Corp., Investors Prime Fund, LLC,
6 SBC Portfolio Fund, LLC, and their subsidiaries and affiliates, came before the
7 Court.

8 Defendant Mark Feathers filed an opposition on August 8, 2019 in which he
9 represents that on July 15, 2019, he reserved a hearing date of December 12, 2019
10 for his anticipated motion for approval of his own legal fees and motion to challenge
11 the Receiver's accounting and financial analysis. Dkt. No. 1276). Pursuant to the
12 undersigned's Standing Order For Civil Cases, motions must be filed and noticed
13 within 14 calendar days of reserving a hearing date. Accordingly, Feathers'
14 motion(s) were due July 29, 2019. To date, Feathers has not filed any motion.

15 The Court having considered the Receiver's Motion and opposition thereto, IT
16 IS HEREBY ORDERED as follows:

- 17 1. The Motion is granted.
- 18 2. The Receiver's post-closing and report is approved.
- 19 3. The Receiver is authorized to cease holding the Defense Counsel
20 Account¹ containing \$200,000 and distribute those funds to investors and creditors
21 as provided herein.
- 22 4. The Receiver is authorized to make a final distribution to investors and
23 creditors in accordance with the Motion and approved Distribution Plan. [Dkt.
24 Nos. 711, 628]

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28 ¹ The capitalized terms used herein shall have the meanings as defined in the Motion.

1 5. The Receiver is authorized to pay his counsel, Allen Matkins Leck
2 Gamble Mallory & Natsis LLP, attorneys' fees and costs in the amount of
3 \$60,157.70.

4 6. The Receiver is authorized to establish a post-closing reserve of
5 \$65,107 to pay for the final administrative expenses associated with the Closing
6 Tasks as set forth in Section IV of the Motion.


7 7. The Receiver is authorized to turn over to the Securities and Exchange
8 Commission to be paid to the United States Treasury, any remaining funds in his
9 possession following completion of the Closing Tasks, including funds reflecting
10 uncashed distribution checks and remaining post-closing reserve funds after
11 payment of the expenses described in Section IV of the Motion.

12 8. The Receiver is discharged of all duties under the Temporary
13 Restraining Order and Orders: (1) Freezing Assets; (2) Prohibiting the Destruction
14 of Documents; (3) Granting Expedited Discovery; (4) Requiring Accountings; and
15 (5) Appointing a Temporary Receiver; and Order to Show Cause re Preliminary
16 Injunction and Appointment of a Permanent Receiver entered by this Court on
17 June 26, 2012 ("TRO") (Dkt. No. 16), the Preliminary Injunction and Orders:
18 (1) Freezing Assets; (2) Prohibiting the Destruction of Documents; (3) Requiring
19 Accountings; and (4) Appointing a Permanent Receiver entered by this Court on
20 July 10, 2012 ("Preliminary Injunction Order") (Dkt. No. 34), and subsequent orders
21 of the Court.

22 (a) The receivership is closed.

23 (b) The Receiver presently stores loan files, records for the Receivership
24 Entities' operations, personnel files, investor files, and miscellaneous
25 documents and electronic records. The Receiver shall turn such books and
26 records over to the United States Attorney's Office

27 Dated: August 9, 2019 _____



Hon. Edward J. Davila
Judge, United States District Court

28

PROOF OF SERVICE

Securities and Exchange Commission v. Small Business Capital Corp; Mark Feathers, et al.
USDC, Northern District of California – San Jose Division – Case No. 5:12-cv-03237-EJD

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

NOTICE OF MOTION AND MOTION OF RECEIVER, THOMAS A. SEAMAN, FOR ORDER MODIFYING ORDER CONCLUDING RECEIVERSHIP **AS MODIFIED [DKT. NO. 1277]**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **July 17, 2020**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Eric James Adams**
eric.adams@sba.gov
- **John Brian Bulgozdy**
bulgozdyj@sec.gov, LAROfiling@sec.gov, delgadilloj@sec.gov, mitchells@sec.gov, berryj@sec.gov, irwinma@sec.gov
- **California Business Bank**
rormond@buchalter.com
- **Lynn Marie Dean**
deanl@sec.gov, larofiling@sec.gov, mitchells@sec.gov, berryj@sec.gov, irwinma@sec.gov
- **Ted Fates**
tfates@allenmatkins.com, bcrfilings@allenmatkins.com, jbatiste@allenmatkins.com
- **Susan Frances Hannan** hannans@sec.gov
- **John M. McCoy , III** mccoyj@sec.gov
- **Richard Paul Ormond**
rormond@buchalter.com, jwright@buchalter.com, clazo@buchalter.com
- **James A. Scharf**
james.scharf@usdoj.gov, mimi.lam@usdoj.gov
- **Carol Elizabeth Schultze**
schultze@sec.gov, masseym@sec.gov, caroleschultze@gmail.com, clarket@sec.gov

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- **Martin Teckler**
mteckler@kelleydrye.com
- **Thomas A. Seaman**
tom@thomasseaman.com
- **David Robert Zaro**
dzaro@allenmatkins.com

2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **July 17, 2020**, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit.

Pro Se Defendant
Mark Feathers
1580 Maple Street
Redwood City, CA 94063

Phone 510.778.0175
markfeathers@sbcglobal.net

Via U.S. First Class Mail

Marissa Harris, U.S. Attorney
U.S. Attorney's Office
Heritage Bank Building
150 S. Almaden Boulevard, Suite 900
San Jose, CA 95113

Via U.S. First Class Mail

Rita Belle Bosworth
Federal Public Defender
55 S. Market Street, Suite 820
San Jose, CA 95113

Via U.S. First Class Mail

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **July 17, 2020** at Los Angeles, California.

/s/ Martha Diaz

Martha Diaz

Motion Hearing Date Reservation, CV12-03237-EJD

From: Mark Feathers (markfeathers@sbcglobal.net)

To: ejdcrd@cand.uscourts.gov; adriana_kratzmann@cand.uscourts.gov

Date: Thursday, July 30, 2020, 08:53 AM PDT

Hello,

In the matter of CV12-03237-EJD, I would like to reserve a motion hearing date for a Rule 60 motion to overturn a prior adverse summary judgment. Can you please reserve the earliest date possible for me? I anticipate submitting my pleadings in a timely manner, and in accordance with the local rules of the court.

Regards,

Mark Feathers
ph. (650) 960-5646