

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15755

In the Matter of

MARK FEATHERS,

Respondent.

**DIVISION OF ENFORCEMENT’S OPPOSITION TO FEATHERS’ REQUEST FOR
REDESIGNATION TO 120 DAY PROCEEDING, REQUEST FOR COMMISSION
CONSIDERATION OF IMPEDIMENTS OF “INEXPENSIVE” PROCEEDINGS**

The Division of Enforcement (“Division”) opposes Respondent Mark Feathers’ “Request for Redesignation to 120 Day Proceeding, Request for Commission Consideration of Impediments of “Inexpensive” Proceedings (“Request”), which apparently seeks a variety of forms of relief including designation of the proceedings as 120-day proceedings; depositions of unidentified Division employees; reconsideration of Feathers’ subpoenas to the Division, the Small Business Administration (“SBA”), and the Federal Deposit Insurance Corporation (“FDIC”); an “explanation of what is meant by ‘inexpensive’ proceedings”; and a stay for an unspecified period. (Request at p. 1.) Feathers seeks these varied forms of relief in a one-page motion, without any legal support other than a vague claim that providing such relief will benefit “Respondent, and the public.” (*Id.*) Because there is no factual or legal justification for any of the relief sought, Feathers’ Request should be denied.

The Commission’s Order remanding this proceeding for hearing deemed this proceeding to be one under the 75-day time frame under the Commission’s Amended Rules of Practice. *See*

Mark Feathers, Securities Exchange Act of 1934 Release No. 87226, at p. 3 n.9 (Oct. 4, 2019); see also *Mark Feathers*, Release No. 6783 (Aug. 11, 2020). The Commission specifies the time period in which the hearing officer’s initial decision must be filed with the Secretary at its “discretion, after consideration of the nature, complexity, and urgency of the subject matter, and with due regard for the public interest and the protection of investors” Rule of Practice 360(a)(2). *Feathers* provides no authority for a hearing officer to countermand the Commission’s determination of the appropriate designation for a proceeding.

Feathers’ rationale for requesting that these proceedings be re-designated as 120-day proceedings is so that he may depose unidentified Division employees on unidentified matters for the benefit of “Respondent, and the public.” (Request at p. 1.) Showing a familiarity with the Commission’s Rules of Practice, *Feathers* understands that depositions are not permitted in a 75-day proceeding, but upon re-designation to a 120-day proceeding, *Feathers* offers to “abide by Commission Rules of Practice related to depositions (Rule 233).” (*Id.*) Consistent with the Commission’s Rules, the January 15, 2020 Scheduling Order did not provide for depositions in this follow-on proceeding. See *Mark Feathers*, Release No. 6724 (Jan. 15, 2020). The Commission’s designation of this matter as a 75-day proceeding is consistent with a determination, in its discretion, that depositions were not warranted given the nature, complexity, and urgency of the subject matter, and with due regard for the public interest. See Rule 360(a)(2). *Feathers*’ vague assertion that he wishes to take depositions of unidentified Division personnel on unidentified matters does not provide any grounds to contradict the Commission’s discretion that this matter was appropriately deemed a 75-day proceeding.

Also in this Request, *Feathers* seeks reconsideration of the decisions concerning the subpoenas to the Division, the SBA, and the FDIC, using the same argument as previously

asserted that they “may hold information of value to this court.” (Request at p. 1.) Feathers provides no legal basis, or additional facts that have not previously been considered, and so his request for reconsideration should be denied.

In his Request, Feathers asks for an “explanation” of what is meant by “inexpensive” in the Commission’s Rules of Practice, and refers to costs incurred in the administration of the receivership estate in *SEC v. Small Business Capital Corp., et al.*, (“*SEC v. SBCC*”) Case No. 5:12-cv-3237-EJD (N.D. Cal.), *aff’d sub nom SEC v. Feathers*, 774 Fed. App’x 354 (9th Cir. 2019), *amended as to costs*, 773 Fed. App’x 929 (Mem) (9th Cir. 2019). (Request at p. 1.) The district court judge approved all of the receivership fees incurred in *SEC v. SBCC* as reasonable and necessary to the administration of the receivership estate, and the Ninth Circuit affirmed the district court’s handling of that case in all respects. Feathers also complains about the salaries of the Commission’s employees who have been involved in litigation with him. As the Court commented at the sentencing of Feathers in the criminal case: “But I do want to say that the length of the civil case, and how burdensome it was, in many respects, caused by Mr. Feathers.” *United States v. Mark Feathers*, Case No. 5:14-cr-00531-LHK, Dkt. No. 192 at p. 51 (N.D. Cal. Jan. 1, 2020). Having prolonged the litigation and made it more burdensome, Feathers should not then be heard to complain that it was not inexpensive, when his very actions increased the complexity and expense. Indeed, in this follow-on proceeding, Feathers has filed over 30 motions that completely ignore the public interest factors at issue in this proceeding, while increasing the resources needed to reach resolution. Rule 103(a) provides: “The Rules of Practice shall be construed and administered to secure the *just, speedy, and inexpensive* determination of every proceeding.” (emphasis added). Finally, to the extent Feathers is asking the hearing officer to somehow apply the Commission’s Rules of Practice to the district court

proceeding, the criminal proceeding, and other civil litigation involving Feathers, the Rules govern these proceedings, but not those federal court proceedings. *See* Rule of Practice 100(a).¹

Finally, Feathers also included in the Request a motion for an indefinite stay. Feathers has not provided any good cause for an indefinite stay. Consistent with the prior orders on Feathers' requests for stay, this new motion for a stay should be denied. *See Mark Feathers*, Release No. 6755 (Apr. 28, 2020) (denying motion to stay); Release No. 6762 (May 29, 2020) (denying multiple motions to stay); Release No. 6765 (June 9, 2020) (denying motion to stay); Release No. 6774 (July 14, 202) (denying two motions to stay); Release No. 6780 (July 28, 2020) (denying motion to stay); Release No. 6784 (Aug. 17, 2020) (denying two motions to stay). A stay would be inconsistent with Rule of Practice 103(a) which states that the Rules of Practice "shall be construed and administered to secure the just, *speedy*, and inexpensive determination of every proceeding." (emphasis added).

For the reasons stated, Feathers' Request should be denied in all respects.

Respectfully submitted,
DIVISION OF ENFORCEMENT
By its Attorneys:

Dated: August 25, 2020

/s/ John B. Bulgozdy
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¹ While the Commission's Rules of Practice do not apply to district court litigation, the Division's staff undertakes to litigate cases to secure the just, speedy, and inexpensive determination of every proceeding, no matter what the forum.

IN THE MATTER OF MARK FEATHERS
ADMINISTRATIVE PROCEEDING FILE NO. [3-15755]

SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

DIVISION OF ENFORCEMENT'S OPPOSITION TO FEATHERS' REQUEST FOR REDESIGNATION TO 120 DAY PROCEEDING, REQUEST FOR COMMISSION CONSIDERATION OF IMPEDIMENTS OF "INEXPENSIVE" PROCEEDINGS

was served on August 25, 2020 upon the following parties as follows:

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Mark Feathers

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Pro Se Respondent

Dated: August 25, 2020

/s/ Sarah Mitchell

Sarah Mitchell