

**Respondent's Response to Enforcement Opposition to Motion to Sanction Counsel re: Mark Feathers
3-15755**

In June 2012 Enforcement Senior Trial Counsel Bulgozdy falsely represented a federal equity receiver as a licensed CPA in sealed court pleadings. See Exhibit 1, for which Respondent asks the Court take judicial notice.

Respondent did not oppose the appointment of that receiver. He desired an actual licensed CPA, after all, to perform accountings of his investment funds, as ordered by district court, and to the benefit of Respondent and his three hundred and fifty investors. If Respondent had known that Enforcement's counsel had falsely represented, under seal, the receiver as a licensed CPA, or if Respondent had known on a timely basis that the receiver was not a licensed CPA, he would never have consented to that party's appointment.

Subsequent to Enforcement's false CPA licensing description to district court and Respondent, Enforcement's counsel then falsely represented to the California State Bar that the receiver was a licensed CFA. There is no such thing as a licensed CFA. CFA's are neither licensed nor federally regulated. Apparently, that matter slipped by the State Bar of California. So, Enforcement's counsel not only falsely represented a receiver as a licensed CPA to district court, he also then followed that up by falsely representing the receiver as a "licensed" CFA to the California State Bar. See Exhibit 2, for which Respondent asks the court take judicial notice.

When prosecutors are allowed immunity, these things may happen. The bar will rarely cooperate in allowing one of its members to look as though he were engaging in prosecutorial misconduct.

If it walks like a duck, and talks like a duck, it's a duck, though.

Right?

Respectfully,

A handwritten signature in black ink, appearing to be 'Mark Feathers', written over a horizontal line.

Mark Feathers, *pro se*, Respondent 8-25-20

1 JOHN B. BULGOZDY (Cal. Bar No. 219897)
2 Email: bulgozdyj@sec.gov
3 SUSAN F. HANNAN (Cal. Bar No. 97604)
4 Email: hannans@sec.gov

5 Attorneys for Plaintiff
6 Securities and Exchange Commission
7 Michele Wein Layne, Acting Regional Director
8 John M. McCoy III, Associate Regional Director
9 John W. Berry, Regional Trial Counsel
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JUN 21 2012

Richard W. Wiekling
Clerk, U.S. District Court
Northern District of California
San Jose

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 **SECURITIES AND EXCHANGE**
14 **COMMISSION,**

15 Plaintiff,

16 vs.

17 **SMALL BUSINESS CAPITAL CORP.; MARK**
18 **FEATHERS; INVESTORS PRIME FUND,**
19 **LLC; and SBC PORTFOLIO FUND, LCC,**

20 Defendants.

Case No.

CV 12 - 03237
EJD

RECOMMENDATION BY PLAINTIFF
SECURITIES AND EXCHANGE
COMMISSION THAT THOMAS A. SEAMAN
BE APPOINTED RECEIVER

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RECOMMENDATION BY PLAINTIFF THAT
THOMAS A. SEAMAN BE APPOINTED RECEIVER

1 Plaintiff Securities and Exchange Commission (“Commission”) is seeking appointment
2 of a temporary receiver over defendants, Small Business Capital Corp. (“SB Capital”), Investors
3 Prime Fund, LLC (“IPF”), and SBC Portfolio Fund, LLC (“SPF”), and an order to show cause
4 why a permanent receiver should not be appointed. The Commission accordingly believes that it
5 is appropriate to recommend to the Court a person who appears to be well qualified to serve as
6 receiver in this action.

7 The Commission recommends that Thomas A. Seaman be appointed receiver in this
8 action. Copies of Mr. Seaman’s qualifications and his letter setting forth additional information,
9 including the hourly rates he charges for his and his staff’s time, and what steps he would take if
10 initially appointed receiver are attached hereto as **Exhibit 1**.

11 Mr. Seaman sent the information attached hereto as **Exhibit 1** to the Commission at the
12 request of counsel for the Commission in this action, who solicited this information in
13 conformity with internal Commission procedures for selecting candidates to recommend for
14 appointment by Federal District Courts as receivers in Commission actions. The Commission
15 obtained proposals from two other qualified receiver candidates, and evaluated all three
16 proposals before selecting Mr. Seaman as its recommended candidate for receiver. If the Court
17 desires, the Commission will provide the information submitted by the other two candidates that
18 it considered, or other candidates.

19 The Commission recommends Mr. Seaman for several reasons. First, Mr. Seaman is an
20 experienced receiver who has supervised several complex multimillion dollar receiverships in
21 the past. Second, notwithstanding Mr. Seaman’s substantial receivership experience, his blended
22 hourly rate of \$225 is very reasonable. Third, in addition to being an experienced receiver, Mr.

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1 Seaman is a licensed CPA and has extensive experience operating and resolving distressed
2 businesses, and these two qualifications may be of substantial assistance to the Court in this
3 matter.

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5 DATED: June 21, 2012

Respectfully submitted,

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8 /s/ John B. Bulgozdy
9 John B. Bulgozdy
Susan F. Hannan
10 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
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THE STATE BAR
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
INTAKE

Dane Dauphine, Assistant Chief Trial Counsel

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

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<http://www.calbar.ca.gov>

April 30, 2013

Natalie Feathers

Los Altos, CA

RE: Inquiry Number: 13-14006
Respondents: John B. Bulgozdy, David R. Zaro and Edward G. Fates

Dear Ms. Feathers:

The State Bar's Office of the Chief Trial Counsel has reviewed your complaint against John B. Bulgozdy, David R. Zaro and Edward G. Fates (collectively, the "Respondents") to determine whether there are sufficient grounds for proceeding to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

Mr. Bulgozdy represents the Securities Exchange Commission ("SEC") in *SEC v. Small Business Capital Corp., et al.*, Northern District of California case number 5:12-cv-03237-EJD. Thomas A. Seaman is the court-appointed receiver for the case. You explained that Mr. Bulgozdy misrepresented to the court, on more than one occasion, that Mr. Seaman is a licensed certified public accountant ("CPA"). On or about February 25, 2013, defendant Mark Feathers filed a Motion to Dismiss the Receiver, among other relief, due to Mr. Bulgozdy's misrepresentations to the court. You added that Mr. Zaro and Mr. Fates represent Mr. Seaman and never disputed Mr. Bulgozdy's misrepresentations.

Mr. Bulgozdy responded to your complaint. He acknowledged that he represents the SEC in the above-referenced case. He further acknowledged that two documents that he filed with the court reflected that Mr. Seaman is a licensed CPA. He explained that the CPA was a typographical error and he did not intend to misrepresent Mr. Seaman's credentials or mislead the court. He added that each court filing was accompanied by supporting documentation, which clearly demonstrated that Mr. Seaman is a licensed CFA. Mr. Bulgozdy indicated that Mr. Feathers emailed him on February 22, 2013, February 23, 2013 and February 24, 2013 regarding the errors. He stated that he was unaware of the errors until Mr. Feathers brought them to his attention. He added that he has filed an opposition to Mr. Feathers' Motion.

The State Bar has the burden of proving willful ethical violations to the State Bar Court by clear and convincing evidence. We concluded that there is insufficient evidence to meet this burden of proof. Although Mr. Bulgozdy's court filings reflect that Mr. Seaman is a licensed CPA when in fact he is a licensed CFA, it is not clear that Mr. Bulgozdy willfully misrepresented Mr. Seaman's credentials or intended to deceive the court. Therefore, we are closing your complaint.

Natalie Feathers
April 30, 2013
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If you have any questions or disagree with the decision to close your complaint or have new information or other allegations not included in your initial complaint, you have two options. For immediate assistance, the first option is to speak directly with a Complaint Analyst. You may leave a voice message with Complaint Analyst Ms. Broderick at (213) 765-1215. Be sure to clearly identify the lawyer complained of, the case number assigned, and your telephone number including the area code in your voice message. The Complaint Analyst will return your call within two business days.

The second option is to request the State Bar's Audit & Review Unit to review your complaint. An attorney may re-open your complaint if he or she determines that you presented new, significant evidence about your complaint or that the State Bar closed your complaint without any basis. You must submit your request for review with the new evidence or a showing that closing your complaint was made without any basis. To request review, you must submit your request in writing, together with any new evidence, post-marked within **90 days of the date of this letter**, to:

State Bar of California
Audit & Review Unit
1149 South Hill Street
Los Angeles, CA 90015-2299

Please note that telephonic requests for review will not be accepted.

The State Bar cannot give you legal advice. If you wish to consult an attorney about other remedies available to you, a certified lawyer referral service can provide the names of attorneys who may be able to assist you. In order to find a certified lawyer referral service, you may call our automated Lawyer Referral Services Directory at (866) 442-2529 or (415) 538-2250 or access the State Bar's website at www.calbar.ca.gov and search for information on lawyer referral services.

Thank you for bringing your concerns to the attention of the State Bar.

Sincerely,


Diane J. Meyers
Deputy Trial Counsel