

Respondent's Request to Stay Proceedings Due to Filing of Related Civil Action re: Mark Feathers 3-15755

Respondent never asked for Commission administrative law proceedings. In 2012 Respondent lost his companies, his reputation and many things of importance to him after the seizure of his companies through a Commission civil action. That civil action turned into an indictment by way of Enforcement's and a receiver's concerted actions with the Department of Justice of presenting false information about Respondent's companies, followed by Respondent's arrest and twenty eight months of federal pre-trial and post-sentencing incarceration. During his period of incarceration, [REDACTED]

[REDACTED] The Department of Justice presented the threat of a superseded indictment, adding obstruction charges, and three to five years sentencing enhancement due to that for an email that he sent to SEC's prosecutors. In Respondent's email, Respondent asked Enforcement, *et al*, not to use the word "Ponzi" at trial, for his fear of losing control of himself after five years of acrimonious civil and criminal litigation, employment, family, and financial stress, and all of that possibly coming together at trial, if he were to hear the prejudicial, harmful, and legally questionable phrase "Ponzi-like" or similar.¹

On the infrequent occasions that Respondent's minor sons could visit him during his first fourteen months of incarceration, they were separated from him by bullet proof glass, and their visits were limited to 25 minutes. After accepting a plea, Respondent saw his children periodically for the next six months at the Atwater federal prison camp. After filing a grievance at the Atwater Camp because his [REDACTED] were being withheld, on three days' notice Respondent was put onto a Con-air flight to Southern California originating out of Travis Air Force Base, followed by several weeks of diesel bus transit and stops across, and throughout, the country². After arriving at the Terra Haute federal prison camp, which is a complex of three prisons that has hosted four executions over the past several months, Respondent was forcibly required to work often in the maximum security prison kitchen during

¹Some five years earlier during civil proceedings, Respondent asked for an injunction by district court on the Commission's use of the word "Ponzi", which was unsuccessful, arguing in his motion to district court that the word "Ponzi", to Respondent, was a **fighting word**, even if no prior federal actions had addressed the particular issue if "Ponzi" is a fighting word. Ultimately, based upon Respondent's loss of pre-trial release, was the depiction of "Ponzi" as a **fighting word** not proven true? This issue of the fighting word argument may be revisited soon in district court.

²Being shackled while facing cold fifty degree morning winds on the Travis Air Force Base tarmac, for an hour, and while wearing nothing but a tissue-paper-thin disposable orange jump suit, was especially humiliating to Respondent, who had flew out of this same base on several occasions while on active duty as a Naval Officer, in full military uniform. Eating warm bologna sandwiches and trying to drink water while shackled at 30,000' during that flight was no pleasure, either.

maximum security riots (i.e., death row and life sentence inmates). Respondent could not see his sons for seven consecutive months, after his diesel-therapy transfer, due to distance issues and the timing during mid school year of his sons. To this day, some twelve months after Respondent's release from the Bureau of Prisons, when Respondent's sons talk about past matters of separation from their father, it is clear they suffer, and suffered, trauma and substantial hardship from the loss of father, home, and stability.

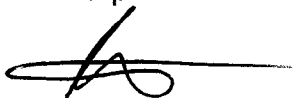
In late fall of 2019, Enforcement asked to initiate new OIP from the Commissioners, who provide unanimous consent on their request. Several months prior to that event, Respondent scheduled a Rule 60 motion in district court. This was for the purpose of having the court consider overturning Respondent's prior adverse summary judgment from the summer of 2013. The basis for the Rule 60 motion was evidentiary information outlined in the forensic accounting report of Annette Stalker, CPA and Certified Fraud Examiner. The "Stalker Report", in 2016, rebutted information presented to district court by SEC and SEC's falsely CPA licensed receiver in 2013. District court dismissed Respondent's Rule 60 motion filing hearing because Respondent failed to meet local rules which required him to submit his pleadings within two weeks of reserving his filing date. Although this was a bitter pill for Respondent, he decided to just move on with his life. **Not that easy, though, because Enforcement re-initiated this OIP.**

During the course of this OIP, in reviewing the Stalker Report, Stalker's qualifications as a forensic examiner, and the receiver's prior submissions to the court, it became apparent to Respondent in the past few weeks that SEC's receiver employed fraud in his preparation of his own "forensic accounting report" of Respondent's investment funds. Additionally, on appearance, there were concerted actions by SEC and the receiver in the preparation and submission of his court reports.

On the basis of Respondent's belief of fraud employed by the receiver in his reports, Respondent has filed a civil action in district court against the Receiver. Shortly, the receiver will be served with a summons for the civil action. Respondent asks the court to take notice of the attached civil complaint filing. Of note, Respondent asks the court ignore the "False Claims Act" action reference in Respondent's civil filing and focus its attention on the fraud issue, as District court has already made a determination that a False Claims Act filing will not be considered at this time.

Due to Respondent's civil action, and the complexity added to this already complex OIP, Respondent asks the court for stay in these proceedings, for an indefinite period, or alternatively, for a period which this court believes to be suitable.

Resp.



Mark Feathers, *pro se*

Respondent

Mark Feathers

Menlo Park, CA

Ph.

VKD

-C- 20 06029

Plaintiff: Mark Feathers

Defendant: Thomas A. Seaman

Civil Complaint for Fraud and for False Claims by Defendant, filed by Plaintiff under provisions of the False Claims Act

Basis for Complaint, and Summary:

On, or about, August 13, 2020, Mark Feathers ("Plaintiff") was preparing a motion for a Rule 60 hearing in federal district court. Plaintiff was preparing a Rule 60 motion for the purpose of seeking to have district court overturn a prior adverse summary judgement against Plaintiff in the civil proceedings "SEC v. Small Business Capital Corp., et al", in which Plaintiff was a named defendant. Part of the evidentiary materials reviewed by Plaintiff while preparing his Rule 60 motion was a forensic accounting report, produced in 2016, on investment funds Plaintiff founded and managed prior to their seizure in 2012 (the "Stalker Report", CR14-00531-LHK, Docket 67). Plaintiff had never, before August 13, 2020, read in detail, prior, the qualifications of the party who prepared that report, for such matters, while also reading the findings of the report, and considering both at the same time. Upon reading the findings of the report, and reflecting on the qualifications of the author of the report, Plaintiff arrived at the conclusion, for the first time, on, or about, August 13, 2020, that Thomas A. Seaman had engaged in fraud in his preparation of a forensic accounting report on Plaintiff's investment funds by Seaman (Court Docket 557, CV12-03237-EJD). As pointed out in Stalker's report, Seaman employed a "cash" basis in which Seaman described Plaintiff's investment fund operations. In that way, Seaman inexplicably, inexcusably, and in fraud departed from accepted methods of forensic accounting specialists, which Seaman purported himself to be in his court filings, or knowingly allowed others to represent him to be. Plaintiff was aware from his own prior review of Seaman's forensic report that Seaman had employed a

so-called "cash flow" based analysis of Respondent's investment funds. However, Plaintiff is not an accounting expert. Until Plaintiff read the Stalker Report, and viewed Stalker's forensic

accounting experience, both on August 13, 2020, Plaintiff had never realized that Seaman had employed fraud, on his part, in his report to the court.

Seaman, on Plaintiff's knowledge and belief, has materially and substantially violated numerous California Business & Professions Codes while engaging in his reporting fraud, and while engaged in such fraud, and knowing that he was engaged in such fraud, has brought about great financial loss, and emotional pain and suffering onto Plaintiff, and onto others closely related to Plaintiff, from Seaman's fraudulent so-called forensic "accountings" in district court.

Plaintiff requests a jury trial in these matters, and a recovery of his direct losses, and damages to be awarded on top of Plaintiff's losses.

JURISDICTION AND VENUE

This Court has jurisdiction and venue over these matters, having presided over earlier related proceedings.

DEFENDANT

Thomas A. Seaman was appointed by this court as the federal equity receiver for a related civil proceeding. Seaman, for his work, some, or all of which, appears to have been produced in fraud, was paid some \$3,000,000 in fees by Plaintiff's companies, along with some \$2,000,000 in fees paid to Defendant's counsel by Plaintiff's companies. Seaman's age is unknown by Plaintiff. Plaintiff holds belief that Seaman is the sole principal of the Thomas A. Seaman Company, which conducts business in Irvine, CA.

ALLEGATIONS

Seaman held the position of federal equity receiver over Plaintiff's funds from approximately June of 2012 thru June of 2016. Seaman was the sole party who conducted fraudulent forensic accountings, and representations same in his reports to the court, of Plaintiff's investment companies, in Plaintiff's knowledge and belief.

By employing an unconventional and inexplicable "cash basis" method of forensic accounting, Seaman materially misrepresented, and/or, underrepresented, the net income, and the cash flow of Plaintiff's companies to district court, and on that basis, caused, or materially contributed, to an adverse summary judgement against Plaintiff, an unwarranted referral for criminal prosecution to the U.S. Department of Justice, leading to wrongful incarceration for 28 months for Plaintiff, the continued unwarranted holdings, and disposition, of Plaintiff's personal property, a disgorgement order on Plaintiff of some \$6,000,000, and a permanent injunction related to federal securities laws from district court. Had Seaman employed a proper "accrual" forensic accounting of Plaintiff's "accrual" based accounting of his companies, and not a fraudulent "cash" basis method, which itself also did not adhere to even acceptable "cash basis" methods of forensic examination, then Plaintiff would not have suffered the injuries that

he did suffer. In his "cash basis" method of forensic examination, Seaman also omitted, deliberately and in his fraud, on appearance, material information from the court about substantial cash flow from investment fund operations, for example, premiums which were gained-on-sale from portions of federally guaranteed loans. These premiums were recurring, in the millions of dollars annually, and either discounted or not reflected by Seaman in his reports, with no explanation provided for same.

CLAIM FOR RELIEF

Plaintiff realleges and incorporates by reference prior paragraphs herein. Seaman, by engaging in the conduct described, brought about profits to himself and to his company through fraudulent means, and deprived Plaintiff of his own property, reputation, and personal freedom to enjoy life and liberty. In so doing, Seaman violated laws of this court, of the State of California, and the standards of conduct of federal equity receivers.

Additionally, Plaintiff alleges herein that Seaman has defrauded the government under provisions of the False Claims Act. Although Seaman billed Plaintiff's companies directly for his work produced by way of his frauds, the government also shared direct and indirect costs as a result of Seaman's fraudulent work and work product.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this court issue findings of fact and conclusion of law that Seaman committed the alleged fraud(s) outlined herein by Plaintiff.

Plaintiff respectfully requests this court issue temporarily, preliminarily, and permanent enjoins Seaman against future fraudulent conduct on his part, and those persons in active concert or participation with him.

Plaintiff respectfully requests that the court issue a requirement for a bond to be placed by Seaman as monies to be awarded Plaintiff upon the determination of Seaman to have committed fraud, that Seaman pay Plaintiff civil penalties, that this court retain jurisdiction of this action, and that this court grant such other and further relief as this Court may determine to be just and necessary.

DATED: August 20, 2020



Mark Feathers, *pro se*

Plaintiff