

**Respondent's Request to Stay Proceedings While United States Ninth Circuit Court of Appeals
Considers Respondent's Claims of Constitutional Harm re: Mark Feathers 3-15755**

On the basis of the Ninth Circuit accepting Respondent's appeal (Exhibit 1) to review the Constitutionality of certain matters in these proceedings, Respondent asks this court for a stay in proceedings while the Circuit reviews those matters presented by Respondent in his appeal (Exhibit 2).

Respondent also has a motion request now presented with this court to modify proceedings from 75 day to 120 day. Respondent respectfully ask that the court consider the Ninth Circuit's acceptance of Respondent's appeal as a matter adding complexity to these proceedings, and if the court does not stay these proceedings, add this consideration in while considering modifying these to 120 day proceedings.

Resp.

A handwritten signature in black ink, appearing to be 'Mark Feathers', with a long horizontal flourish extending to the right.

Mark Feathers, *pro se*

Respondent

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 26 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARK FEATHERS,

Petitioner,

v.

U.S. SECURITIES & EXCHANGE
COMMISSION,

Respondent.

No. 20-72552

SEC No.

Securities & Exchange Commission

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

Mon., November 16, 2020 Agency petitioner brief due

Mon., December 14, 2020 Respondent's answering brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

The optional petitioner's reply brief shall be filed and served within 21 days of service of the respondent's brief, pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Failure of the petitioner to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Janne Nicole Millare Rivera
Deputy Clerk
Ninth Circuit Rule 27-7

Mark Feathers, Petitioner, *pro se*

Date: July 10th, 2020

REQUEST FOR INJUNCTION BY THE UNITED STATES 9TH CIRCUIT COURT OF
APPEALS TO STAY SEC ADMINISTRATIVE LAW COURT PROCEEDINGS

AND

REQUEST FOR ORDER REQUIRING SEC TO ALLOW AS EVIDENTIARY MATERIALS
THE *STALKER FORENSIC ACCOUNTING REPORT* ON PETITIONER'S PRIOR-
MANAGED INVESTMENT FUNDS

HISTORY

Petitioner was prior sued in 2012 in district court by SEC (CV12-03237-EJD). Petitioner, unwillingly *pro se* in that action, had an adverse summary judgement against him in 2013 (Docket 591). Only after that, in 2014, Petitioner was indicted by DOJ (CR14-00531-RMW). Petitioner's federal public defender gained approval, in 2016, for a forensic accounting by a CPA of Petitioner's investment funds which were the subject of SEC's civil action. On completion that report was concurrently submitted attached to motion filings with district civil (Dockets 1193, 1194, 1195, 1195-1, and 1201) and criminal court (Dockets 60, 63, 64, 65, 65-1, 66, 67, 67-1, and 68). The motion filings were for the purpose of gaining legal fees for Respondent in his criminal action from a reserve awarded early in the civil case in the unlikely event that *pro se* and bankrupt Petitioner ultimately prevailed against SEC, a federal agency employing hundreds of enforcement division trial attorneys and paralegals. Both civil and criminal court ruled against the motion. The ruling against Petitioner was not for lack of merit. The district ordered that jurisdiction rested with the Circuit because Petitioner (as defendant in SEC's action) held an active appeal on the matter of being declined legal fees by the district.

**CONSTITUTIONAL DUE PROCESS MATTER PETITIONER REQUESTS THE
CIRCUIT TO RESOLVE**

In 2019 SEC, due to a ruling by SCOTUS adverse to it that SEC had not constitutionally appointed their administrative law judges (*Lucia v. SEC*), again ordered administrative proceeding against Petitioner (*re Mark Feathers, 3-15755*). Now again, eight years after filing

civil action against Respondent, SEC seeks the same life time ban against Petitioner from the securities industry. SEC's action is based on the same 2013 adverse summary judgment.

Earlier this year Petitioner submitted a forensic accounting report of his investment funds to SEC's law forum (the "Stalker Report"). The preparation, submission, and expenses of the court were approved and borne by criminal court, upon the request of Petitioner's federal public defender. Prepared by a licensed CPA, also an experienced expert witness, the report rebuts throughout it the facts and conclusions presented by SEC which were predicate to the adverse summary judgment against Petitioner. And, the report relied upon the same CPA audited financial statements and offering documents of Petitioner's investment funds used by SEC.

During proceedings, SEC's administrative law judge, Hon. Jason Patil, signed Petitioner's subpoenas directed to the U.S. Small Business Administration and to the FDIC. Judge Patil indicated in his written orders that he held favorable view on Petitioner's request to subpoena SEC Enforcement division materials. He also indicated earlier in oral hearings that Petitioner would also be able to present the Stalker Report during proceedings. When SEC Enforcement balked at production of materials, and then refused the Court's orders for production, Judge Patil stated (in his March 18, 2020 Order) "I will give the Division a third chance to propose a method for reviewing the documents. If the division is unwilling or unable to do so, I will order search criteria and in camera review of the entire corpus, if necessary."

Two weeks later, on April 6, 2020, with it appearing until that time that Petitioner would be able to gain access to critical evidentiary materials needed to defend himself at trial, the Commission suddenly, without explanation, replaced Judge Patil. On Petitioner's written submission for explanation, the new presiding judge, Hon. James E. Grimes explained only that Judge Patil "was busy".

A telephonic hearing took place April 14, 2020 with SEC Enforcement, Petitioner, and SEC's new judge. During that hearing Petitioner referenced the Stalker Report, to which Judge Grimes made comment that expert reports must comport with SEC's Rules of Practice, and that evidentiary materials requested or submitted by Petitioner must "demonstrate a potential need for the documents he's...". The next day, on April 15, 2020, Judge Grimes signed the SBA and FDIC subpoena. He did not sign the SEC subpoena. Nine days after the telephonic conference, on April 23, 2020, Judge Grimes then produced "Order for Corrections to Prehearing Conference

Transcript”, ordering a change in a verbatim conference transcript. He specified that the word “potential” which he spoke be replaced by the word “substantial”, which was not spoken. So, Judge Grimes ordered a wording change, with a new word that holds substantial differences in meaning and implications during federal agency administrative law proceedings such as these.

On June 12, 2020, the Court ordered submissions for summary disposition by July 14, 2020. Eight days ago, July 1, 2020, Judge Grimes has now ordered that the Stalker Forensic Accounting Report of Petitioner’s investment funds is “irrelevant”, and not be allowed as evidentiary material for Respondent use in summary disposition or any further SEC proceedings. Judge Grimes did this despite the report approved, paid for, and submitted to district court.

Petitioner is not using SEC’s follow-on proceedings as the basis to now collaterally attack the summary judgement adverse to him in SEC’s civil case. However, the Stalker Report, submitted to civil and criminal court some two years after Respondent’s adverse summary judgement, produces very different conclusions about the transparency offered by Respondent to investors as to his investment fund’s financial representations, and offering document disclosures of his investment funds, from what SEC alleged in its sealed, *ex parte, prima facie* civil complaint (and which SEC successfully employed to cause Petitioner’s companies, income, assets, and reputation all to be taken from him without the benefit of adversarial proceedings). And, the Stalker Report was produced, according to attestations of its author attached to district court motion pleadings, with a reliance upon the very same materials (i.e. CPA audited financial statements and fund offering documents) SEC employed as the basis to alleging in its civil complaint that Respondent had violated federal securities laws, reaching different conclusions.


SEC Rules of Practice state an opposition filing to the other party’s Motion for Summary Disposition “must be accompanied by a responsive statement of material facts”, and by “citations to evidence”. By denying Petitioner the opportunity to make reference to the Stalker Report, which certainly is evidence that was introduced into a district court, and which would be attached as an exhibit to his Respondent’s opposition filing to SEC’s motion for summary disposition, Petitioner suffers immediate, and potentially drastic, harm. For, no trial and full disposition of facts will be allowed Petitioner if he cannot present evidence during Summary Disposition hearings which would even allow him opportunity to then go to trial in SEC’s law forum.

Petitioner is so harmed in fact, that it makes no sense he go through the process of losing in SEC's home court, be banned for life from the securities industry, to then have opportunity to file appeal with the Circuit court, with thousands of appeals waiting before him, and waiting for years for the Circuit to take arguments on his appeal on a civil matter which has consumed almost a decade of Respondent's life, including twenty eight months of federal incarceration and many days wearing iron shackles during that period while subsisting on unidentifiable foods, and away from his family. Petitioner was *pro se* in SEC's civil action, forced to file bankruptcy, and never had the benefit of a third-party CPA report on his funds in court. SEC, in its own law forum, seeks to deny opportunity for Respondent to enjoy constitutionally based due process rights for proper evidentiary materials to be afforded by Petitioner for submission. "The touchstone of due process is protection of the individual against arbitrary action of government." (Wolff v. McDonnell, 418 U.S. 539, 558, 94 S.Ct. 2963, 2976, 41 L.Ed.2d 935 (1974)).

Petitioner asks this Court to consider if it is in the public's best interest that a district court forensic accounting report, with expenses borne by the public, be disallowed by a federal agency's own law forum? Congress and the President, when the APA was approved and which established agency courts of law, and from which SEC thereafter formulated over time its Rules of Practice, did not foresee a situation such as Petitioner is in – where a Petitioner had an adverse summary judgment against him in civil court, and subsequent to that, had a forensic accounting report ordered, and paid for, by criminal court which challenges the veracity of the factual assertions presented by SEC and heavily relied upon by the district court in civil proceedings which were notably lacking adversarial third party reports due to Petitioner's *pro se* status and bankrupt financial condition. A fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaning manner (Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed2d 62 (1965)). Petitioner respectfully requests this Court for a stay in SEC's proceedings while it examines the compelling possibility of there being an abuse of discretion at this critical point in SEC's administrative proceedings against Respondent, and, if so and due to that, there may be a strong likelihood of constitutional due process violations and harm against Petitioner on that basis by SEC within its law forum which this Court may prevent.

Respectfully

7-10-00


Mark Feathers, *pro se*, Petitioner