


File No. 3-15755 In the Matter of MARK FEATHERS

Respondent's Request for Court's Reconsideration of 6-12-20 Order re: the "Stalker Report"

Once again, this court broadcasts that it has no intention allowing a full development of facts during this OIAP, which such allowance is a constitutional hallmark of due process, and broadcasts that the court does not intend to allow this proceeding to go to trial for a *pro se* Respondent. For, in its most recent order, while the Court points out that the Stalker Report was submitted for criminal proceedings, it fails to acknowledge that the Stalker Report was concurrently submitted in civil proceedings, as well, a fact which the Commission does not dispute, because it cannot dispute, and which such fact Respondent has already informed this court of. As well, the Commission will not be able to present any evidence that the Commission, the U.S. Department of Justice, or federal civil, and/or, criminal court challenged the Stalker Report, when all had the opportunity to do so under Federal Rules of Civil Procedure, or local rules, because Stalker did not "affix her signature" to her forensic accounting report (see attached civil docket 1195 prepared by Respondent's federal public defender, for verification of civil court submission in CV12-03237-EJD "*SEC v. Small Business Capital Corp., et al*") of Respondent's investment funds. By all appearance, undisputed by any party including Stalker, herself, Stalker allowed Respondent's federal public defender to submit to civil and criminal courts her forensic accounting report on Respondent's investment funds. And, this court suggests that Respondent should plead with Stalker for a signed declaration now? Now that Respondent is a felon? And without any compensation to Stalker, who engages in a living by earning fees for her work, with no expectation of same from Respondent? And also while considering that Stalker holds a CPA license, which is ultimately regulated by the Commission, as well, who casts a long shadow on Stalker and others similarly situated, therefore? Where is the logic from this court?

Neither Congress, nor the President, nor federal agencies themselves likely envisioned a scenario such as occurred here when the APA – and agency courts of law – were approved and signed into law...in this instance, where a properly prepared forensic report was engaged after a *pro se* Respondent lost a civil summary judgment hearing, was indicted, and subsequently finally obtained funds necessary for a forensic accounting report on his funds (approved and paid for by the criminal court) which wholly rebuts the very basis for a *surprise sealed ex parte prima facie "pro forma" based* seizure of his managed investment funds and his personal assets in the first instance.¹ Respondent respectfully requests that this court make an exception to the Commission's Rules of Practice and accept the Stalker Report now into evidence, with an Order to this effect by June 30, 2020. Otherwise, Respondent asks this court to stay these proceedings in order for Respondent to prepare an injunction request for the U.S. 9th Circuit Court of Appeals by July 12, 2020, should that be necessary to ensure a semblance of constitutionally-based due process for Respondent during these proceedings.

Respectfully,


Mark Feathers, *pro se*, Respondent

Dated 6-25-20

¹*Ex parte, prima facie*, and "pro forma" are all descriptive terms subject to abuse by those who employ these terms. In this instance, the Commission engaged all of these terms subject to legal misuse *simultaneously*, and all while doing so *under seal*. Officers of the Commission - John Bulgozdy, Susan Hannan, and Roger Boudreau - did this while all knowingly, on appearance, presenting material, false, and highly prejudicial financial depictions and characterizations of Respondent's investment funds under seal. Such acts are legally described as *judicial deception*, a punishable crime when such judicial deception linchpins a \$50,000,000 seizure of private monies from 300 citizens afforded constitutional rights. These officers concurrently presented an agency-relationship receiver appointment request to civil court with a false CPA description. This lands civil litigants in jail who are not afforded the immunity of federal officers, when a false licensing description of a federal equity receiver request is combined with a request to seize \$50,000,000 under false pretense.

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5 Counsel for Defendant MARK FEATHERS
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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 SECURITIES AND EXCHANGE)
COMMISSION,)

12 Plaintiff,)

13 v.)

14 SMALL BUSINESS CAPITAL CORP;)
15 MARK FEATHERS; INVESTORS)
PRIME FUND, LLC; and SBC)
16 PORTFOLIO FUND, LLC,)

17 Defendants)
18)
19)

No. CV 12-3237 EJD

**DECLARATION OF RITA BOSWORTH IN
SUPPORT OF MOTION TO DEFER
RULING ON PART OF RECEIVER'S
MOTION TO RELEASE FUNDS; MOTION
TO SHORTEN TIME; AND OPPOSITION
TO RECEIVER'S MOTION TO DESTROY
DOCUMENTS**

20 I, Rita Bosworth, declare:

- 21 1. I am admitted to practice before this Court and am counsel of record for Defendant Mark
22 Feathers in CR 14-531. I have submitted a motion to be appointed as counsel for Mr. Feathers
23 in CV 12-3237, which is pending.
- 24 2. On August 18, 2016, I left a message for attorney David Zaro asking for his position on Mr.
25 Feathers' motion to shorten time on Mr. Feathers' Motion to Defer Ruling on Part of
26 Receiver's Motion to Release Funds, in accordance with Local Rule 6-3(a)(2).

1 3. Attorney Zaro returned my phone call on August 18, 2016. He did not directly answer my
2 question regarding his position on Mr. Feather's Motion to Shorten Time, but he conveyed that
3 he opposes any action taken by myself and or Mr. Feathers in this case.
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5 I declare under penalty of perjury under the laws of the United States that the foregoing is true
6 and correct, executed this 18th day of August, 2016.

7 /s/

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9 RITA BOSWORTH
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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION
10

11 SECURITIES AND EXCHANGE
COMMISSION,
12 Plaintiff,
13 v.
14 SMALL BUSINESS CAPITAL CORP.,
15 MARK FEATHERS, et al.,
16 Defendants.

No. 12-CV-3237-EJD

**NOTICE OF MOTION AND MOTION
TO DEFER RULING ON A PART OF
RECEIVER’S MOTION TO CONCLUDE
RECEIVERSHIP; SHORTEN TIME
UNDER WHICH MOTION TO DEFER IS
HEARD; AND OPPOSITION TO
RECEIVER’S MOTION TO DESTROY
DOCUMENTS; [PROPOSED] ORDER¹**

Proposed Date: August 25, 2016
Proposed Time: 9:00 a.m.
Judge: Honorable Edward Davila

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19 TO: SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF; THOMAS
20 SEAMAN, RECEIVER; ALL INTERESTED PARTIES; AND CLERK OF THE
21 ABOVE-ENTITLED COURT:

22 PLEASE TAKE NOTICE that on August 25, 2016, at 9:00 a.m., in the courtroom of the
23 Honorable Edward Davila, United States District Judge, defendant Mark Feathers (“Mr.
24 Feathers”), through his counsel, AFPD Rita Bosworth, who has requested but not yet received
25 permission to be appointed in this matter, will move this Court to defer ruling on a part of the

26 _____
27 ¹ Given the shortness of time, this motion is made subject to the Court’s ruling on Docket No.
28 1193, which is the Federal Public Defender’s Motion to be Appointed as Counsel in an Ancillary
Matter.

1 Receiver's Motion to Conclude Receivership, Dkt. No. 1164, so that Mr. Feathers may litigate
2 his right to access funds in the reserve account for the purpose of hiring counsel in his criminal
3 case. This motion is based upon this notice of motion and motion and the arguments herein, as
4 well as any further evidence and argument that may be presented at the hearing on this motion.

5 **RELIEF REQUESTED**

6 Mr. Feathers makes three requests: (1) that this Court defer ruling on whether to release
7 \$200,000 held in a reserve account, an issue currently scheduled to be determined on August 25,
8 2016, until after his pending motion to release those funds to pay for legal counsel in his criminal
9 case is decided, (2) that the Court shorten the time within which his motion to defer is heard and
10 set a hearing date one week from today, August 25, 2016; and (3) that this Court deny the
11 Receiver's motion to destroy books and records.

12 **FACTS**

13 On June 26, 2012, this Court issued a temporary restraining order freezing all assets in
14 this case. CV 12-3237, Dkt. No. 16. On July 10, 2012, this Court issued a preliminary
15 injunction which (1) froze all assets of Mr. Feathers and his businesses; (2) prohibited the
16 destruction of documents; (3) required accounting; and (4) appointed a permanent receiver. *Id.*
17 Dkt. No. 34. On September 26, 2012, this Court denied Mr. Feathers' request for limited use of
18 receivership assets to pay for his defense in the civil proceedings. *Id.* Dkt. No. 70. However, the
19 Court ordered the Receiver to establish a "Defense Counsel Account" (hereinafter "reserve
20 account") and allocate an initial sum of \$200,000 in said account. *Id.* at 12. The Court stated that
21 "Such monies are intended to cover any monies Defendant would obtain from the indemnity
22 clause in the Operating Agreement," assuming the defendant is "determined not to have
23 committed fraud." *Id.* at 11-12. On August 16, 2013, the Court granted Plaintiff's motion for
24 summary judgement. *Id.* Dkt. No. 591. On October 29, 2014, a criminal indictment was filed.
25 CR 14-531 Dkt. No. 1.

26 The \$200,000 remains in the reserve account as of the time of this filing. However, the
27 Court is currently scheduled to have a hearing on the Receiver's Motion to Conclude
28

1 Receivership, including disseminating the \$200,000 in the reserve account, on August 25, 2016.
2 The Receiver also requested approval to destroy or transfer books and records. The hearing date
3 was expedited, at the request of the Receiver. CV 12-3237 Dkt. Nos. 1173, 1175. The timeline
4 leading up to the hearing date is as follows.

5 On June 20, 2016, defense counsel in Mr. Feathers' criminal case informed Judge Whyte,
6 Mr. Feathers' criminal judge, and AUSA Tim Lucey that Mr. Feathers intended to file a motion
7 that he is entitled under the Constitution to access the funds set aside for his defense to defend
8 himself. CR. 14-531, Dkt. No. 60. The parties set a briefing schedule with defense counsel's
9 opening brief due on August 22, 2016, and a hearing date of September 26, 2016.

10 On June 23, 2016, three days after this criminal case appearance on Mr. Feather's motion
11 to release funds, the Receiver in the civil case filed a Motion to Conclude the Receivership,
12 including releasing Mr. Feathers' reserve funds to the investors. CV 12-3237 Dkt. No. 1164.
13 The Court set a hearing date of October 20, 2016. On July 6, 2016, the Receiver filed a motion
14 to shorten the time on the motion to conclude receivership and move the hearing date to August
15 18, 2016, which is four days before defense counsel's motion in the criminal case is to be filed.
16 CV 12-3237 Dkt. No. 1173. This Court granted the motion to shorten time, and set the current
17 hearing date of August 25, 2016. CV 12-3237 Dkt. No. 1175.

18 The Court is scheduled to hear argument on the Receiver's Motion to Conclude
19 Receivership on August 25, 2016. The Receiver is asking the Court to, among other things,
20 release to investors \$200,000 that was set aside in a reserve account to potentially be used for
21 Mr. Feathers' legal fees. On August 22, 2016, Mr. Feathers will be filing a motion in his parallel
22 criminal case, CR 14-531, arguing that he has a right to those funds to hire counsel in his
23 criminal case. Judge Whyte is scheduled to have a hearing on that motion on September 26,
24 2016.

ARGUMENT**A. The Court Should Defer Ruling on the Receiver's Motion to Release Funds**

The Receiver has filed a motion which seeks, in part, to release the \$200,000 set aside in a reserve account to potentially be used for legal fees. This is the same money that is the subject of Mr. Feathers' criminal motion for release of funds to use to hire criminal legal counsel. If the Court rules on the Receiver's motion prior to ruling on or receiving a ruling in the criminal matter, it could result in irreversible harm to Mr. Feathers and deprive him of his opportunity to litigate his right to counsel of choice. Furthermore, Mr. Feathers seeks only for the Court to defer ruling on the \$200,000 in the reserve account. This is a fraction of the remaining money, which totals over \$11 million, and delaying ruling on just this portion of the funds would still permit the Receiver to accomplish the majority of what it seeks to do, should the Court grant its motion.

The delay Mr. Feathers is seeking is reasonable. The criminal motion hearing is currently scheduled for September 26, just one month after the current civil hearing date of August 25. Because the funds are the subject of both motions, and releasing the funds before the criminal motion is decided could cause irreparable harm, Mr. Feathers respectfully requests that this Court defer making a decision as to whether the \$200,000 in the reserve account may be dispersed to investors until after the criminal motion is decided.

B. Substantial Harm Could Result if the Court Does Not Shorten the Time Within Which to Hear Defendant's Motion to Defer

Pursuant to Civil L.R. 6-3, Mr. Feathers requests that this Court shorten the amount of time between the filing of this motion and the hearing date of this motion. The reason for requesting a shortened period of time on this motion is as follows. The criminal motion was calendared on June 20. CR 14-531 Dkt. No. 60. At that time, there was no motion scheduled or

1 filed on the civil docket relating to release of funds. *See* CV 12-3237 Dkt. No. 1164. The
2 Receiver's motion was subsequently filed, and then expedited. *Id.* Dkt. Nos. 1164, 1173, 1175.
3 In light of the expedited hearing date in one week, there is not enough time for a standard
4 briefing and hearing schedule prior to the hearing date of August 25.

5 On August 18, 2016, undersigned counsel spoke with the Receiver's attorney, David
6 Zaro, who did not give a direct response regarding his position on the motion to shorten time.
7 *See* Declaration of Rita Bosworth ¶ 3.
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9 The prejudice that could result if the Court were not to expedite the hearing on the
10 Motion to Defer would be irreversible. There is a motion in Mr. Feathers' criminal case which
11 involves the reserve account, the same money that is the subject of the hearing on August 25. If
12 the Court ruled to release the reserve fund to investors prior to determining whether Mr. Feathers
13 has a right to the money in his criminal case, substantial harm could result to Mr. Feathers.

14 Shortening the time within which the Court hears Mr. Feathers' motion to defer would
15 not have a significant impact on the schedule of the case. Mr. Feathers is requesting that the
16 Court defer ruling on just the issue of the release of funds from the reserve account. Briefing on
17 that issue in the criminal case will be complete on September 19, and the hearing is scheduled for
18 September 26. Thus, the delay will be minimal, less than two months, and the hearing in the
19 criminal case is still one month earlier than the original hearing date in the civil case, which was
20 set for October until the Receiver moved to advance it.
21

22 **C. The Court Should Deny the Receiver's Request to Destroy Documents**

23 For the reasons stated in the SEC's Response to Motion to Conclude Receivership, CV
24 12-3237 Dkt. No. 1176 at 5-6, Mr. Feather's opposes the Receiver's request to destroy any
25 documents, books, records or other written or recorded materials in this case.
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CONCLUSION

For the reasons set forth above, Mr. Feathers respectfully requests that the Court defer ruling on the Receiver’s request to release \$200,000 in the reserve account to investors, he requests that the Court permit an expedited hearing schedule on this motion, and he requests that the Court deny the Receiver’s request to destroy records.

Date: 8/18/16

Respectfully submitted,

STEVEN KALAR
Federal Public Defender

/s/

RITA BOSWORTH
Assistant Federal Public Defender

[PROPOSED] ORDER

Good cause shown, the Court hereby GRANTS Mr. Feather’s request for an expedited hearing schedule on his Motion to Defer, and the Court schedules a hearing on this matter for August 25, 2016, at 9:00 a.m.

Date:

EDWARD J. DAVILA
United States District Judge