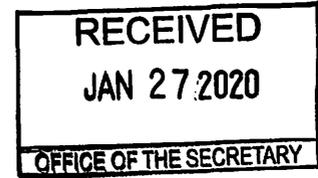


Mark Feathers, Respondent



ANSWER and DEFENSES to OIAP

General Response

June 2012 the Commission initiated a sealed *ex parte, prima facie* civil action against Respondent. That action brought about a seizure of Respondent's companies, personal net worth (held almost entirely in those companies), and primary source of income. Stripped of almost all assets and income, Respondent afterwards was forced thereafter to defend himself *pro se* against the Commission in civil proceedings, the OIAP which preceded this, and now once again with this new OIAP.

The Commission's sole financial witness to its complaint, a Western Regional Division of Enforcement accountant by the name of Roger Boudreau, sidestepped his licensing and agency responsibility to present to the court valid and reliable information about Respondent's investment funds. How did Boudreau do this? Boudreau submitted work product that was neither GAAP nor GAAS compliant. In an unsupportable departure from GAAP and GAAS compliant accounting and auditing, Boudreau ADDED together investor DISTRIBUTIONS from the funds to investor CONTRIBUTIONS into the funds. Boudreau's work product created fictitious financial illustrations. Boudreau was never required during civil proceedings to explain his pejorative methodology. Yet his illustrations had the effect of overstating the distributions of Respondent's investment funds by more than double their true amounts¹. Respondent's CPA audited financial statements were always in Boudreau's possession.

Boudreau described the distributions of Respondent's funds as "*Ponzi-like*" in scores of instances in the Commission's complaint, always with a reliance on his own wholly non-GAAP and non-GAAS financial illustrations as the basis for the Commission's "*Ponzi*" scheme allegations.

The Commission itself is the regulator of the Public Accounting profession within the United States. Yet it was the Commission that initiated a sealed civil action that held within it scores of *pro forma* non-GAAP and GAAS compliant and highly prejudicial financial illustrations².

Possession is Nine-Tenths of the Law

Once Respondent's investment funds, personal assets, and sources of income were seized and placed into receivership, the outcome of civil proceedings was quite predictable, especially against a party representing himself *pro se* against the Commission.

¹The hallmark of a "*Ponzi*" scheme is an unsustainable over-distribution of capital created by way of phantom profits

²Combined with the Commission's written narratives using scores of "*Ponzi*" references

Things did not stop there. After the Commission lost a witness tampering motion it filed in civil court against Respondent, lost a motion to compel Respondent's spouse to provide testimony against him, and lost its request for a lien attachment on Respondent's family home at a Chapter 7 Bankruptcy trial forced by the Commission onto Respondent (where Respondent again was forced to represent himself *pro se*), the Commission then submitted these same unsupportable and prejudicial financial illustrations to the United States Department of Justice. That agency in turn, in reliance on the Commission's financial illustrations it appears, submitted the Commission's false and prejudicial illustrations and narratives under seal to a grand jury. In that way Respondent was caused to have an indictment issued against him. In the United States it is well established that the conviction rate against those who have received a federal indictment is over 97%, regardless of the innocence (as with Respondent), or guilt of those charged with wrongdoing; this is due to a preponderance of factors well beyond the scope of these proceedings.

Additionally, the attorneys of SEC's Western Regional Office of Enforcement inserted substantial snippets of Respondent's offering documents into the sealed complaint in reference to "no loans to manager", "loan premiums", and "loan sales". The Commission crafted their snippets into very misleading representations, and then pressed the court under seal for a quick seizure and receivership before any possibility whatsoever was presented to Respondent for adversarial proceedings. In that way, the Commission brought harm to the Court itself by preventing the Court an opportunity to view the representations of Respondent's offering documents as a whole before placing pressure on the Court to approve a seizure based upon non-GAAP or GAAS compliant financial illustrations.

Respondent was always deprived any semblance of due process. Since June 2012 there has been a cascade of injustices against Respondent. Respondent eventually took a plea in criminal court to a single government-manufactured count of mail fraud, followed by Respondent serving twenty eight months prison time (many weeks of that period while wearing wrist-to-ankle body shackles)³. All that while, Respondent was represented by public defenders with no experience in public accounting or securities law, and/or by court-appointed counsel experienced with public accounting and securities law, but whose appointment was too late to be of timely value to Respondent.

Respondent will also present to this court during proceedings a third party forensic accounting of the investment funds Respondent founded and managed. This forensic accounting was performed by a licensed CPA, while adhering to Generally Accepted Accounting Principles. Such a report by a qualified party was never performed during earlier civil proceedings (*SEC v. Small Business Capital Corp., et al*). The forensic accounting to be presented to this court was produced with funds approved by the court of Hon. Lucy Koh in *United States v. Mark Feathers*. The report was presented to the criminal court as part of Respondent's request for legal fees in his criminal case. However, after submission of the report, the Court ruled that jurisdiction as to legal fees did not rest with the Court, it rested with the Circuit, and so the court did not review the report, nor was their opportunity for adversarial review.

³This period included a forced separation of Respondent from his spouses and twin teenage boys, and the non-voluntary sale of Respondent's family home of fifteen years

Respondent founded and operated legitimate business enterprises. The actual “loss to investors” in the civil case closely aligned with the amounts paid to SEC’s receiver and his counsel, some \$5,000,000. These amounts were taken from earnings of Respondent’s investment funds, which belonged to investors and to Respondent and his company, not to a CPA-masquerading receiver engaged in an agency relationship with the Commission⁴.

The Commission desires a lifetime ban against Respondent to engage in securities sales despite the fact that the underlying civil action commenced now more than seven years ago, that Respondent “served his time” of incarceration on a government-manufactured plea, and despite *not a single investor* presenting themselves, when they had full opportunity at Respondent’s sentencing hearing, in March of 2017, to speak negatively about Respondent⁵.

I. DEFENSES

Respondent is *not guilty of charges* outlined in the OIAP of 2014. Respondent re-asserts those defenses originally appearing in his March 12th, 2014, Answer. Respondent will not re-litigate matters already litigated in prior civil proceedings. Upon its review of allowable evidentiary materials which will come before it, Respondent holds hope that this court, with a favorable ruling for Respondent, will refer these matters to the Commission’s Office of Inspector General for further investigation.



Mark Feathers, Respondent

Submitted on this 23rd day of January, 2020

⁴Subsequent to the Receiver’s appointment, it was discovered by Respondent that the Commission falsely represented the receiver, Thomas A. Seaman, as a “licensed CPA” to Respondent and to the Court

⁵The only investor present, Mr. Syd Raineri, spoke in positive terms to the Court regarding Respondent. A full copy of the sentencing hearing transcript will be presented to this court.