



UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF: : ADMINISTRATIVE PROCEEDING
MARK FEATHERS : FILE NO.: 3-15755
: RESPONDENT MARK FEATHERS PETITION
RESPONDENT. : FOR REVIEW OF INITIAL DECISION OF THE ALI

INTRODUCTION

Essentially all of this defendant's personal and business assets and investments were taken by way of a surprise injunction and seizure in late June of 2012. The cause of this was that SEC's Western Regional Enforcement Division submitted a request to authorize a seizure with a federal court by way of a sealed *ex parte prima facie* Complaint. So with no counsel for the past two years, the outcome of the civil proceedings predictably was not in Respondent's favor. Statistics bear out the likelihood of success in such situations for a *pro se* party somewhere along that of a snowball's chance in Hell of not melting. As the basis to this seizure, SEC's "*ex parte prima facie*" sealed submission relied upon, more than anything else, the sworn statements and "work product" (?) of an SEC CPA, Mr. Roger Boudreau. This party, Boudreau, has more than twenty years' employment experience with SEC. His job description is attached hereto, obtained under a FOIA request of Respondent. This person, Boudreau, submitted false financial information about the defendants covering essentially every calendar period of SEC's three year period of review from 2009 through Q1 2012. That is more than fraud and a civil issue, it is actually a crime given the amount of private property seized through Boudreau's false financial representations. SEC admits the formula used by Boudreau, even if not the fraud of the formula, and this admission should be very carefully looked at by the Secretary and by the Commissioners sooner, rather than later:

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18 || The Commission does not dispute that in calculating member returns in the Complaint, it
19 || added together the line items "distributions" and "re-invested distributions" to arrive at the total
20 || distributions alleged in the Complaint.

SEC and Roger Boudreau asserted "faith" to their work, even though a guiding principle of this country is surely the separation of church and state, even though, perhaps, and even though neither SEC nor Boudreau reflected any particular denomination of choice as to the basis of their "good faith". SEC and Boudreau made many references about their "good faith" efforts, instead of admitting his and their fraud. Here they are, listed from SEC's court pleadings in the lawsuit against this respondent:

Page 3, Line 15,
Dkt 160
Page 1, line 26,
Dkt 161

Page 9, line 2, Dkt
160
Page 2, line 4, Dkt
161

Page 1, line 20,
Dkt 161
Page 2, line 5, Dkt
161

Exactly when is the Commission going to indicate to the public, and the members of the defendant investment funds founded and managed by this respondent, that it has engaged its Office of Inspector General, as well as the FBI to research this matter? After all, violations of the 4th and 5th Amendment to the Bill of Rights of the Constitution are important matters in this day and age, still, aren't they, and tens of millions of dollars of private property from hundreds of private investors was seized due to Boudreau's statements; very viable business entities were, essentially, shuttered overnight. By denying this respondents' request for public hearings, including an opportunity to have testify in public under oath key witnesses, including Boudreau, the Office Of Administrative Law Judges of the Commission only makes itself to look like a kangaroo court, as described here by in Wikipedia, and also brings down the credibility of the entire Commission:

“Kangaroo court

From Wikipedia, the free encyclopedia

For the song by Capital Cities, see Kangaroo Court (song). For the EP by Ritual, see Ritual (band).

A kangaroo court is a judicial tribunal or assembly that blatantly disregards recognized standards of law or justice, and often carries little or no official standing in the territory within which it resides. Merriam-Webster defines it as "a mock court in which the principles of law and justice are disregarded or perverted".^[1]

A kangaroo court is often held by a group or a community to give the appearance of a fair and just trial, even though the verdict has in reality already been decided before the trial has begun. Such courts typically take place in rural areas where legitimate law enforcement may be limited. The term may also apply to a court held by a legitimate judicial authority who intentionally disregards the court's legal or ethical obligations."

CONCLUSION

Boudreau's sworn statements and his fraud was masked, at least to this point, by calling them "pro forma" statements. His submissions included no reconciliation of net worth, statements of adjusted cash flows, or outlines of his methodologies. Use of these various standard tools of CPA auditors would have shown it to be nigh impossible for Boudreau to not "catch" his errors. Of course, his errors allowed SEC to make claim that "new member capital" was needed by the funds, and then to sprinkle the word "Ponzi" very liberally throughout their sealed *ex parte prima facie* complaint and related submissions. Boudreau used no acceptable methods of analysis in creating his "pro forma" tables and illustrations, and his fraudulent misconduct will eventually cause with the public a much lower regard for the standing of all CPAs working for all governmental enforcement agencies, be they civil or criminal agencies. This party is *pro se*, and asks the ALJ, the Secretary, and the Commissioners to forgive him if he has not cited relevant SEC rules. All parties should recognize Boudreau's fraud as grave misconduct. If not, then this will be left up to the 9th Circuit, or by way of a class action lawsuit against SEC, after all, a score of fund members of the defendant investment funds have now submitted claims against SEC under the Federal Tort Claims Act due to Boudreau's fraud, and SEC's additional misconduct of falsely labeling their recommended receiver a "licensed CPA" in this lawsuit. In six months or so time, when SEC has denied all of these FTCA claims, this matter will then be turned into a federal class action lawsuit against SEC. At some point, likely parallel to the progression of this OIAP, some person at SEC will have to swear during depositions, and possibly at a jury trial, under the close questioning of an attorney with the guidance of a "real" accountant, (vs. a *pro se* party) that Boudreau's mistakes were all made "in good faith", and with sufficient credibility for a jury to believe. I say good luck to you, SEC, on that.

June 23rd, 2014


Mark Feathers, Respondent

U.S. Securities and Exchange Commission
Division of Enforcement
Staff Accountant, SK-0510-14
Job Number: OEN094S

INTRODUCTION

The mission of the U.S. Securities and Exchange Commission (SEC) is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

The Division of Enforcement investigates possible violations of securities laws, recommends Commission action when appropriate, either in a federal court or before an administrative law judge, and negotiates settlements on behalf of the Commission.

The employee is assigned to the Division of Enforcement and serves as an advisor providing accounting advice, counsel, and recommendations for a highly sophisticated and sensitive area involving the securities market and SEC operations

DUTIES

Serves as a senior accounting advisor in the SEC Headquarters or a regional office for one or more of the Division of Enforcement's areas of accounting program emphasis such as; broker-dealers, transfer agents, investment advisers and investment companies, corporate accounting, internal controls, liaison with enforcement, and/or disgorgement and civil penalties.

Provides technical advice and assistance in the areas of financial analysis and accounting principles and standards performing a wide range of complex and difficult assignments supporting the Division of Enforcement's accounting examination, investigation and enforcement activities and operations such as; reviewing financial statements, evaluating accounting systems and internal controls, computing capital, reserve, etc., reviewing accruals, reconstructing records, conducting stress testing, analyzing cash-management systems, investigating new financial products, analyzing performance calculations, evaluating the integrity of security measures, verifying assets and liabilities, confirming the use of proper methods of valuing and accounting for portfolio securities, verifying compliance with federal tax code, reviewing examinations conducted by national, regional and local accounting firms, negotiating difficult issues, interviewing and preparing witnesses, serving as an expert witness, testifying on accounting matters, conducting conferences, preparing reports, and briefing and defending findings and recommendations.

Provides accounting advice for assigned area of responsibility responding to complex and difficult questions related to the statutes administered by the Division. Researches and provides interpretation of accounting regulations, statutes, executive orders, and agency

directives. Ensures that the Division's interpretive positions with respect to statutes administered are appropriate under established accounting standards and guidelines.

Develops and prepares guidance on a variety of complex accounting issues arising from interpretation and application of statutes administered by the Division which have been referred because of the complexity or sensitivity of the topics involved, precedent setting implications, short suspense time for response, deviation from established regulations, or other unusual actions.

Identifies major policy issues requiring consideration by senior staff, and develops and prepares recommended interpretation outlining the facts and applicable accounting issues. Develops response and provides determinations which best sustain propriety of action, policies, practices, and position under applicable statutory and regulatory provisions

Participates in the development of policies or procedures to implement new accounting requirements. Ensures that these rules, policies and procedures are consistent with the intent of the law and are administratively sound, efficient, and economical in operation and that local/state/federal officials, the securities industry, the general public, or others affected by the new legislation are considered in developing pertinent policies and procedures.

Responds to questions and inquiries on matters of accounting procedure, or policy relative to the Division of Enforcement policies and/or on-going examinations from agency staff, securities industry staff, other federal agencies, and the public. Provides support and assistance for training relative to the area of specialization to include technical assistance conferences. Represents the agency in meetings, conferences, and in public forums.

Displays an up-to-date knowledge and understanding of the assigned specialized segment of the financial management programs, utilizes technological advancements, and maintains productive work relationships with federal and foreign agencies and the industry.

Performs other duties as assigned.

COMPETENCIES

FACTORS

Factor 1. Requirements

Expert level professional knowledge of accounting principles, standards, theories, practices, concepts, and techniques and skill and ability in order to apply this knowledge to broad and difficult assignments

Mastery of the accounting profession to provide advice involving interpreting or developing important public policies; and to serve as a recognized expert in the specialty area.

Comprehensive knowledge of and experience with professional accounting processes, and in-depth knowledge of specific area of assigned responsibility that substantially impacts the operations of the agency.

Advanced knowledge and skill to apply relevant accounting regulations, principles, decisions, statutes, and law to specific issues or problems and serve as a senior advisor for the agency.

Demonstrated advanced skill to conduct complex research in order to apply broad regulations governing federal agencies and rules for financial institutions to unprecedented situations and to contribute to preparation of rules and regulations.

Advanced communication skills to convey complex and technical information both verbally and in writing. Expert level skill in presenting technical findings in conferences, briefings, public forums, and hearings.

Strong interpersonal skills to interact effectively with U.S. and foreign industry representatives as well as with SEC senior officials, supervisors, co-workers, and the public.

Factor 2. Supervision

The supervisor provides administrative direction for assignments in terms of broadly defined assignments or functions. The employee has responsibility for independently planning, designing, and carrying out programs, projects, studies, or other work. Results of the work are considered technically authoritative and are normally accepted without significant change. If the work should be reviewed, the review concerns such matters as fulfillment of program objectives, effect of advice and influence on the overall program, or the contribution to the advancement of technology. Recommendations for new projects and alteration of objectives are usually evaluated for such considerations as availability of funds and other resources, broad program goals, or national priorities.

Factor 3. Guidelines

Guidelines include generally accepted accounting principles as approved and adopted by the Financial Accounting Standards Board, generally accepted auditing standards as approved and adopted by the Public Company Accounting Oversight Board and the American Institute of Certified Public Accountants, and other related pronouncements by governing bodies, SEC policies, and statutes administered by the agency. These guidelines are typically stated in general terms and have gaps in specificity requiring considerable interpretation. The employee must apply extensive knowledge and experience to develop new methods, applications, or criteria. Work may require the refinement or development of guidelines. The employee is generally recognized as a technical authority in the interpretation of guidelines.

Factor 4. Complexity

The employee serves as a senior advisor to management providing accounting opinions, recommendations, alternatives, and technical analysis of complex accounting matters which are critical to the mission of the Division of Enforcement. Assignments involve broad, difficult, and unusual accounting issues and problems. The employee exercises a high degree of professional discretion due to the nature, magnitude, and impact of the assignments. Decisions regarding what needs to be done require extensive, self-directed probing and analysis. Work requires decisions regarding interpretation of information, planning work, and refinement of methods and techniques to be used.

Factor 5. Scope and Effect

The work involves conducting extensive accounting examinations and reviews; resolving problems involving complex accounting and auditing issues, providing advice; responding to information requests; and representing the agency as required. Employee provides technical assistance and advice to SEC managers and staff. The work performed contributes to the productivity, effectiveness, and efficiency of program operations of the Division of Enforcement, which in turn affects the quality of decisions and recommendations developed for SEC leadership.

Factor 6. Personal Contacts

Personal contacts are with Division staff, SEC senior staff, senior-level accountants and program staff in federal agencies, industry representatives, and with the public. The purpose is to justify, defend, negotiate, or settle matters involving significant or controversial issues. The work usually involves active participation in conferences, meetings, hearings, or presentations involving problems or issues of considerable consequence or importance. The persons contacted typically have diverse viewpoints, goals, or objectives requiring the employee to achieve a common understanding of the problem and a satisfactory solution by convincing them, arriving at a compromise, or developing suitable alternatives.