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8 Thomas A. Seaman

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 vs.

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

18 Defendants.

Case No. CV12-03237

**RECEIVER'S RESPONSE TO
DEFENDANT MARK FEATHERS'
OPPOSITION TO RECEIVER'S MOTION
FOR AUTHORITY TO:**

- (A) SELL NATOMA PROPERTY;
- (B) SELL SWEET FINGERS PROPERTY;
- (C) SELL WHISKEY JUNCTION
PROPERTY; AND
- (D) ACCEPT DISCOUNTED PAYOFF
FROM THE FOUR BROTHERS
INNS, LLC

Date: May 10, 2013
Time: 9:00 a.m.
Ctrm: 4 - 5th Floor
Judge: Hon. Edward J. Davila

1 Thomas A. Seaman ("Receiver"), the Court-appointed permanent receiver for Small
2 Business Capital Corp. ("SBCC"), Investors Prime Fund, LLC ("IPF"), SBC Portfolio Fund, LLC
3 ("SPF"), and their subsidiaries and affiliates ("Receivership Entities"), hereby responds to
4 Defendant Mark Feathers' Opposition to the Receiver's Motion for Authority to (A) Sell Natoma
5 Property; (B) Sell Sweet Fingers Property; (C) Sell Whiskey Junction Property; and (D) Accept
6 Discounted Payoff from The Four Brothers Inns, LLC ("Motion").

7 When selling or otherwise disposing of assets of the receivership estate, the focus should
8 be on obtaining the maximum recovery from the assets for the benefit of investors. Mr. Feathers'
9 opposition, which is 10 pages in length, does not give a single economic reason for denying
10 authorization to complete the sales of three properties obtained through foreclosure on defaulted
11 loans ("REO Properties"). Nor does Mr. Feathers articulate a cogent basis for not accepting the
12 proposed payoff of a failing hotel property loan. Instead, Mr. Feathers continues to focus on
13 making personal attacks on the Receiver and criticizing actions of the Securities and Exchange
14 Commission ("Commission"). Neither has any bearing on whether the REO Properties should be
15 sold or the loan payoff accepted.

16 As it pertains to the relief requested in the Motion, Mr. Feathers says only that the
17 Receivership Entities have approximately \$12,000,000 cash so there is no reason to sell real estate
18 "at a loss."¹ This argument ignores two key facts: (1) it is all but certain that the assets of the
19 receivership estate will be insufficient to pay investor and creditor claims in full; and (2) holding
20 the REO Properties involves expenses for insurance, property taxes, security and maintenance.
21 Maximizing the value of receivership assets, and minimizing expenses associated with those
22 assets, is critically important. Here, for example, the Receiver has concluded that neither the
23 Sweet Fingers Property nor the Whiskey Junction Property is likely to appreciate in value in
24 amounts greater than the costs to hold and maintain them. Moreover, neither property is integral
25 to SBCC's business operations. Accordingly, the properties should be sold. As described in the
26

27 _____
28 ¹ Presumably, what Mr. Feathers means by "at a loss" is that the Sweet Fingers and Whiskey
Junction properties will be sold for less than IPF loaned the former borrowers when IPF was
being managed by SBCC and Mr. Feathers.

1 Motion, the Receiver proposes to follow procedures customary in the real estate industry to ensure
2 that the properties are adequately exposed to the market and the highest and best prices are
3 obtained.

4 The fact that Mr. Feathers disputes the Commission's allegations against him is not a basis
5 to deny the Motion. The REO Properties do not belong to Mr. Feathers. If he is successful in
6 defeating the Commission's claims, SBCC would still need to sell the REO Properties in order to
7 realize the value of the underlying loans.

8 Mr. Feathers states that the Receiver "does not deny that these assets may be sold for
9 amounts substantially below their carrying value or appraised values." This is incorrect. All
10 recent appraisals and broker's opinions of value support the proposed sale and list prices for the
11 REO Properties as well as the sale price for the property securing the loan to The Four Brothers
12 Inns, LLC ("TFBI").² The sale prices for two of the three REO Properties (Sweet Fingers and
13 Whiskey Junction) are below the "carrying values" of the loans on IPF's books. This is simply
14 because SBCC assigned inflated values to the loans and collateral when IPF was being managed
15 by Mr. Feathers.

16 Mr. Feathers states that the Receiver "is under severe ethical and fiduciary examination"
17 from the Institute of Chartered Financial Analysts ("CFA Institute"). This is absolutely false. As
18 part of his continuous campaign to harass and interfere with the Receiver's work, all in violation of
19 the Preliminary Injunction Order, Mr. Feathers sent a letter to the CFA Institute accusing the
20 Receiver of failing to notify the Court that the Commission had incorrectly stated that the Receiver
21 is a licensed CPA. The Receiver sent a response to the CFA Institute which included the
22 declaration he filed with the Court addressing the issue. Docket No. 293. The CFA Institute then
23 notified the Receiver that no further inquiry was warranted, that it had concluded its investigation,
24 and that it found no evidence that the Receiver violated the CFA Institute Code of Ethics or
25 Standards of Professional Conduct. See Exhibit A.

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27 ² The Receiver obtained two appraisals of the property securing the loan to TFBI, one dated
28 April 2, 2013 by Yovino Young, Inc. with an appraised value of \$885,000, and one also dated
April 2, 2013 by Rae Gordon & Associates with an appraised value of \$880,000. These
appraisals further support the \$895,000 proposed sale price of the property.

EXHIBIT A

From: Geoff MacDonald <Geoff.MacDonald@CFainstitute.org>

>

Date: May 6, 2013 1:36:41 PM PDT

To: "'tom@thomasseaman.com'" <tom@thomasseaman.com>

Subject: CFA Institute Professional Conduct Program

Dear Mr. Seaman –

On 12 April 2013 we sent you a letter informing you that our investigation of your conduct had been concluded. You may provide a copy of that letter to any person you may wish in order to inform them of our investigation's conclusion. In its investigation, the Professional Conduct Program did not find any evidence that you violated the CFA Institute Code of Ethics or Standards of Professional Conduct.

If you should have any further questions for us, please feel free to contact me.

Best regards,

Geoff

Geoffrey MacDonald, Esq. | Special Investigator, Industry Matters | CFA Institute | 560 Ray C Hunt Drive
| Charlottesville, VA | 22903-0668 | USA | +1.434.951.5450 fax | www.cfainstitute.org



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12 April 2013

VIA FIRST CLASS MAIL and EMAIL: tom@thomasseaman.com

PERSONAL AND CONFIDENTIAL

Thomas A. Seaman, CFA
31562 Eagle Rock Way
Laguna Beach, CA 92651-8299

Dear Mr. Seaman:

I am writing to you on behalf of the Professional Conduct Program at CFA Institute. The Professional Conduct Program has previously corresponded with you regarding allegations that the Securities and Exchange Commission had represented to courts that you were a certified public accountant.

After reviewing the available information, we have determined that no further inquiry into this matter is warranted. As such, we consider our investigation concluded.

For your information, you may reference this matter on your next Professional Conduct Statement as: "matter previously investigated by CFA Institute; review concluded." Other professional conduct matters, should they arise, must be disclosed in compliance with the CFA Institute *Bylaws*.

Thank you for supporting the work of the Professional Conduct Program.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Stith".

Jeffrey K. Stith, Esq.
Head, Industry Litigation, Professional Conduct Program
jeffrey.stith@cfainstitute.org

cc: Geoffrey MacDonald, Esq. (via email only)

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

On May 7, 2013, I served the within document(s) described as:

- **RECEIVER'S RESPONSE TO DEFENDANT MARK FEATHERS' OPPOSITION TO THE RECEIVER'S MOTION FOR AUTHORITY TO (A) SELL NATOMA PROPERTY; (B) SELL SWEET FINGERS PROPERTY; (C) SELL WHISKEY JUNCTION PROPERTY; AND (D) ACCEPT DISCOUNTED PAYOFF FROM THE FOUR BROTHERS INNS, LLC**

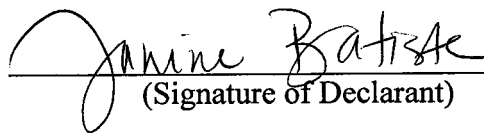
on the interested parties in this action by:

- BY MAIL:** I placed a true and correct copy of the document in a sealed envelope or package addressed as indicated below on the above mentioned date in San Diego, California for collection and mailing pursuant to the firm's ordinary business practice. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by an overnight courier service, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, addressed as indicated in the attached service list on the above-mentioned date, with fees for overnight delivery paid or provided for.
- BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a true copy of the document to be sent to the persons at the corresponding electronic address as indicated herein on the above-mentioned date.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 7, 2013, at San Diego, California.

Janine L. Batiste
(Type or print name)


(Signature of Declarant)

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SERVICE LIST

Mark Feathers 1520 Grant Road Los Altos, California 94024	<i>Pro Se</i> Defendant Tel: (650) 776-2496 Fax: (650) 961-2382 Email: markfeathers@sbcglobal.net
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