

1 DAVID R. ZARO (BAR NO. 124334)
TED FATES (BAR NO. 227809)
2 KIM A. BUI (BAR NO. 274113)
ALLEN MATKINS LECK GAMBLE
3 MALLORY & NATSIS LLP
515 South Figueroa Street, Ninth Floor
4 Los Angeles, California 90071-3309
Phone: (213) 622-5555
5 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com
6 tfates@allenmatkins.com
kbui@allenmatkins.com

7 Attorneys for Receiver
8 THOMAS A. SEAMAN

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DISTRICT

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 REPLY IN SUPPORT OF
MOTION FOR APPROVAL OF
PROCEDURES FOR SALE OF LOAN
PORTFOLIOS AND SBA LENDING
AUTHORITY**

Date: April 25, 2014
Time: 9:00 a.m.
Ctrm: 4 - 5th Floor
Judge: Hon. Edward J. Davila

19
20
21
22
23
24
25
26
27
28

1 Thomas A. Seaman ("Receiver"), the Court-appointed permanent receiver for Small
2 Business Capital Corp. ("SB Capital"), Investors Prime Fund, LLC ("IPF"), SBC Portfolio
3 Fund, LLC ("SPF"), and their subsidiaries and affiliates ("Receivership Entities"), submits this reply
4 to Defendant Mark Feathers' Opposition to the Motion for (A) Approval of Sale Procedures for
5 Loan Portfolios and 7(a) License and (B) Authority to Engage Voit Real Estate Services LP as
6 Broker ("Motion").

7 As usual, Mr. Feathers presents no basis to deny the motion, but instead makes false
8 statements and accusations, including the following:

- 9 • That all gross revenues from the Receivership Entities' "loan investment and servicing
10 portfolios" have been "diverted" to the Receiver and his counsel "[f]or almost two years
11 now." Dkt. No. 824, p. 2.
- 12 • That both the Receiver and his counsel "have performed nothing besides SEC related
13 referral work for the better part of the past decade." Id.
- 14 • That the proposed broker, Voit Real Estate Services LP ("Voit"), "appears to be a local
15 crony buddy" of the Receiver. Id. at p. 4.

16 These baseless accusations are not only false, but they denigrate the Receiver, his counsel,
17 and Voit with absolutely no justification. Mr. Feathers also misleads the Court and investors by
18 overstating and misstating the income generated by the loans. These fictions are part of
19 Mr. Feathers' ongoing campaign to harass the Receiver, interfere with the performance of his duties,
20 delay the receivership, and run up administrative expenses, which Mr. Feathers then objects to as
21 being too high. The Court should order Mr. Feathers to stop these actions, which only further harm
22 the investor victims of his fraud.

23 Moreover, Mr. Feathers who has been adjudged to have defrauded investors and ordered to
24 disgorge more than \$7.7 million dollars, no longer has a pecuniary interest in the loan assets, has no
25 right to speak for defrauded investors, and has no standing to object to the proposed sale procedures.

26 The Opposition contains other specious and nonsensical arguments, including the following:

- 27 • That there is no basis not to have the loan assets appraised. The Receiver has explained
28 that such appraisals would take time to obtain, would be expensive, and would not

1 enhance the purchase price for the loan assets. Therefore, there are ample reasons to
2 waive the requirement for appraisals.

- 3 • That the proposed listing agreement with Voit pre-dates the Motion and therefore means
4 that a buyer has already been identified. This is completely false. The Receiver has
5 deliberately held back from communications with prospective bidders until the Court
6 approves the process and such work can be handled by Voit. Furthermore, the proposed
7 listing agreement with Voit is subject to Court approval. Without Court approval, Voit
8 will not be engaged. The listing agreement in no way suggests a buyer has already been
9 identified, which is not the case.
- 10 • That there is no evidence that delay proposes a financial hardship on investors. This
11 argument is difficult to comprehend considering Mr. Feathers was in the courtroom on
12 February 14, 2014, and heard investors speak directly and emotionally about the hardship
13 that not having access to their savings has caused them. The Receiver and his staff have
14 taken countless calls from investors desperate for the return of their funds. The hardship
15 is very real for many investors and should be strongly considered in decisions regarding
16 the receivership.
- 17 • That numerous investors have opposed the Motion. The fact that certain investors have
18 filed letters stating they oppose the Motion (*albeit* stating no grounds for their
19 opposition) only indicates these misguided individuals continue to be misled and
20 confused by Mr. Feathers' misrepresentations in his numerous pleadings, letters, and
21 e-mails. Many investors that call the Receiver's office do not understand that by
22 opposing the sale motion, the second distribution cannot happen. Mr. Feathers has
23 apparently coached the investors on the declarations and the declarants have simply
24 inserted their names and signatures. One such form declaration states "I understand that
25 the Receiver may be allowed to sell these assets for substantially less than their market
26 value, and will have Court immunity for his actions." This is clearly contrary to the
27 terms of the proposed sale process. The Receiver is reserving the right as seller to not
28

1 conclude a sale if the price is not satisfactory. Moreover, the statement is meant to
2 mislead and alarm investors, further victimizing them.

- 3 • That reorganization would produce a better recovery than a sale. To begin with, the
4 Motion only seeks approval of sale procedures, not the actual sale of any assets. Further,
5 no legitimate plan of reorganization has been set forth for the Court to consider. At this
6 point, reorganization is nothing more than a hypothetical concept. Until a legitimate plan
7 of reorganization is set forth, there is nothing for anyone to evaluate or consider and
8 Mr. Feathers is just making more noise. Moreover, the numbers and returns Mr. Feathers
9 uses in his opposition are specious and not based on fact or the current loan balances,
10 which have declined as the Receiver has collected principal and loans have been paid
11 off.¹ Finally, as the Motion describes, if the facts indicate that holding the loan assets
12 would produce a better recovery than selling them, the Receiver may withdraw some or
13 all of the loan assets from the sale or terminate the sales process entirely.
- 14 • That control of the loan assets should be turned over to investors. As with
15 reorganization, Mr. Feathers fails to give any explanation of how turning over loan assets
16 to the investors would work, who would manage such an operation, how it would be
17 funded, whether the SBA would allow it, how the claims of investors that do not wish to
18
19
20

21 ¹ Mr. Feathers completely ignores all operating expenses of managing and servicing the loans and
22 only uses interest income and gross servicing income. Servicing income is not free money. It is
23 built into the SBA's loan program to compensate SBA lenders for servicing the loans and
24 abiding by regulations set forth in SOP 5050, essentially the SBA's standard operating
25 procedures. Mr. Feathers asserts the "portfolio generates a gross annual return on income of
26 15%." It is unclear what "gross annual return on income" means as that term is not used in
27 accounting. More importantly, despite fully knowing the work involved in servicing the loans,
28 Mr. Feathers assumes no cost whatsoever to service the loans. The reality is that the sum of
interest income and servicing income is now \$154,081 per month, or approximately
\$1.85 million per year, not \$2,500,000 as Mr. Feathers misstates. The cost to service the
portfolio, which Mr. Feathers counts at zero, is approximately \$40,000 per month. The net
income before taxes based on the February 28, 2014 loan balances is \$1,368,972 per year. This
equals 8.9% of the unpaid loan balances and 4.8% of the investors' capital, which is defined as
the amount the investors invested (\$47,067,448), less the principal they received prior to the
TRO (\$3,821,203) and less the \$15,000,000 recently distributed to investors by the Receiver, for
total equity of \$28,246,245. \$1,368,972 of net income divided by total equity of \$28,246,245 is
4.8%. The 15% asserted by Mr. Feathers has no basis in fact and is misleading to investors.

1 participate in a reorganization will be treated, or how it would generate a greater
2 recovery.

- 3 • The SBA "absolutely desires SEAMAN discontinue servicing the fund's SBA portfolio."
4 The SBA has never objected to the Receiver or his staff servicing the Receivership
5 Entities' SBA loan portfolios. The Receiver and his staff have complied with SBA
6 servicing requirements and keep in regular contact with the SBA regarding loan
7 servicing issues.

8 The Opposition is another unfortunate self-serving attempt by Mr. Feathers to mislead and
9 confuse investors, delay the receivership, and run up administrative expenses. The Motion should
10 be granted and the sales process allowed to move forward such that bids for the loan assets can be
11 received and evaluated without further delay. The proposed sale procedures will allow the Receiver
12 to obtain the highest and best prices for the loan assets, while complying with SBA requirements
13 and minimizing administrative expenses.

14
15 Dated: April 2, 2014

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

16
17 By: _____ /s/ Ted Fates

TED FATES
Attorneys for Receiver
Thomas A. Seaman

18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

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

On April 2, 2014, I served on interested parties in said action the within:

➤ **RECEIVER'S REPLY IN SUPPORT OF MOTION FOR APPROVAL OF PROCEDURES FOR SALE OF LOAN PORTFOLIOS AND SBA LENDING AUTHORITY**

BY U.S. MAIL: by placing a true copy thereof in sealed envelope(s), addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service in San Diego County 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.

Mark Feathers
1520 Grant Road
Los Altos, California 94024

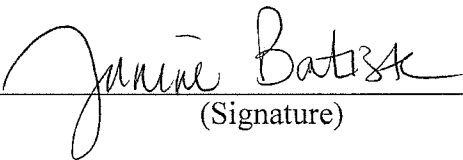
Pro Se Defendant
Tel: (650) 776-2496
Fax: (650) 961-2382
Email: markfeathers@sbcglobal.net

BY OVERNIGHT DELIVERY: by placing a true copy thereof in sealed envelope(s), addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in a box or other facility regularly maintained by express service carrier, 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, with fees for overnight delivery paid or provided for.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 2, 2014, at San Diego, California.

Janine L. Batiste
(Type or print name)


(Signature)