

Natalie E. Feathers
Nataliefeathers@sbcglobal.net
1520 Grant Rd.
Los Altos, CA 94024
Telephone: (650) 961-2382
Facsimile: (650) 961-2382

Filed
JAN 22 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

Case No. CV12-03237-EJD

**DECLARATION OF NATALIE E.
FEATHERS IN OPPOSITION TO
COURT APPROVAL OF THE
RECEIVER'S PRELIMINARY
FORENSIC REPORT TO THE COURT
(Docket No. 171).**

Judge: Hon. Edward J. Davila

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C

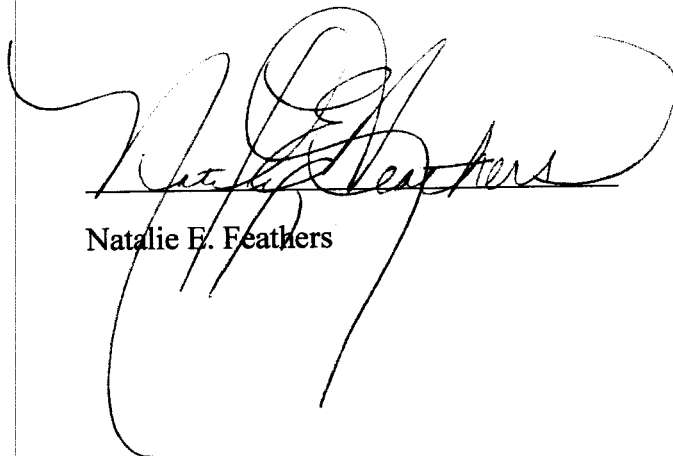
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Natalie E. Feathers, declare as follows:

1. The matters set forth herein are based upon my own personal knowledge and observations. If called to testify herein, I can and would competently testify thereto.
2. I have reviewed the receiver's preliminary forensic report to the court. The attached letter to this declaration outlines in detail, my original observations and comments on the report, and I desire that the court read the letter in full before approval or acceptance of the preliminary forensic report of the receiver.
3. I am a direct investor in Investors Prime Fund, LLC, an entity of the receivership estate.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that the attached submission is my own letter to the court on these matters.

Executed on January 21st, 2013, at Los Altos, California.



A large, stylized handwritten signature in black ink, appearing to read 'Natalie E. Feathers', is written over a horizontal line.

Natalie E. Feathers

Natalie Feathers

1520 Grant Rd.,

Los Altos, CA 94024

Re: CV12-03237 EJD

SEC v. Small Business Capital Corp.

Receiver's Interim Preliminary Forensic Report to the Court

January 21st, 2013

Dear Honorable Judge Davila,

I am a former employee of the entities of the receivership estate. I am also a current investor in Investors Prime Fund. I have experience in analyzing financial statements. I have held numerous senior managerial positions including that of Executive Vice President of several community banks with substantial assets.

In this letter, I offer comments in regards to the Receiver, Thomas Seaman's, forensic report, which are based upon my own analysis of the receiver's preliminary forensic report and his reports no. 1 through 4 to the court. The receiver's preliminary forensic report to the court, in my belief, is so rife with errors that it cannot be reliably considered to offer any level of accurate financial reporting on the entities of the receivership estate. The receiver's court submission also fails to include schedules of attachments, ledgers, etc., to support the receiver's commentaries and conclusions drawn.

The receiver has demonstrated that he cannot complete the simplest of tasks of addition and subtraction, (or has intentionally manipulated numbers to benefit the plaintiff's cause). As an investor relying upon the data portrayed in the report, I assert my belief that the report is a travesty, and a downright embarrassment to the accounting industry, and to court appointed receivers.

The receiver's "money raising activities" table (Docket 171, page 5, lines 22 - 26) is wholly incorporated into the first three columns on this table, which I have produced. The fourth column is my net adjustments made by subtracting "outstanding" amounts from "invested" amounts. (Of note- how can the receiver have "outstanding" capital for SCMF below of \$3,738,762 as opposed to "invested" capital of \$3,659,430". This is an unexplained differential of approximately \$80,000).

Fund	Invested	Outstanding	Natalie's Variance of "returned principal"
IPF	\$45,150,177.	\$32,040,023.	\$13,110,154
SPF	\$15,395,757.	\$10,258,707.	\$ 5,137,050
SCMF	\$3,659,430.	\$3,738,762.	(\$79,332)
Total	\$64,205,964.	\$46,037,492.	\$18,167,872

The receiver's description on line 1 of page 6 (Docket 171), shows "principal returned" of \$20,544,497, which is also the number he uses in his table on page 6, line 8. This figure makes no sense. There is a large and unexplained differential of \$2,376,625 against my total of \$18,167,872 of "principal returned" calculated in my use of the receiver's own numbers in the table above, and which were calculated from the numbers used in the receiver's own table on page 5 of his report.

On page 6, line 3, net source of funds has incorrectly reported at \$39,522 (vs. my \$41,899), resulting in an understatement of the source of funds by \$2,378. This astounding subtraction error of the receiver is carried throughout, and into, the receiver's other references and his tables in the report. Specifically, page 6, line 6 through 10 table of "Money Raising Activities", the receiver carries the \$2,376,625 error into this table under his "total" figure, invalidating this table. He makes likewise errors in his multiple illustrations on page 7, invalidating his illustrations of "Intercompany Uses of Cash", his breakdown of uses of cash by fund in his table at the bottom of page 7. The carry-over errors of the receiver include grossly inaccurate statements on his part about the monies "transferred" to SB Capital.

The Receiver carries these errors throughout his report, causing substantial invalidations in his own conclusions, or those that he may have the reader of his report infer.

Money Lending Activities:

I have no idea the method of accounting the receiver is employing, for simple subtraction would indicate $\$25,474,544 - \$9,543,725 - \$400,000 = \$15,530,819$, resulting in a misrepresentation of the net use of funds of \$4,174,987.

Starting on line 22 of page 6 of his report in the category "Money Lending Activities", the receiver describes "interest income earned" of \$4,995,881. He describes "servicing income" of \$715,899. He describes "profits" of \$3,818,845 from loan premiums. He describes profits of "\$13,099" from the sale of a loan to a third party. He describes the sum of these activities as \$9,543,724. He describes total amounts which were loaned as \$25,474,544.

The receiver references a subtraction of \$400,000 taken by the fund. He summarizes these totals as a "net use of funds" of \$19,705,807. Unfortunately, in so doing, he illustrates another substantial error on his part.

Using the receiver's very own narrative numbers outlined in his report in the table below, which I have prepared, the "net use of funds" illustrated by the receiver shows a very large, and unexplained, variance of \$4,174,987:

Interest	4,995,881
Servicing	715,899
Premiums	3,818,845
Sale	<u>13,099</u>
Total Revenues	9,543,724
Monies Loaned	25,474,544
Total Revenues	-9,543,724
Natoma Adjustment	<u>-400,000</u>
Net Total	15,530,820
Receiver's Net	19,705,807
Adjusted Net	<u>15,530,820</u>
Unexplained Variance	4,174,987

As he does in his "money raising activities" section, the receiver has many errors in his "money lending activities section", further invalidating any conclusions that he either illustrates, or that he may leave to be drawn by the readers of his very flawed report.

Other Major Unexplained Errors and Adjustments – Cash Balances

In his first interim receiver's report to the court, filed July 9th, 2012, the receiver makes reference to some approximate \$10.2M of cash balances as of the date of his engagement in late June. He makes approximately this same dollar reference in his receiver's second report to the court for operations through July 31st, 2012. However, and inexplicably, in his preliminary forensic report to the court, the receiver utilizes a cash balance of \$9.7M, which is a variance of approximately \$500,000 from those amounts that he has outlined in his receiver's reports no. 1 and no. 2 to the court.

SB Capital Sources and Uses of Funds:

On page 8, lines 13 and 14, Receiver states, "the total sources of funds to SB Capital is estimated to be \$12,706,756, which includes the \$9,848,721 transferred to SB Capital from the Funds." The receiver fails to provide supporting documentation/ledger reconciliation supporting this statement. Further, the \$9,848,721 is a figure of questionable veracity which may be very far off, and is a figure that was arrived at incorrectly. The figure appears to be a plug-in figure extrapolated from inaccurate figures derived from "money raising activities", "money lending activities", and "cash balances".

Forensic accounting:

It is my understanding that forensic accounting is an audit of the books and records of the receivership estate, conducted to assist the court in determining the sources and uses of capital, earnings, and expenses of the entities of the receivership estate. The receiver himself is inconsistent with his reported asset values within his own "receiver's reports to the court". In his first interim report in July of 2012, the receiver reports *preliminary pro forma* assets of \$34,123,783 (page 18 of Docket No. 30). Within the report, the receiver reflects assets which include "cash, loans, bank stock, cash value of life insurance, real estate owned, and SBA license" to arrive at the value of \$34,123,783.

On page 2, line 15, of his preliminary forensic report, the receiver reports the estimated aggregate value of the Receivership Entities assets of \$34.1 million. This is despite the fact that his fourth interim report to the court reports assets as of December 31, 2012 with value of \$36M. Why is the receiver using a \$34.1M figure when his fourth report shows asset value of \$36M? Additionally, the \$36M asset value of December 31st, 2012, appears to exclude some \$2M in asset values of the SBA license, real estate, bank stock, liquor license, etc. These matters of large variances go unexplained by the receiver. Why? These assets had substantial value in July – and they are tangible assets of the entities, Why has the receiver failed to reflect these in the forensic report, although they are accounted for in his July report to the court?

In his preliminary forensic report to the court, the Receiver is utilizing a figure of \$34.1M to arrive at a value of receivership entities assets. It appears that he is utilizing a value that was originally reported in his *preliminary pro-forma* in his first interim report to the court in July 2012. I question the receiver's arrival at even this number. The receiver's figure at that time, was very preliminary in nature and appears to have discounted the assets of the receivership assets to reflect potential loan losses that have not occurred, and excludes (1) any note/loan receivables due from Small Business Capital, Corp.; (2) any enterprise value from the establishment of an ongoing viable SBA lending operation, (3) miscategorizes "Sweet Fingers" as a loan, instead of as real estate owned, (4) and excludes substantial loan premiums in excess of \$1M that the receiver has yet to verify (after seven months), although these premiums are clearly reflected, and readily viewable, from the QuickBooks ledgers and charts of account for the entities of the receivership estate. Every loan sale was accompanied by a fund manager's economic analysis, all of which have been in the receiver's possession since June of 2012.

Based on my own analysis, the assets of the Receivership Entities would be more accurately reflected as:

Cash (per 12/31/12 balance sheet)	\$11,718,915.
Loan Receivables (per 12/31/12 balance sheet)	\$24,539,215.
California Business Bank stock (as reported in Exhibit A of first interim report based on current FMV vs. cash basis of \$990,000)	\$326,700.00
SBA license (as reported in Exhibit A of first interim report on a cash basis vs. FMV of \$1MM)	\$750,000.
Whiskey Junction Liquor License (not disclosed by Receiver but is owned by Receivership entities)	\$50,000.

Natoma DREO – (list price per 4 th interim report is \$715,000)	\$700,000.
Sweet Fingers (FMV per 4 th interim report of \$450m vs book of \$900m)	\$450,000.
Subtotal:	\$38,484,830.
Loan Receivables due from Small Business Capital not reported in assets as a result of receiver shutting down all lending operations of the Receivership Entities ****	\$5,691,474.
Loan premiums that receiver has yet to verify or determine due to his inexperience in loan pooling, but has been priced below, or at market premiums.	\$1,536,768.
Total Assets:	\$45,713,072.00
Member Capital	(\$46,037,492.)
Variances	\$324,420.00

****By terminating 90% of the staffing of the entities of the receivership estate and halting all SBA Lending activity, Receiver has prevented the repayment of said Small Business Capital receivable from ongoing operations. One must ask how any type of business can repay it's obligation if they are unable to "sell their product", (i.e., a grocery store not being to sell its groceries, or a gas station unable to sell its gas), of course it is unsustainable.

I have produced the above table based upon the receiver's reports, and from the submissions to the court of the receiver. I believe the figures in my table above to be accurate, but not necessarily exact. The final variance of \$324,420 does not factor in other miscellaneous receivables which I do not have access to the records for.

I believe that the above table clearly rebuts the receiver's claims of \$12M in "dissipated assets".

It should also be noted that receiver attempts to persuade the reader that Small Business Capital Corp's expenses were paid from fund revenues, rather than the actual (and auditable) fact, which is that the company's expense were paid from fund capital (promissory note proceeds) by way of the approved manager's note. On page 8 of his report, line 21, the receiver states that monies were transferred from the funds to SB Capital to cover SB Capital's expenses, and that the amount of these monies made the funds unable, therefore, to pay returns promised to members. This statement is false, and inappropriate. The forensic reporting is to be a summary of fact gathering, and not a document in determining if promises were made or kept.

Even if you exclude the Small Business Capital receivable(s) to the funds, and capitalized loan premiums that the receiver has yet to determine/verify; receivership entity assets appear to equate to \$38,484,830., vs. the \$34,123,783 outlined in the receivers forensic report. This results in a \$4,361,047. swing, or 36% decrease in receivers grossly overstated/hypothetical/misleading dissipation of assets.

Question if the Receiver is Inappropriately Comingling Funds of the Receivership Estate

Per court directive, the receiver established a \$200,000 "defense council account" for Feather's use subject to qualifying considerations. These amounts are reflected within an account labeled #6291 on page 30 of Docket 167, in the columnar category of the title "SB Capital Corp." – which reflects a balance as of December 31st, 2012, of \$200,091.11. The column totals, however, reflect a balance of "checking and saving balances" of \$182,133, or an unexplained differential of some \$18,000.

Closing Comments

As a result of the receiver's (1) numerous addition and subtraction errors, which provide false and misleading representations; (2) misleading and miscalculated estimates of receivership assets which are not indicative of a forensic report; and (3) utilization of "modified cash" accounting vs. "cash basis" accounting, and (4) the receiver's lack of supporting documentation to substantiate his work, (5) and his own inconsistencies from court submission to the next, the referenced preliminary forensic report cannot be relied upon and should be rejected by the court. Additionally, due to the poor quality of the report, the receivership entities should not be obligated to pay for the receiver for his sloppy and unreliable work.

In conclusion, whereas the receiver reflects "dissipation" of approximately \$12M, my own reconciliation shows the receiver's tables and conclusions to be grossly misleading, and produced in a manner which does not appear to be a true "forensic" accounting.

Per Wikipedia, "forensic accounting" means: "suitable for use in a court of law"

Clearly, the erroneous report fails to meet the guidelines of suitability for a court of law.

Respectfully,


Natalie E. Feathers

1-21-13