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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. 12-cv-03237 EJD

DEFENDANT'S OPPOSITION REPLY ON RECEIVER'S COUNSEL'S MOTION FOR PAYMENT (DOCKET NO. 339)

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

I Introduction

The law firm of Allen Matkins ("AM") has submitted their second application for payment. AM's client, the receiver, has a court hearing scheduled for May 10, 2013, on defendant's motion for dismissal of Thomas Seaman Company as the court appointed receiver. Seaman, under counsel of AM in both lawsuits, failed for more than a period of six months' time to notify the court that he is "not" a licensed CPA, as represented by SEC in their recommendation of Seaman as the federal equity receiver for this lawsuit. It appears that in two lawsuits AM failed to review court documents requesting Seaman's appointment and his being represented as a licensed CPA, and, failed to advise his client to correct the court in these important matters.

II Arguments Against the Receiver's Counsel's Request

Ten months into the management of the receivership estate by the Thomas Seaman Co. with AM as counsel, it continues to be apparent that their client's work is not unbiased and is not neutral. The receiver's work product, under counsel of AM, confirms his employment resembles that of an agent for SEC, and not that of an unaffiliated third party federal equity receiver.

AM makes reference to receiver's reports 1, 2, 3, 4 in its request for payment. AM fails, however, to make note that report no. 4 has not been accepted by the court. Neither has the receiver's "preliminary interim forensic accounting report" been accepted by the court. This report was submitted under AM's counsel. AM's client never made a court response to defendant Feathers' opposition of this report.

AM states that its work did not "overlap with or duplicate" the receiver's work (page 2, line 10), while failing to incorporate any reference to a complete and interlocking "cause and effect" relationship between the two parties which leads to enormous billings to the receivership.

For its own purposes of illusory, AM makes reference to "analyzed issues raised by California Department of Real Estate…action against SB Capital" (page 3, line 5). In so doing, AM appears to raise the specter of some matter of consideration which is, perhaps, relevant to this lawsuit. However, it offers no other comments in this matter. Therefore, AM's comment on this

matter appears to be more one of trying to create false characterizations about Feathers, then about issues of merit. AM should focus efforts more so on a better explanation why they have allowed SEC to twice label their client as a "licensed CPA" for a four year period in two federal lawsuits.

AM makes reference to "assisted the Receiver with an analysis of the right to recover receivership assets currently held in an investment fund, which were obtained by SB Capital through a judgment prior to receivership" (page 3, line 8-9). AM fails to make reference to the fact that this asset is one specifically owned by SB Capital, was settlement from a lawful award from a California State court some four years ago, that it is a separate and distinct asset from any other assets of the receivership entity which is owned by SB Capital, and that this asset should be released to Feathers to employ for his legal fees or living expenses. The asset is substantial, at some $200,000 value or more. It will be the subject of a future motion, so perhaps it is good that AM has already performed research on this matter, and the receivership estate will not be billed again.

AM makes references to the "unique legal issues arising from the lending and servicing operations of the Receivership Entities" (page 4, line 4). In making this statement, AM validates that neither AM nor receiver have any idea what SBA lending, and the business model of the funds is about, and how it works.

AM makes reference to "turn over net operating income to the Receiver on a bi-monthly basis" on page 4, line 14 of his report. This is perhaps an oxymoron? A borrower who is in "default", as this borrower is, will likely not have "net income" that they desire to turn over. Most businesses in fact, try hard not to show net income. Was there also a specific minimum payment amount , as well as the turn-over of "net income"? SB Capital had this loan weeks away from foreclosure and trustee sale, had written the loan down already by substantial amounts, with investor approval and consent, and would have benefitted from a liquidity event to the funds to help finance new SBA loans (this legacy loan did not have an SBA guarantee).

AM makes reference to "deficiencies" in the "Menlo Park" loan administration (page 4, line 18-19) prior to the receiver's appointment. Defendant asks the court to incorporate by reference

defendant's Docket no. 312 which portrays a true and accurate assessment of the "pre-receivership" vs. "post-receivership" administration of this loan, as compared to the illusory that AM offers to the court in this matter. The receiver's and AM's fees for this project appear to have exceeded $50,000. Additionally, they have obtained court approval to allow the borrower to pay off the note for almost $100,000 less than the note balance. This combined expense to the receivership estate is certainly real "dissipation" of the assets of the receivership estate.

AM makes reference to "analyzing the enforcement of a judgment in favor of SB Capital" (page 4, line 28), and its fees for such. In other words, even when the defendants "win" in court, the defendant's "lose". Such is the perverse and unrestrained power of an equity receiver and his counsel.

AM bills the receivership estate for research for their client in regards to his "quasi-judicial" immunity (Exh. A, page 8). It does not seem appropriate to bill the receivership estate in this matter.

It is noted that AM has scores of billing and journal citations in their motion for payment exhibit as to phone calls, emails, etc., with SEC. The agency or quid pro quo relationship of all of these parties is quite clear.

AM shows a journal entry Exh. A, page 42, "Review and Analyze documents relating to purchase of stock by SBC/Feathers". Given this entry, why do the receiver, his counsel, and SEC continue to feign that it is not "their" responsibility to validate Feathers equity injections into SB Capital, or to provide him with ready access to this information? Clearly, there must be information beneficial to Feathers here. If it were not, it would have been employed by AM, the receiver, or SEC at this point against Feathers.

AM shows a journal entry Exh. A., page 43, "California Business Bank emails/payments to Feathers/Morales as to offering". Is AM or the receiver on a witch hunt on this matter? This entry appears to make it look like Feathers or Morales was provided payment of illicit monies in return for the decision to invest in this bank's offering. To his knowledge and belief, Feathers earned no money. If Morales earned money, it was for legitimate services rendered. For nine months AM

and the receiver delayed on starting a lawsuit on this matter. Now new evidence shows that six months ago they were looking for evidence to use against Feathers rather than focusing their efforts on actions beneficial to the receivership estate.

AM shows a journal entry "Send reminder regarding fee application response deadline to SEC's counsel" Exh. A, page 46. Isn't theirs' a beautiful alarm-clock relationship? A true partnership where each side is always thinking about the needs of the other. However, why should the receivership estate be billed for AM to contact the SEC to remind them to support AM's and/or the receiver's billing requests?

Conclusion

As of this date, more than two dozen investors have written the court to protest the second fee requests of the receiver and/or his counsel. The request should be denied.

Respectfully submitted,

Date: 4-18-13

Mark Feathers, *Pro Se* Defendant