UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4078/ August 22, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16937

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| In the Matter of<br><br>JAMES MICHAEL MURRAY | ORDER DENYING RESPONDENT'S MOTION TO CORRECT MANIFEST ERROR |

I issued the initial decision in this matter on May 10, 2016, barring Respondent James Michael Murray from the securities industry. *James Michael Murray*, Initial Decision Release No. 1008, 2016 WL 2642658. On August 3, 2016, Murray filed a motion to correct manifest error, claiming that due to his incarceration, he did not receive the initial decision until July 18, 2016. For the reasons discussed below, his motion is DENIED.

Commission Rule of Practice 111(h) governs motions to correct manifest error. 17 C.F.R. § 201.111(h). Subsection (h) provides that "[a]ny motion to correct [a manifest error] *must* be filed within ten days *of* the initial decision." 17 C.F.R. § 201.111(h) (emphasis added). Unlike the timeline for filing a petition for review, which begins to run "after service of the initial decision," 17 C.F.R. § 201.410(b), or the timeline for answering an order instituting proceeding (OIP), which begins to run "after service . . . of the" OIP, 17 C.F.R. § 201.220(b), the timeline for filing a motion to correct is not explicitly tied to service of the initial decision. The Commission's decision to omit any reference to service in Rule of Practice 111(h), while retaining references to service in other Rules of Practice, is significant. *Cf. Smith v. Comm'r of Soc. Sec.*, 482 F.3d 873, 876 (6th Cir. 2007) ("When an agency includes a requirement in only one section of a regulation, we presume the exclusion from the remainder of the regulation to be intentional."). The timeline for filing a motion to correct, therefore, begins to run when the initial decision is issued. *Cf. Adam Sommerrock Holzbau, GmbH v. United States*, 866 F.2d 427, 429 (Fed. Cir. 1989) ("Had [Congress] desired to include a 'date of receipt' provision in the EAJA . . . it certainly could have done so.").

Under Rule 111(h), the time for Murray to file a motion to correct manifest error began to run on May 10, 2016, the date the initial decision was issued. The time to file a motion to correct expired on May 20, 2016. As Murray's motion was filed after May 20, 2016, it is untimely.

Moreover, even if Murray's motion were timely, it is almost entirely meritless. "A motion to correct is properly filed under . . . Rule [111(h)] only if the basis for the motion is a patent misstatement of fact in the initial decision." 17 C.F.R. § 201.111(h). A manifest error is

"[a]n error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record." Error – manifest error, *Black's Law Dictionary* (10th ed. 2014). In his motion, Murray ignores the word "manifest" and quibbles with the findings in the initial decision.

Murray takes issue with the words "in light of" in the statement "In light of the evidence that he created Jones Moore," which he portrayed as his firm's third-party auditor, "Murray testified that he was actually Jones Moore's CFO." Mot. at 2-3; *James Michael Murray*, 2016 WL 2642658, at *7. But Murray did testify that he was Jones Moore's CFO. Ex. J at 1658. And, he does not dispute that this testimony cut against his assertions to investors that "there were no conflicts of interest between [his firm] and its service providers." *James Michael Murray*, 2016 WL 2642658, at *7.

Murray also quibbles with the words "According to Murray," in the finding "According to Murray, [David] Lowe signed a $3 million subscription agreement in 2010." Mot. at 3; *James Michael Murray*, 2016 WL 2642658, at *8. Because Murray testified that Lowe signed a $3 million subscription agreement in 2010, Ex. J. at 1612, this statement is accurate.

Murray says there is no evidence that he told investors that MNT was audited by Jones Moore, which Murray said was a third party. Mot. at 3. As discussed in the initial decision, there is ample evidence that (1) Murray told investors that Jones Moore audited MNT; (2) Murray invented Jones Moore; and (3) Murray invented the fake audits he claimed Jones Moore performed. *See James Michael Murray*, 2016 WL 2642658, at *3-9; Ex. A at 52-53, 55, 193-95; Ex. B at 356, 358-61; Ex. C at 505, 574-75, 581-83; Ex. E at 906-09, 911; Ex. J at 1607, 1616, 1618, 1714-29; Ex. O at 7, 17, 20; Ex. S at 1-2, 8, 15, 17, 19, 46; Ex. Y at 13.

Murray argues there is no evidence that he used the alias "Tim Palm" to tell Regus to forward Pareto Capital's mail to Murray's home address or that he used the alias to create a virtual office. Mot. at 4. To the contrary, these facts are easily inferred from the fact that Pareto Capital was another entity Murray either used or controlled. Its address was a virtual office in San Rafael, California, he used. Ex. J at 1654-55. Tim Palm was listed as a point of contact for a virtual office for Anderson and Associates that was established in Delaware. Ex. A at 89-91. Tim Palm's address was listed as the same address in San Rafael as for Pareto Capital. *Id.* at 91. And all the mail sent to the office in San Rafael was forwarded to Murray's home address. *Id.* at 85; *see id.* at 99-100; Ex. B at 344. In a locked briefcase in Murray's master bedroom, investigators found credit cards issued to Pareto and Anderson and mail for Pareto Capital. Ex. E at 892-93, 911-12; Ex. S at 4.

Murray says there is no evidence that he used a credit card issued to Pareto Capital in the name of David Lowe. Mot. at 4. This assertion is belied by the evidence noted above that showed that Murray used virtual offices he set up in Delaware and California, each of which listed the other's address as a point of contact, and evidence that the mail from those offices that all ended up at Murray's home address.

Murray claims there is no evidence that he instructed that the mail from the virtual offices be sent to his home address. Mot. at 5. But this is a reasonable inference based on the

undisputed fact that the offices were told to send the mail to Murray's home and the fact the mail was found in a locked briefcase in Murray's master bedroom. Ex. E at 892-93; Ex. S.

Murray is technically correct that when he told investors he had never been disciplined by any state or federal government regulatory authorities, he was being truthful; the New York Stock Exchange, which had disciplined him, is not a federal entity. Mot. at 1-2; *see James Michael Murray*, 2016 WL 2642658, at *6. But this simply means that Murray omitted a material fact—his disciplinary history with the New York Stock Exchange—instead of affirmatively misstating it. Murray, however, did affirmatively misstate this fact when he stole the identity of Giovanni de Francisci to create a brokerage account. Ex. J at 1641-42; *see James Michael Murray*, 2016 WL 2642658, at *10.

For the reasons stated above, Murray's motion to correct manifest error is DENIED.

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James E. Grimes
Administrative Law Judge