

1 James Micheal Muray, Pro Se
2 [REDACTED]
3 Post Office [REDACTED]
San Pedro, California [REDACTED]

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

5 IN THE MATTER OF)
6 JAMES MICHAEL MURRAY RE:)
7 INITIAL DECISION RELEASE)
NO. 1008 ADMINISTRATIVE)
PROCEEDING FILE NO. 3-16937)

RESPONDENT'S MOTION FOR REVIEW OF
INITIAL DECISION 5-10-16

8 INTRODUCTION & BACKGROUND

9 Pursuant to Rule 410, Respondent files this motion for review of
10 initial decision 5-10-16. A motion to correct manifest error of fact was
11 resolved 8-22-16. This timely review filing follows. Respondent also files
12 seprately a motion for leave to adduce additional evidence pursuant to
13 rule 452 which if granted respondent requests a stay of this Rule 410
14 review pending completion & submission of additional evidence.

15 Respondent takes exception to the initial decision, All findings of
16 fact, ALL conclusions of Law & Order & Granting of Motion for Summary
17 Judgement. Respondent also seeks review of the finding in the Motion to
18 correct manifest error of fact that it's filing was untimely & other rulings.
19 Additionally, The S.E.C. in their response to Respondents opposition to
20 their M.S.J. submitted new arguments & new evidence. Respondent was not
21 given an opportunity to respond.

22
23 Genuine issues of material fact to be decided at trial exist.
24 Respondent's contradictory evidence was ignored & evidence from which
25 conflicting inferences could be drawn was not considered. This was significant
26 because most findings of fact used to justify the order could not be
27 concluded were based on the criminal trial conviction. Those genuine issues
28 being used as justification for the order of the initial decision should

1 have been decided at a trial.

2 ORDER DENYING RESPONDENT'S MOTION TO CORRECT MANIFEST ERROR

3 The order finds the motion was untimely. In support it cites cases with
4 dissimilar facts where whether the document at issue was mailed & or
5 received was not an issue as it is here. The denial order doesn't concede
6 the initial decision would need to be mailed & or received by Respondent. This
7 contradicts Rule 150 that requires all documents to be "Served" on parties.
8 Even if served, there were extraordinary circumstances due to Respondents
9 transportation by the U.S. Marshall's that caused him to not be able to
10 receive the initial decision until July 18, 2016. Further, it is not clear
11 whether any initial decision was mailed to Respondent whether or not he could
12 receive mail. Respondent requests this finding be reversed out of
13 concern if the filing of a motion to correct manifest error was untimely,
14 It's possible the 21 Day time period to file this Rule 410 review may have
15 elapsed during a period Respondent believed it was tolled by his filing of
16 the Motion to correct manifest error.

17 CONCLUSIONS OF LAW

18 The initial decision concludes Respondent was acting as an Investment
19 Advisor during the alleged misconduct. Here the decision does not address
20 Respondent's evidence the misconduct the jury verdict decided (wire fraud)
21 took place in 2011 & 2012. This is the period that should be decided if
22 Respondent was "Compensated" as required & thus was acting as an Investment
23 Advisor during the alleged misconduct. Additionally the evidence cited to
24 support " Compensation" is not evidence of compensation. Exhibit P at 4-5, 9
25 is from January 2009 & out of all ranges including 2011-2012 of wire
26 transmission dates required under wire fraud statute. It is even prior to
27 alleged misconduct. Additionally the amount paid is undisputed "0".
28

1 Compensation is also mischaracterized at Exhibit O at 4. A questionnaire is
2 not a contract or evidence of compensation. The decision fails to consider
3 the absence of evidence showing compensation during the alleged misconduct.
4 The evidence in trial exhibits the ALJ stated he reviewed showed Respondent
5 first deposited from own personal sources over four hundred thousand &
6 then over 12 months later took from his own capital account, at MNT 150k.
7 This 150k was not evidence of compensation. The issue of Respondent's
8 being compensated was not considered by the Jury for Wire Fraud conviction.
9 Additionally the court at Respondent sentencing did not find Defendant was
10 acting as an "Investment Advisor". The SEC in it's response to respondent's
11 opposition to Summary Judgement made new arguments to which respondent did
12 not have a chance to respond. Those new arguments should not have been
13 permitted without giving respondent a chance to respond.

14 There are incorrect facts cited in this section, for example Page 13
15 13¶ 7 incorrectly concludes with no basis in fact "After he was indicted,
16 Murray used Giovanni De Francisco's identity to open a new brokerage account
17 in order to evade the district court's order seizing MNT's assets." Respondent
18 was never accused of evading the District Court's order seizing MNT's Assets
19 & the finding is without basis as these assets were created by a trade
20 completed after the seizure order.

22 APPEAL OF CRIMINAL CASE CONVICTION

23 Dec 3, 2015 during a pre hearing telephone call Respondent requested
24 a stay of this case & ALJ was advised there was a pending appeal of the
25 criminal case conviction the SEC Regional Office sought as a basis for their
26 Motion for Summary judgement. The ALJ advised that if the M.S.J. succeeded
27 & later the conviction was overturned on appeal the administrative decision
28 could be reversed. There is no provision in the Commission rules for this &

1 Respondent requests the final decision now be stayed pending appeal of the
2 criminal case as the M.S.J. was based on the criminal case conviction.
3 Respondent incorporates all exceptions & Summary reasons cited in Respondent's
4 Motion to correct manifest error of fact.

5 Respondent's contradictory evidence & or even evidence from which
6 conflicting inferences could be drawn was ignored. This included evidence
7 other than Respondent's testimony. Here are some examples:

8 On page 3 ¶ 3 of the initial decision, the finding of the last four
9 months of 2009 performance fails to account for Respondent evidence including
10 that these calculations were for a particular class of shares.

11 Page 3 ¶ 4 also fails to consider Seibt testimony cited by Respondent
12 & her own testimony she received no audits & did not expect to receive any audits.
13 The exhibits cited in this decision by way of citing her testimony were not
14 submitted as trial exhibits. Additionally the jury did not find respondent
15 guilty of defrauding Seibt.

16 Page 4 ¶ 4, Respondent incorporates the arguments raised in Motion to
17 correct manifest error of fact.

18 Page 5 § 4, the "investor" referred to is not an investor but Paul Eckel.

19 Page 5 ¶ 6 "Contrary to Murray's present assertion, Opp at 3, 20,
20 some investors received the Audit reports directly from MNT & thus Murray".
21 This misstates Murray's assertion & also evidence for contradictory inferences
22 to be drawn. Murray asserted no investors received audits on the money
23 they invested. Investors who wired money to MNT received no audits on that money.
24 Findings fail to account for evidence, Eckel had no permission as required
25 in contract to send Audits. Also fails to consider Spicer Jeffries engaged to
26 perform 2011 audits & that the process had started.

27 Page 6 ¶ 5 fails to account for conflicting evidence.
28

1 Page 7 ¶ 2 fails to account for conflicting testimony.

2 Page 7 ¶ 3 fails to account for conflicting evidence cited by the
3 respondent.

4 Page 8, final paragraph unfairly characterizes \$2.6 million transfer
5 without disclosing respondent argument & evidence. This was done to facilitate
6 opening new brokerage account & that all but 500k which was returned to
7 Investor was wired back to U.S. the following day.

8 Page 9 ¶ 1. " The fact that MNT never had the claimed \$5 Million shows
9 this testimony is false" is made in illogical error as the assertion described
10 as being false has nothing to do with whether this testimony was false.

11 Page 10 ¶ 1 fails to account for contradictory evidence cited by
12 Respondent permission to open the event trading brokerage account & documentary
13 evidence Giovanni personally appeared and opened the event trading Citi Bank
14 account.

15 CONCLUSION

16 The initial decision used factual assertions, Respondent had shown did
17 not establish the absence of a genuine dispute of material fact. This was done
18 by citing to material in the record.

19 Most of all, These factual assertions cannot be determined whether a
20 jury decided. However, these factual assertions were then used as a basis to
22 support the initial decision.

23 Respondent's contradictory evidence cited was ignored despite providing
24 at a minimum evidence from which conflicting inferences could be drawn.

25 Additionally Respondent was not able to respond to new evidence & argument
26 the S.E.C. cited in their response to Respondent's opposition to their

27 M.S.J.

[Handwritten Signature]
STANLEY M. MURPHY, PPO JC

CERTIFICATE OF SERVICE

IN THE MATTER OF)
JAMES MICHAEL MURRAY RE:)
INITIAL DECISION RELEASE)
NO. 1008 ADMINISTRATIVE)
PROCEEDING FILE NO. 3-16937)

ADMINISTRATIVE PROCEEDING
FILE NO. 3-16937

I, James Murray, certify on this 12th day of September, 2016, that I sent first class postage prepaid, or other delivery charges prepaid, by depositing said documents herein-listed with prison authorities at the Mail Room of the [REDACTED] [REDACTED] for mailing through the United States Postal Service, pursuant to Houston v. Lack, 487 U.S. 266, 270-271, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988)(holding that a Pro Se prisoner's filing was deemed filed on the date of delivery to prison authorities for filing with the court), mailing copies of the foregoing:

RESPONDENT MOTION FOR REVIEW OF
INITIAL DECISION & MOTION TO ADDUCE
ADDITIONAL EVIDENCE

to the following individuals and/or entities:

Jason Habermeyer
Securities & Exchange Commission
San Francisco District Office
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20549-2533

I certify under the penalty of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. §1746 of the United States Code.

J. M. Murray
James Michael Murray
Federal Reg. [REDACTED]
[REDACTED]
Post Office [REDACTED]
San Pedro, California [REDACTED]