UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 635/July 26, 2007

ADMINISTRATIVE PROCEEDINGS
FILE NO. 3-12436

In the Matter of	:	
	:	ORDER DENYING MOTION TO
BRENDAN E. MURRAY	:	CORRECT MANIFEST ERRORS
	:	OF FACT

On July 10, 2007, I issued an Initial Decision in this proceeding. On July 24, 2007, Respondent Brendan E. Murray (Murray) filed a motion to correct twenty-three manifest errors of fact in the Initial Decision (Motion to Correct).[1]

Rule 111(h) of the Commission's Rules of Practice allows a party to file a motion to correct a manifest error of fact within ten days after issuance of an Initial Decision. Rule 111(h) further explains that a motion to correct is properly filed "only if the basis for the motion is a patent misstatement of fact in the Initial Decision."

Murray alleges that the Initial Decision improperly weighs the evidence. He also maintains that he was "used" as "a pawn" by other individuals who were more culpable than he was (Motion at 15-16). I find no merit to these claims. I also find that these challenges to the Initial Decision do not involve "patent misstatements of fact" that could support a legitimate Rule 111(h) motion to correct. Such matters should be raised, if at all, before the Commission in a timely petition for review.

Certain of Murray's arguments are inconsistent. For example, Murray insists that he "was not considered a meaningful member of the management" of the Cornerstone Funds (Motion to Correct at 6). However, he also claims that, "as an officer of the [Cornerstone] Funds, [he] was authorized to perform work on behalf of the Funds without seeking any additional approvals" from others (Motion to Correct at 12). Both contentions cannot be correct. Neither contention demonstrates manifest factual error.

[1] By letter dated November 30, 2006, the parties agreed to serve pleadings on each other by electronic mail (e-mail). This agreement does not relieve the parties of their obligation to file pleadings with the Office of the Secretary in full compliance with the Rules of Practice of the Securities and Exchange Commission (Commission). The Motion to Correct fails to include a certificate stating that it does not exceed the permissible word count. See Rule 154(c) of the Commission's Rules of Practice.

Finally, Murray asserts that his gains from Cornerstone ($42,200 between November 2001 and February 2002) were not "ill gotten" because they were tied directly to his new role as portfolio manager (Motion to Correct at 7). The weight of the credible evidence shows that Edward Rabson (Rabson) performed most of Cornerstone's portfolio management duties until mid-January 2002, and that Murray did such work only occasionally. (Transcript pages 147-48, 307-08.) (Tr. ___.) The testimony that Rabson was merely assisting Murray as portfolio manager was not credible. (Tr. 275-76.) In fact, "once the funds could no longer be sold [to the public], there really wasn't much trading to be done." (Tr. 384.) The preponderance of the evidence does not support Murray's claim that his increased compensation was directly related to his role as portfolio manager after mid-January 2002. Compare Respondent's Exhibit 15, original e-mail message from I. Lopez to S. Schuyler, dated Jan. 23, 2002 ("I just found out that Ed [Rabson]'s last day was last Friday and the task of portfolio manager may fall on Brendan. Is this the beginning of the end?") with Division of Enforcement Exhibit 122, letter from Murray to S. Schuyler, dated Jan. 29, 2002 ("An intensive search for [Rabson's] replacement has been mounted, and should result in the hiring of an equally qualified individual within the week.") Murray's description of Rabson's potential replacement as an "assistant" portfolio manager is entitled to limited weight on this issue. (RX 15, e-mail from Murray to Sal, dated Jan. 25, 2002.) Murray offered no evidence at the hearing to quantify the hours he personally devoted to portfolio management duties, or to place a dollar value on such services.

As found in the Initial Decision, the Division of Enforcement has sustained its burden of showing that $42,200 is a reasonable approximation of Murray's gains during the period relevant to the Order Instituting Proceedings. Murray has not sustained his burden of showing that this compensation was legitimate, and not "ill gotten."

IT IS ORDERED THAT Murray's motion to correct twenty-three manifest errors of fact in the Initial Decision is denied.

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James T. Kelly
Administrative Law Judge