

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2809 / November 21, 2008

INVESTMENT COMPANY ACT OF 1940
Rel. No. 28519 / November 21, 2008

Admin. Proc. File No. 3-12436

In the Matter of

BRENDAN E. MURRAY

OPINION OF THE COMMISSION

INVESTMENT COMPANY PROCEEDING

INVESTMENT ADVISER PROCEEDING

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Aiding and Abetting Fraudulent Conduct by Investment Adviser

Conversion of Assets of Registered Investment Company

Managing director of investment adviser who also served as secretary to client investment companies engaged in scheme to defraud investment companies by preparing and submitting to investment companies' administrator for payment inflated invoices purportedly showing services provided to investment companies by third parties.

Held, it is in the public interest to bar managing director from association with an investment company or investment adviser, to impose a cease-and-desist order and civil money penalty, and to order disgorgement and payment of prejudgment interest.

APPEARANCES:

Brendan E. Murray, pro se.

James McGovern and Susannah M. Dunn, for the Division of Enforcement.

Appeal filed: August 20, 2007

Last brief received: November 13, 2007

Oral argument: September 8, 2008

I.

Brendan E. Murray ("Murray" or "Petitioner"), formerly a managing director of registered investment adviser Cornerstone Equity Advisers, Inc. ("Cornerstone") and secretary to Cornerstone's advisory clients the Cornerstone Funds, Inc. (the "Funds"), registered investment companies under the Investment Company Act of 1940, appeals from the decision of an administrative law judge. The law judge found that Murray willfully aided and abetted and caused Cornerstone to violate antifraud provisions of the Investment Advisers Act of 1940, and that Murray converted assets of the Funds in violation of the Investment Company Act. The law judge barred Murray from associating with any investment adviser and from working for any registered investment company, assessed a civil money penalty of \$60,000, imposed a cease-and-desist order, and ordered disgorgement in the amount of \$27,200. 1/ We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal. 2/

II.

A. Background

From September 1998 until February 2002, Cornerstone, as the Funds' investment adviser, provided the Funds with investment advice; supervised and managed all aspects of the Funds' operations; and provided, obtained, and supervised administrative services to the Funds. The Funds paid advisory fees to Cornerstone for these services based on assets under management. Cornerstone also provided officers to the Funds at no cost. The Funds ceased offering shares to the public on approximately April 30, 2000, when their auditors refused to certify their 1999 financial statements.

1/ The law judge also ordered the payment of prejudgment interest.

2/ Commission Rule of Practice 451(d), 17 C.F.R. § 201.451(d), permits a member of the Commission who was not present at oral argument to participate in the decision of a proceeding if that member has reviewed the oral argument transcript prior to such participation. Commissioners Casey and Walter conducted the required review.

Murray joined Cornerstone as a managing director in September 1998 and became Cornerstone's compliance officer in January 2001. While employed at Cornerstone, Murray performed a variety of services for the Funds: he was responsible for operations and administration and handled mutual fund clearing, processing, and sales. As secretary to the Funds, Murray attended board meetings and drafted minutes. Murray also provided some portfolio management services beginning in November 2001.

Stephen Leslie and James A. DeMatteo were Cornerstone's chief executive officer and president respectively. ^{3/} Leslie also served as president of the Funds. Together, Leslie and DeMatteo owned more than fifty percent of Cornerstone's stock. They were the only principals of Voyager Institutional Services, LLC ("Voyager"), which provided website maintenance and certain administrative services to the Funds.

Until November 2001, Leslie managed the Funds' portfolios. He reviewed and approved all third-party invoices for services performed for the Funds, and forwarded each invoice to the Funds' administrator, Orbitex Fund Services, Inc. ("Orbitex"). Orbitex would then prepare an expense authorization for Leslie's approval. Leslie would return the approved expense authorization to Orbitex. When Orbitex notified Union Bank of California ("UBC"), the custodian for the Funds, that the expense was authorized, UBC paid the vendor directly.

B. The Invoice Inflation Scheme

Around October 31, 2001, Leslie was incapacitated by a stroke. Beginning in mid-November 2001, Murray assumed Leslie's responsibilities for invoice processing. By this time, it was clear to Murray that the Funds were facing liquidation. In his new capacity, Murray, together with DeMatteo, embarked on a scheme to falsify certain vendor invoices for submission to Orbitex. This scheme resulted in Voyager's receipt of a total of \$122,241 of Fund monies in excess of amounts that the Funds actually owed to the vendors.

Although it is unclear from the record the precise extent of DeMatteo's involvement, and how much Murray was acting at DeMatteo's direction, the record is clear that Murray engaged in multiple deceptive acts in furtherance of the scheme. Between November 2001 and February 2002, Murray prepared, approved, and submitted to Orbitex for payment twelve invoices from

^{3/} In a separate administrative proceeding, DeMatteo consented to an order (1) that he cease and desist from committing or causing any violations or future violations of Advisers Act Sections 206(1) and 206(2), 15 U.S.C. §§ 80b-6(1) and 80b-6(2), and Investment Company Act Section 37, 15 U.S.C. § 80a-36, and (2) barring him from association with any investment adviser and prohibiting him from serving or acting in certain capacities with an investment company. DeMatteo was also ordered to pay disgorgement and prejudgment interest, but the Commission waived payment thereof, and declined, based on DeMatteo's financial circumstances, to impose a civil penalty. James A. DeMatteo, Investment Advisers Act Rel. No. 2556 (Sept. 26, 2006), 88 SEC Docket 3362.

five third-party vendors that purportedly provided services to the Funds. In some cases, Murray requested a payment that was in excess of the amount billed by the vendor; in others, Murray simply prepared an invoice in an amount dictated to him by DeMatteo, although no services had been provided to the Funds. The expense authorizations approved by Murray and returned to Orbitex directed UBC to send the monies owing under these invoices to Voyager, not to the vendors directly. Voyager then paid any money actually owed to the vendors, and kept the difference.

For example, accountant Jay Sanders performed various tax, bookkeeping, and other services for Cornerstone, Voyager, and the Funds. On November 12, 2001, Sanders submitted an invoice in the amount of \$5,000 for enumerated services. Murray used this invoice as a model to forge an invoice that appeared to be on Sanders's letterhead (except that "Sanders" was misspelled as "Samders") for the same services but in the amount of \$17,500. Murray submitted this (and a corresponding invoice on Voyager letterhead) to Orbitex and authorized its payment to Voyager. Voyager paid Sanders the \$5,000 he had billed the Funds, and retained the remaining \$12,500. Murray repeated this pattern with respect to invoices submitted by Sanders in the amounts of \$28,275, \$41,650, and \$30,400, which Murray inflated to \$53,275, \$65,650, and \$55,400 respectively.

Murray similarly falsified bills from two property management groups. In November 2001, Murray billed the Funds \$4,000 for services allegedly provided by the PR Group ("PR Group" or the "Group"). Murray forged the PR Group's letterhead in preparing the phony invoice. The Group had not rendered any significant services to the Funds since June 2001. Murray had reason to know that the Group had not rendered services to the Funds that would justify a \$4,000 payment. Murray had negotiated the June 2001 settlement of a bill from the Group, after which he told the Group that any future services would be requested on an "as-needed" basis. The Group received no money from the bill Murray submitted to the Funds in November 2001.

Murray prepared, submitted, and approved three invoices, each in the amount of \$7,500, for services allegedly rendered by Richardson Management ("Richardson"). Murray forged Richardson letterhead for one of these invoices. Richardson's contract provided for payments of only \$2,500 per month. Murray testified that he prepared the invoices based on information provided to him by DeMatteo. However, Murray took no steps to determine whether Richardson had performed any services to the Funds. The law judge did not credit Murray's testimony that he acted as a mere scrivener for DeMatteo. UBC sent Voyager \$22,500 in satisfaction of the three invoices, of which Richardson received only \$10,615.20.

Murray also submitted inflated invoices for purported portfolio management services from several individuals. ^{4/} Edward Rabson is an experienced bond analyst. Murray had prepared two versions of a contract for Rabson's services. One required Voyager to pay Rabson \$1,000 per month; the other allotted Rabson \$5,000 per month. Only the contract for \$1,000 was executed by Rabson and Voyager. DeMatteo gave Murray the unexecuted \$5,000 contract when he told Murray to prepare the first Rabson invoice, and he told Murray that the \$5,000 contract was in effect. Murray did not ask why the contract was unexecuted, or what had happened to the \$1,000 contract. However, Murray submitted three invoices for Rabson's services, each in the amount of \$5,412.50 (including sales tax). Rabson received only \$4,000 from the more than \$16,000 that UBC paid to Voyager for his services.

Murray also billed the Funds \$8,118.75 for services purportedly rendered by Rabson's apparent replacement, Harry Peterson. However, Peterson received only \$500. In preparing Peterson's invoice, Murray relied solely on DeMatteo's representation that Peterson should be paid \$7,500 per month (plus sales tax). Murray did not confirm that Peterson performed services for the Funds. In fact, the invoice was dated only one day after Murray informed Orbitex that Rabson had stopped providing portfolio management services to the Funds and that a search for his replacement was underway.

At the hearing, Murray admitted his involvement in preparing, approving, and submitting the twelve invoices at issue. He knew some invoices were inflated and admitted that, with respect to other invoices, he failed to inquire into whether the payments were based on actual agreements or were justified by services actually performed. Moreover, Murray admitted that he knew that the purpose of submitting inflated invoices to Orbitex was to prevent Orbitex from determining how much money was being retained by Voyager.

C. Counsel Learns of the Inflated Invoices

In December 2001, Murray formed a corporation known as White Star Capital or White Star Management ("White Star"), and became its chief executive officer. He subsequently filed Form ADV with the Commission to register White Star as an investment adviser. Without consulting anyone at Cornerstone or the Funds, Murray, acting through White Star, prepared a ten-page report reviewing certain work done by accounting firms used by the Funds. In late January or early February 2002, Murray prepared, approved, and submitted a single-sentence invoice in the amount of \$37,650 for White Star's services in preparing the report. The invoice neither specified an hourly rate for Murray's services nor indicated how many hours were

^{4/} Murray also approved expense authorizations for a total of \$47,179.21 in advisory fees payable to Cornerstone for November 2001 through January 2002, which were supposed to compensate Cornerstone for providing investment advice, among other things. The record is unclear as to whether the individuals for whom Murray submitted invoices should have been compensated by Cornerstone out of the money it received for portfolio management rather than by the Funds.

involved in preparing the report. Although the invoice was addressed to DeMatteo, Murray did not provide DeMatteo with a copy. Murray also approved an expense authorization for the invoice and submitted the authorization to Orbitex, directing that payment be made to Voyager. Almost immediately after authorizing payment, Murray revised the payment instructions, directing via a letter to Orbitex and on the expense authorization form that payment should be made to White Star directly and not to Voyager (to prevent DeMatteo from becoming aware of the payment).

On February 14, 2002, Orbitex's general counsel sent a letter to an attorney representing the Funds, stating that Orbitex had

become aware of fees recently billed to the Cornerstone Funds for consulting services rendered by WhiteStar [sic] Management Inc. and Voyager Institutional Services, Inc. It has also come to our attention that Brendan Murray is a principal of both WhiteStar Management Inc. and Voyager Institutional Services, Inc. We wanted to insure that you're aware of the existence and purpose of the consulting arrangements referenced above.

Murray, DeMatteo, and Sanders met with counsel that day to discuss matters raised by the letter, and counsel instructed DeMatteo and Murray to stop submitting inflated third-party invoices. After a discussion with counsel, Murray returned the \$37,650 payment.

Voyager paid Murray an average of \$2,014.29 per month between January 19 and September 19, 2001, but between November 19, 2001 and February 17, 2002 paid him an average of \$14,066.67 per month.

D. Murray's Termination and Subsequent Actions

In February 2002, the Funds' Trustees and Directors voted to liquidate the assets of the Funds and dissolve the Funds as soon as practicable. In March 2002, they voted to establish liquidating trusts to receive the remaining assets of the Funds (the "Liquidating Trusts").

In April 2002, Murray asked the Funds' board of directors to pay White Star the \$37,650 fee for his report. The directors rejected this request. That month, Voyager, acting through DeMatteo, terminated Murray's services, paying him \$5,000 in severance. Shortly thereafter, Murray sent letters to DeMatteo and an attorney ^{5/} in which he threatened to release damaging information about DeMatteo and Leslie unless certain conditions were met, including retaining White Star to provide on-call consulting services to Voyager for a monthly fee of \$7,500, paying

^{5/} The record is unclear as to whom the attorney was representing at the time.

the \$37,650 for the White Star report, and continuing medical coverage for Murray and his dependents. 6/ Murray's conditions were not met. 7/

In November 2002, the Liquidating Trusts, as successors in interest to the Funds, filed a civil action against Voyager, DeMatteo, Leslie, Murray, and White Star, alleging, among other things, improper inflation of invoices, charges for services not performed, and the conversion of the Funds' assets for personal use. 8/ The parties settled the action in November 2003 for \$130,000, of which Murray contributed \$15,000.

Beginning in 2003, Murray provided consulting services to clients of Ehrenkrantz King Nussbaum, Inc. ("EKN"), a registered broker-dealer firm, who wanted to engage in market-timing activities. 9/ At the time of the hearing in this matter, Murray was providing consulting services to Ehrenkrantz Growth Fund, a registered investment company, and Ehrenkrantz Asset Management Group, a registered investment adviser, both of which are related to EKN.

II.

A. Aiding and Abetting Antifraud Violations of the Advisers Act

The Order Instituting Proceedings ("OIP") charged Murray with willfully aiding and abetting and being a cause of Cornerstone's violations of Sections 206(1) and 206(2) of the

6/ One of Murray's letters warned, "If the information is released the Proper Authorities will move immediately against you. . . . Your friends will loose [sic] their consulting positions. No friends participating in real estate deals. . . . Your political contacts will desert you. . . . No more management fee. No more investment bank. No more Wall Street contacts. . . . If your lawyer was shocked by what he saw imagine what the reaction will be of the press and the authorities. You will loose [sic] everything instantly."

7/ Leslie swore out a complaint for attempted extortion. The New York criminal authorities executed a search warrant at Murray's home, seizing computers and documents; however, no criminal charges were filed against Murray.

8/ Cornerstone filed for liquidation under Chapter 7 of the United States Bankruptcy Code in October 2002.

9/ In September 2005, the Commission filed a complaint in the Eastern District of New York against Murray, EKN, and EKN's then-chief executive officer related to the market-timing activities.

