

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

RECEIVED

Tanya A. Gee, Circuit Court Judge

FEB 23 2016

Appellate Tracking No. 2015-001845

SC Court of Appeals

Trial Court Case No. 2014-CP-40-07917

JOHN M. McINTYRE and SILVER OAK LAND MANAGEMENT, LLC, Appellants,

v.

SECURITIES COMMISSIONER OF SOUTH CAROLINA Respondent.

APPELLANTS' VERIFIED RETURN
(MOTION TO DISMISS)

NOW COMES Robert V. Mathison, Jr. (herein sometimes "the Undersigned Attorney" or "the Undersigned"), who, first being duly sworn, says under oath the following:

1. My name is Robert V. Mathison, Jr., and I am an attorney licensed to practice law by the State of South Carolina.
2. I am the attorney for the Appellants in this matter, John M. McIntyre and Silver Oak Land Management, LLC, and I reside at Hilton Head Island, South Carolina.
3. I am 68 years of age, of sound mind, and I make and submit this Return on my own personal knowledge.

4. This appeal is from an Order of the Honorable Tanya A. Gee upholding a previous order deciding an administrative proceeding entered by the Securities Commissioner (herein "the Commissioner") in which, after appointing a Hearing Examiner, who heard four days of testimony, and after receiving a Report from the Hearing Examiner in which the Hearing Examiner recommended that these proceedings be dismissed against the Appellants, the Commissioner, nevertheless, directed the Hearing Examiner to modify his Report to make findings and reach conclusions as explicitly dictated by the Commissioner in writing, whereupon the Commissioner then purported to adopt the modified Report that he had dictated, amending it only to the detriment of the Appellants, in deciding that they had committed violations of the South Carolina Securities Act of 2005.

5. At the time that Judge Gee heard the matter, four days' of proceedings before the Security Commissioner had already been transcribed and filed with the Richland County Clerk of Court.

6. After the Appellants timely appealed from Judge Gee's decision, the Undersigned Attorney realized that he had not obtained a transcript of the hearing held before Judge Gee.

7. Thus, by motion dated November 6, 2015, which was duly served on counsel for the Respondents and filed with the court, the Undersigned sought authorization from the Court of Appeals (a) to request and submit the transcript of the hearing beyond the time allowed by the South Carolina Appellate Court Rules, as well as (b) to stay in the time within which the Appellants were required to file their Initial Brief and Designation of Matter.

8. Prior to serving and filing the motion described in paragraph 7, the Undersigned, by telephone and email, sought the consent of counsel for the Respondent, but, not having reached him, the Undersigned provided notice of that fact to the Court of Appeals in paragraph 10 of the Appellants' motion.

9. Subsequent to the mailing of the Appellants' motion, the Respondent's counsel agreed in writing to consent thereto, reserving only the Respondent's putative right "to seek payment of the judgment or a bond to stay its enforcement," all as appears in the email correspondence attached hereto as Exhibit A.

10. However, neither the Respondent nor the Appellant gave notice of that consent until the Undersigned, not having received a ruling, wrote to the Court of Appeals on December 3, 2015, to renew the Appellants' previous motion, all as appears from the letter attached hereto as Exhibit B.

11. By that time, the Court of Appeals, evidently inferring from the Respondent's silence no opposition to the Appellants' motion, granted the relief sought by the Appellants.

12. The Undersigned, after calling unsuccessfully in an effort to learn the identity of the court reporter who had taken the hearing before Judge Gee, then wrote to the Richland County Clerk of Court on December 11, 2015, in a formal effort to obtain the same information. A copy of the letter is attached hereto as Exhibit C.

13. In response to inquiry from the Clerk of the Court of Appeals as to the status of the matter, the Undersigned sent his letter dated January 29, 2016, in which the difficulties that had been encountered were described in detail. A copy of that letter is attached as Exhibit D.

14. At the same time, having confirmed the identity of the court reporter from the South Carolina Office of Court Administration, the Undersigned also wrote to Ms. Maryann S. Nevers to request a copy of the transcript in question.

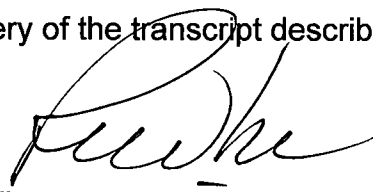
15. Two weeks later, on February 12, 2016, Ms. Nevers acknowledged the Undersigned's request, all as appears from the email correspondence bearing that date, copies of which have previously been furnished to the Clerk of Court and are attached hereto as Exhibit E.

16. As a consequence of the Undersigned Attorney's written request for expedited transcription dated February 12, 2016, a copy of which is attached hereto as Exhibit F, which was accompanied by the payment required by Ms. Nevers, the Undersigned is informed and believes that the transcript of the hearing sought should be delivered on or about February 23, 2016.

17. In view of the important issues to be heard on this appeal, and in the interests of justice, the Undersigned is informed and believes that the Respondent's Motion to Dismiss should be denied.

WHEREFORE, the Appellants pray that the Motion to Dismiss be denied and that a briefing schedule be disseminated upon delivery of the transcript described above.

By:



Robert V. Mathison, Jr.
S.C. Bar No. 3685

MATHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29938
Telephone: (843) 785-6503
Email: rmathlaw@aol.com
Attorneys for the Appellants

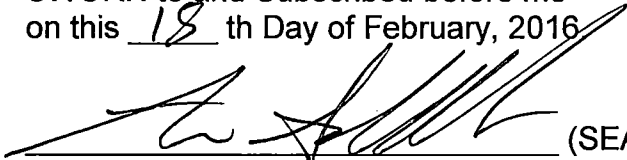
VERIFICATION

The foregoing allegations in paragraphs 1 through 17 of the Return above are true of my own knowledge, except those matters alleged upon information and belief, and, as to those matters, I verily believe them to be true.



Robert V. Mathison, Jr.
S.C. Bar No. 3685

SWORN to and Subscribed before me
on this 18 th Day of February, 2016



(SEAL)

Notary Public for North Carolina
My Commission Expires: 10/16/17

ANNA SCHLOBOHM
NOTARY PUBLIC
Transylvania County, NC
My Commission Expires October 16, 2017

From: Jordan Crapps <jcrapps@scag.gov>
To: rmathlaw <rmathlaw@aol.com>
Subject: RE: John M. McIntyre, et al. v. Securities Commissioner; Appellate Tracking No. 2015-001845; Case No. 2014-CP-40-07917.
Date: Fri, Nov 6, 2015 10:03 am

Mr. Mathison,

We will consent to the request for the extension in your email below. However, we want this case to proceed as quickly as possible. We reserve our right to seek payment of the judgment or a bond to stay its enforcement. If you have any other questions or still wish to discuss this matter by phone, I am in the office for the majority of the day and can be reached at the number below. Thanks.

Sincerely yours,

Jordan Crapps
Assistant Attorney General
South Carolina Attorney General's Office
Securities Division
(803) 734-4172
JCrapps@scag.gov

From: rmathlaw@aol.com [<mailto:rmathlaw@aol.com>]
Sent: Thursday, November 05, 2015 4:15 PM
To: Jordan Crapps
Subject: John M. McIntyre, et al. v. Securities Commissioner; Appellate Tracking No. 2015-001845; Case No. 2014-CP-40-07917.

Mr. Crapps,

I called you and left a message earlier today seeking your accommodation in two respects. First, I have not been able to complete the Appellants' Initial Brief and Designation of Matter in this case, in large measure because we are, uncharacteristically, trying to write for several appellate matters more or less simultaneously. Specifically, we are working on a response to an opponent's Petition for Certiorari to the Supreme Court, which is due next week, and we also have a Reply Brief in another case due in the Court of Appeals during the following week.

Accordingly, I ask the you consent to a 30 day extension, running through and including Wednesday, December 9, 2015, for the Appellants to file and serve their Initial Brief and Designation of Matter.

Also, in working on the brief, it became clear that I had not ordered the transcript of the hearing held before Judge Gee on April 17, 2015. That was my oversight, and I ask your consent for me to rectify it, so that portions can be included in the Record on Appeal, within the same 30 days described in the previous paragraph.

Please advise.

Thanks.

EXHIBIT A
1 of 2 pages

Rob Mathison.

Law Offices of Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938
843-785-6503 rmathlaw@aol.com

EXHIBIT A
2 of 2 pages

MATHHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29938
Telephone: (843) 785-6503
Email: rmathlaw@aol.com

December 3, 2015

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: John M. McIntyre, et al. v. Securities Commissioner of South Carolina
Case No. 2014-CP-40-07917
Appellate Case No. 2015-001845

Dear Ms. Kitchings:

I have not received a response from the Court of Appeals to my letter and motion dated November 6, 2015, copies of which are enclosed. I did learn from Mr. Crapps subsequent to the filing that his client did not oppose the motion, but I do not believe that he communicated that information to the Court.

I am not certain how to proceed at this juncture, except to renew the motion and to ask for additional time. Toward that end, I am enclosing another check to pay the motion fee.

Thanking you and with kind regards, I am

Sincerely,

Robert V. Mathison, Jr.
S.C. Bar No. 3685

RVM:bh
cc: Jordan Crapps, Esquire
Mr. John M. McIntyre

EXHIBIT B

MATHHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29938
Telephone: (843) 785-6503
Email: rmathlaw@aol.com

December 11, 2015

The Honorable Jeannette McBride
Clerk of Court for Richland County
Post Office Box 2766
Columbia, South Carolina 29202

Re: John M. McIntyre, et al. v. Securities Commissioner of South Carolina
Case No. 2014-CP-40-07917
Appellate Case No. 2015-001845

Dear Ms. McBride:

I represent, among others, Jack McIntyre, who is a plaintiff in the action referenced above. A hearing was held in this case before the Honorable Tanya A. Gee on April 17, 2015. The case was then on the Appeals Roster for Richland County.

I need to obtain a transcript of that hearing, as the case is now on appeal to the South Carolina Court of Appeals. In this regard, I would appreciate your having the appropriate employee in your office forward to me the name, address and email address of the Court Reporter who took the hearing so that I can direct a formal request to her for the transcript.

I can be reached most readily via the email address set forth above or on my mobile telephone number (843-384-7115).

Thanking you and with kind regards, I am

Sincerely,

Robert V. Mathison, Jr.
S.C. Bar No. 3685

RVM:bh

cc: Jordan Crapps, Esquire
Mr. John M. McIntyre

EXHIBIT C

MATHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29938
Telephone: (843) 785-6503
Email: rmathlaw@aol.com

January 29, 2016

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: John M. McIntyre, et al. v. Securities Commissioner of South Carolina
Appellate Case No. 2015-001845

Dear Ms. Kitchings:

In response to your letter of January 21, 2016, please be advised that, in an effort to learn the identity of the court reporter for the hearing in the case referenced that took place on April 17, 2015, I wrote to the Clerk of Court for Richland County on December 11, 2015, and a copy of my letter is enclosed.

Several successive calls by me were either met with a busy signal or a voice mail opportunity. Just before Christmas, I received a voice mail from a lady in the Clerk's Office, but several calls to (and voice mails left) at the telephone number that she had provided did not yield any result, probably as the result of the Christmas "interlude."

I ultimately received a call from a gentleman at the Clerk's Office, who advised that the court reporter's name was "Nabors" (Neighbors?) or "Navers." He did not know the reporter's first name or have any other information.

Efforts to locate that person proved fruitless until I was advised to check the *Lawyers' Desk Book*, which revealed a court reporter named Maryann S. Nevers. I have since confirmed with Ms. Michelle Owens at Court Administration that Ms. Nevers was assigned to court in Richland County during the date of the hearing in question.

Accordingly, I have written to her to request a transcript of the hearing, and a copy of that letter is also enclosed.

EXHIBIT D
1 of 2 pages

The Honorable Jenny Abbott Kitchings
January 29, 2016
Page 2

Thanking you and with kind regards, I am

Sincerely,

Robert V. Mathison, Jr.

RVM:bh

Enclosures

cc: South Carolina Office of Court Administration
Jordan Crapps, Esquire
Mr. John M. McIntyre

EXHIBIT D
2 of 2 pages

From: rmathlaw <rmathlaw@aol.com>
To: mnevers <mnevers@sccourts.org>
Cc: jcrapps <jcrapps@scag.gov>
Bcc: jackmmcintyre <jackmmcintyre@gmail.com>
Subject: Re: 2014-CP-40-7917, McIntyre v. Securities Commissioner of South Carolina
Date: Fri, Feb 12, 2016 2:56 pm

Ms. Nevers,

Thank you for the response.

I have today placed in the mail to you a check for the \$250.00 deposit that you requested, together with a transmittal letter addressed to you at the post office box address described in your email..

I am requesting the seven day expedited service described in your email. Also, my preference is for you to deliver an electronic copy to me via email, as well as an original (together with your original certification) to me via U.S. Mail sent to my post office box address below.

Finally, I have sent a copy of this email to my opponent, Jordan Crapps, Esquire, who is an attorney in the Securities Division of the South Carolina Attorney General's Office. I believe that he may request a copy of the transcript as well.

Best regards.

Rob Mathison.

Law Offices of Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938
843-785-6503 rmathlaw@aol.com

-----Original Message-----

From: Nevers, Maryann S. <mnevers@sccourts.org>
To: rmathlaw <rmathlaw@aol.com>
Sent: Fri, Feb 12, 2016 12:15 pm
Subject: 2014-CP-40-7917, McIntyre v. Securities Commissioner of South Carolina

Mr. Mathison, I am in receipt of your request for a transcript of the hearing held before Judge Gee in Richland County on April 17, 2015.

Please be advised that transcript fees are promulgated by SCACR Rule 607, which can be found at the following link:

<http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=607.0&subRuleID=&ruleType=APP>

I estimate that the transcript will consist of approximately 75 pages. Therefore, I will require an advance deposit of \$250.00 to place your request in line for transcription, sent to me at the address listed below. Please note that this is only an estimate. If the final cost exceeds this amount, I will contact you for additional payment before the transcript is finalized. Similarly, if the final cost is less than the deposit amount, I will refund the overage to you.

EXHIBIT E
1 of 2 pages

Additionally, please further define your request in terms of transcript format (paper copy via U.S. Mail, electronic copy via e-mail, etc.), and the turnaround time you are seeking, as there are additional fees for additional services as set forth in SCACR Rule 607(h)(1)(J). Normal turnaround time for transcripts is 60 days unless otherwise specified and agreed to for expedited service. ?There are three different expedited rates and turnaround times: seven-day, one-day, and same-day service. ?

In accordance with the court reporter manual approved by the Supreme Court of South Carolina, the due date will be determined by the date I receive your advance payment.

Please let me know if you have any questions or need additional information, and I will await your further advisement.

THANKS?

Maryann S. Nevers, CVR-M-CM
Certified Verbatim Reporter - Master, Certificate of Merit
Official Court Reporter
Eighth Judicial Circuit - At Large
Post Office Box 90202
Columbia, SC 29290

mnevers@sccourts.org<<https://mail.sccourts.org/owa/redir.aspx?C=0530d46560ca40b3b43f6a3daa27d1bb&URL=mailto%3amnevers%40sccourts.org>>

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

EXHIBIT E  
2 of 2 pages

**MATHHISON & MATHISON**

Post Office Box 5271  
Hilton Head Island, SC 29938  
Telephone: (843) 785-6503  
Email: [rmathlaw@aol.com](mailto:rmathlaw@aol.com)

February 12, 2016

**RECEIVED**

FEB 23 2016

**SC Court of Appeals**

Maryann S. Nevers, CVR-M-CM  
Official Court Reporter  
Eighth Judicial Circuit – At Large  
Post office Box 90202  
Columbia, South Carolina 29290

Re: John M. McIntyre, et al. v. Securities Commissioner of South Carolina  
Case No.2014-CP-40-07917  
Appellate Case No. 2015-001845

Dear Ms. Nevers:

In accordance with our email correspondence today, copies of which are enclosed, I am forwarding my check in the amount of \$250.00 as the deposit for the transcript of the hearing held in the case referenced on April 17, 2015.

Please deliver the transcript both electronically and in hard copy as requested in the enclosures. My understanding is that email delivery will take place seven days after your receipt of this letter.

I appreciate your attention to this matter.

Thanking you and with kind regards, I am

Sincerely,

Robert V. Mathison, Jr.

RVM:bh

Enclosures

cc: The Honorable Jenny Abbott Kitchings  
South Carolina Office of Court Administration  
Jordan Crapps, Esquire  
Mr. John M. McIntyre

**EXHIBIT F**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Appellate Tracking No. 2015-001845

Trial Court Case No. 2014-CP-40-07917

**RECEIVED**  
FEB 23 2016  
SC Court of Appeals

JOHN M. McINTYRE and SILVER OAK LAND MANAGEMENT, LLC, . . . . .Appellants,

v.

SECURITIES COMMISSIONER OF SOUTH CAROLINA . . . . . Respondent.

**PROOF OF SERVICE**  
**(RETURN TO MOTION TO DISMISS)**

I, Robert V. Mathison, Jr., hereby certify that on February 18, 2016, I filed and served by mail the original and a copy of the Appellant's Verified Return to the Respondent's Motion to Dismiss, by depositing same, with sufficient first class postage prepaid, at the United States Post Office at Asheville, North Carolina, addressed as follows:

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Jordan Crapps, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549



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Robert V. Mathison, Jr.  
S.C. Bar No. 3685

**Mathison & Mathison**  
Post Office Box 5271  
Hilton Head Island, SC 29938  
Telephone: (843) 785-6503  
Email: [rmathlaw@aol.com](mailto:rmathlaw@aol.com)

Attorney for the Appellants  
John M. McIntyre and Silver Oak  
Land Management, LLC

February 18, 2016

Hilton Head Island, South Carolina.

**MATHHISON & MATHISON**  
Post Office Box 5271  
Hilton Head Island, SC 29938  
Telephone: (843) 785-6503  
Email: [rmathlaw@aol.com](mailto:rmathlaw@aol.com)

February 18, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
FEB 23 2016  
SC Court of Appeals

Re: John M. McIntyre, et al. v. Securities Commissioner of South Carolina  
Appellate Case No. 2015-001845

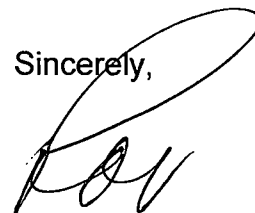
Dear Ms. Kitchings:

In response to the Respondent's Motion to Dismiss this appeal, enclosed please find the following items:

1. The original and six copies of my Verified Return to the Motion, together with attachments; and
2. The original Proof of Service for the Verified Return.

Thanking you and with kind regards, I am

Sincerely,



Robert V. Mathison, Jr.  
S.C. Bar No. 3685

RVM:bh  
Enclosures  
cc: Jordan Crapps, Esquire  
Mr. John M. McIntyre

*Three copies of  
the Return have  
been sent in a  
separate envelope.  
RVM*

\$3.18<sup>9</sup>  
US POSTAGE  
FIRST-CLASS



071S00680619  
28803  
000006450

LAW OFFICES  
**MATHISON & MATHISON**  
POST OFFICE BOX 5271  
HILTON HEAD ISLAND S.C. 29938-5271

**RECEIVED**

FEB 23 2016

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

