

VC's breach-of-partnership lawsuit derailed by finding of bogus e-mail

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By **Jeff Miller**

When Connecticut executive Suni Munshani filed suit against Signal Lake Venture Fund in Suffolk County Court in Boston in December, he hoped to collect \$25 million from the venture capitalists with whom he'd once worked.

But his case, which alleged breach of partnership agreements, crumbled after the state court determined that Munshani had presented a forged e-mail as evidence in a related federal case. And Munshani could face a federal perjury investigation, say sources close to the case. Both civil cases are still pending in state and federal court.

The case is unusual in several respects, according to several local lawyers. It's rare for someone to be caught red-handed presenting bogus evidence. And it's particularly surprising, they add, that a technology investor would present forged e-mail, since e-mail leaves a data trail that experts can track.

The case is also unusual, they say, because disputes over who belongs to a venture capital partnership rarely appear in court. As a matter of course, VC firms make sure that legal agreements are sewn up tight, especially before that partner goes out to raise funds for the firm, said Jay Hachigian, a lawyer with Gunderson Dettmer in Waltham who specializes in venture capital.

The following narrative of the case is based on federal and state court

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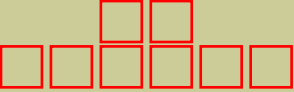
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filings. Munshani did not return phone calls seeking comment. None of the lawyers involved would speak on the record for this story.

Barton Stuck, a resident of Westport, Conn., founded Signal Lake in 1999 with his friend Michael Weingarten of Boston. By late 1999 or early 2000, the two managing directors had invested \$23 million in a variety of early-stage technology companies. For their second fund, they were aiming for more than \$100 million. With more money, they needed more partners. A mutual friend introduced Signal Lake to Munshani.

Apparently, Munshani was no neophyte to venture capital. According to the Web site for Acurion Inc., a New York-based bandwidth management company for which Munshani is chairman of the board, Munshani has invested in startups for more than 15 years and sits on the boards of several other tech companies. He's an engineering graduate of the prestigious India Institute of Technology and a resident of Easton, Conn.

Both sides agree that Stuck invited Munshani to become a managing director in May 2000. They agreed to a proposal for dividing the management fee and their share of the profits, and Munshani traveled with Stuck and Weingarten to speak with potential investors, according to court documents.

The new fund was formally established on June 15, 2000. But the partners were still arguing about how the arrangement should be structured. "Unfortunately," Weingarten said in a telephone interview, "we never could reach closure on the terms of his joining us, so he never became a member of the general partnership."

Munshani claimed otherwise.

Signal Lake said in court documents that Munshani made demands to which it could not agree. Munshani allegedly asked that all investments require a unanimous vote from the managing directors, that each managing director be guaranteed a role in all future funds and that Munshani be granted ownership rights to the Signal Lake name. Among other allegations in his filing, Munshani accuses Signal Lake of overstating the committed capital of its fund to investors, which Signal Lake denies.

In December, Munshani filed suit in Suffolk County Court. He also filed suit in federal court against Terago Communications Inc., an Andover-based semiconductor manufacturer and one of Signal Lake's portfolio companies.

In the federal case, Munshani claimed that, in exchange for his efforts to find financing for the company, Terago promised to issue him warrants. According to Munshani's filing, those warrants would allow him to purchase 1.2 million shares of common stock at \$1 per share, even if he failed to attract investors. But Munshani hadn't claimed there was a written agreement, so Terago moved to dismiss the case on Jan. 18.

Just over a week later, Munshani presented the court with an e-mail that Hemant Trivedi, Terago's CEO, allegedly had sent on Aug. 3, 2000.

"Suni," the alleged e-mail began, "The importance of keeping you excited

about Terago is hard to overstate. As CEO and founder I am personally committing to deliver these warrants to you at the last round of funding. The period we discussed will be two years. Please let me manage this with Signal Lake. Regards, Hemant.”

Judge Richard Stearns denied the motion to dismiss.

Terago was furious. It accused Munshani of fraud.

Meanwhile, in the Suffolk county court, Signal Lake’s attorneys had brought the e-mail into the state case. It was relevant, they said, because the e-mail discussed an agreement between Munshani and the VC firm. The defense filed affidavits saying the e-mail was a fake; Munshani filed an affidavit saying it was genuine.

Given the conflicting accounts, Suffolk county judge Allan van Gestel appointed Kenneth Shear, a computer security expert from Seattle, to determine who was telling the truth. After a lengthy investigation, Shear filed a report concluding that the e-mail was a fake. His report states that the fake e-mail had an altered header that was most likely copied from a genuine e-mail sent to Munshani by Trivedi on the same day.

Judge van Gestel threw out Munshani’s claims and ordered him to pay Signal Lake’s legal fees. In addition, Griesinger Walsh and Maffei, Munshani’s original attorneys, withdrew from the case. Munshani has since retained McDermott Will & Emery as counsel. Signal Lake’s counterclaims are still pending in Suffolk County Court.

In federal court, Judge Stearns has not yet ruled. But given the importance of the e-mail to the suit, sources close to the case expect him to dismiss Munshani’s claims.

Asked by a lawyer on Feb. 23 to dismiss the case if Munshani’s affidavit proved false, Judge Stearns replied, “Well, I think the penalty should be a lot more severe than that,” according to transcripts.

Though the lawsuit is a civil matter, Judge Stearns has the option to refer the case to the U.S. Attorney’s office for investigation of perjury, a spokesperson for the U.S. Attorney’s office said.

A hearing on the federal case is scheduled for Nov. 7 in Boston.



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