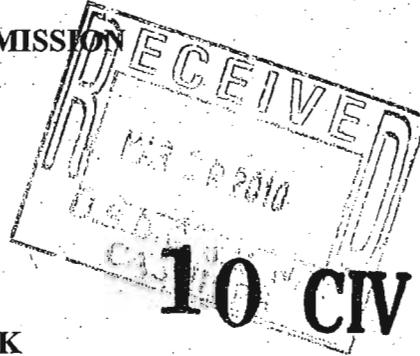


JUDGE DANIELS

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10 CIV 1842

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

10 Civ.

-against-

JOSE O. VIANNA, JR.,

Defendant, and

COMPLAINT

CRESWELL EQUITIES, INC.

Relief Defendant.

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Jose O. Vianna, Jr. ("Vianna") and relief defendant Creswell Equities, Inc.

("Creswell"), alleges:

SUMMARY

1. This case arises from a fraudulent scheme orchestrated by Vianna, a former broker at a New York brokerage firm named Maxim Group LLC ("Maxim"), to divert dozens of profitable trades from one of his customers, a large institutional investor referred to herein as "Customer A," to another of his customers, Creswell, and thereby misappropriate millions of

dollars of Customer A's assets for the benefit of Creswell. Vianna carried out this scheme in violation of his fiduciary duties to Customer A by manipulating Maxim's order entry system and falsifying the records of orders to purchase and sell securities that he executed on behalf of Customer A and Creswell.

2. At least 57 times between July 2007 and March 2008, Vianna simultaneously entered orders in the accounts of Customer A and Creswell to trade the same amounts of the same stock. Each time, he placed a buy order in one customer's account and a sell order in the other customer's account. Every time the market moved to make Customer A's trade profitable and Creswell's trade unprofitable, Vianna improperly misused his access to Maxim's order management system to divert Customer A's profitable trade to Creswell and Creswell's unprofitable trade to Customer A by changing Maxim's records to inaccurately reflect the account for which the orders were entered. However, when the market moved so that Creswell's trade was profitable and Customer A's unprofitable, Vianna let the trades remain as originally entered.

3. The effect of this scheme was to transfer all trading risk from Creswell to Customer A, since Creswell profited whether the stock price went up or down. Creswell realized over \$3.3 million in profits from trades in its Maxim account that were executed against a corresponding trade in Customer A's account.

VIOLATIONS

4. Based on the conduct alleged in this Complaint, Vianna is liable for violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section

10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and for aiding and abetting Maxim's violations of Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rule 17a-3 thereunder, 17 C.F.R. § 240.17a-3.

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), seeking permanently to enjoin Vianna from engaging in the acts, practices and courses of business alleged herein.

6. The Commission also seeks a final judgment requiring Vianna to disgorge ill-gotten gains, if any, with prejudgment interest thereon, and to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

7. The Commission seeks a final judgment requiring Creswell, as relief defendant, to disgorge the amount by which it was unjustly enriched as a result of Vianna's unlawful conduct, plus prejudgment interest thereon. The Commission also seeks an asset freeze against Creswell in order to preserve assets for ultimate disgorgement.

8. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(d) and 77v(a), and Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

9. Venue is proper in the Southern District of New York pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a) and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. Certain of the transactions, acts, practices and courses of business constituting the violations alleged herein occurred in the Southern District of New York, including, among other things, Vianna's fraudulent activity conducted in Maxim's offices located in this district.

DEFENDANT AND RELIEF DEFENDANT

10. Vianna, age 38, is a resident of New York City. Vianna was associated with Maxim from October 2002 until his termination by Maxim on April 3, 2008. Since May 30, 2008, Vianna has been associated with another registered broker-dealer. Prior to joining Maxim, Vianna was employed as a registered representative of a number of broker-dealers in New York.

11. Creswell is a British Virgin Islands corporation with an office in Geneva, Switzerland. During the period relevant to this complaint, Creswell maintained and continues to maintain accounts with broker-dealers in the Southern District of New York.

OTHER RELEVANT PARTIES

12. Maxim Group, LLC, is a New York limited liability company headquartered in New York City. Maxim was incorporated in April 2002 and has been registered with the Commission as a broker-dealer since September 2002.

13. Customer A is a Spanish bank.

14. Employee A is a citizen and resident of Spain. Employee A was, during the relevant period, a portfolio manager employed by Customer A in Customer A's offices in

Madrid, Spain. Employee A was responsible for trading securities in Customer A's proprietary trading accounts, including Customer A's Maxim account. Customer A terminated Employee A's employment in March 2008 for poor performance.

FACTS

15. In October 2003, Customer A opened an account with Vianna at Maxim to engage in proprietary trading. Vianna was the registered representative for the Customer A account. Employee A had authority to trade the account.

16. At the end of April 2007, Employee A referred Creswell to Vianna at Maxim. Creswell opened a Maxim account on June 20, 2007. Vianna was the registered representative for the Creswell account.

17. Creswell gave Employee A discretion to direct trading in its Maxim account and paid Employee A a fee for doing so. Although Vianna knew that Employee A was directing trading in the Creswell account, Vianna did not inform Maxim of this fact.

18. Starting in July 2007 and continuing until March 2008, acting in concert with Employee A, Vianna carried out a fraudulent scheme to divert trading profits from Customer A to Creswell.

19. On at least 57 occasions during that period, Vianna entered simultaneous orders in the Customer A and Creswell accounts to trade the same number of shares of the same stock. In each instance, Vianna entered an order to buy the stock for the account of one customer and entered an order to sell the stock for the account of the other customer.

20. The corresponding orders were for blocks of stock, ranging from 20,000 to

310,000 shares.

21. In each instance, Maxim executed the corresponding orders at the same price.

22. In 28 of the 57 instances in which Vianna entered corresponding orders for the Customer A and Creswell accounts, the market moved so that Customer A's trade was profitable and Creswell's trade was unprofitable. In each such instance, Vianna improperly misused his access to Maxim's order management system to change the identity of the customer on each order so that the profitable trade was allocated to Creswell's account and the unprofitable trade was allocated to Customer A's account. In doing so, Vianna caused Maxim's records to inaccurately reflect the account for which various orders were entered and transactions effected.

23. For example, on July 17, 2007 at 10:19 a.m., Vianna entered a market order for the Creswell account to sell 60,000 shares of Novellus Systems Inc. ("NVLS") and entered a market order to buy 60,000 shares of NVLS for the Customer A account. At 10:20 a.m., these orders were executed by Maxim at \$32.36 per share. Following the execution of these orders, the price of NVLS rose, generating unrealized trading profits for Customer A and unrealized trading losses for Creswell. At 1:37 p.m., Vianna entered a new order to sell 60,000 shares of NVLS for Creswell's account. This order was executed at 1:42 p.m. at \$32.94 per share. At 1:52 p.m., Vianna accessed Maxim's order management system and switched the customer accounts on the original orders that had been entered at 10:19 a.m., so that Creswell became the buyer of 60,000 shares of NVLS at \$32.36 per share and Customer A the seller. Following the switch, Creswell was a buyer of 60,000 NVLS at \$32.36 per share and a seller of those shares at \$32.94 per share, realizing trading profits of almost \$32,000. Customer A, on the other hand, became a seller of

NVLS at a price lower than the then current market price.

24. Similarly, at 8:56 a.m. on November 20, 2007, Vianna entered a limit order for Creswell's account to buy 100,000 shares of Freddie Mac ("FRE") at \$30.80 per share and then immediately entered a limit order for Customer A's account to sell the same number of shares of FRE at the same price. Maxim executed both orders at \$30.80 per share, the limit price. Following execution of the orders, the price of FRE declined, generating unrealized losses for Creswell. At 9:19 a.m., Vianna entered an order in Creswell's account to buy another 100,000 shares of FRE at the market price. Maxim executed this order at \$28.99 per share. The price of FRE continued to decline, and at 9:25 a.m. Vianna entered another order in Creswell's account to buy 100,000 shares of FRE, which was executed at \$27.07 per share. Minutes later, Vianna accessed Maxim's order entry system and reallocated Creswell's purchases of 100,000 FRE at \$30.80 and 100,000 FRE at \$28.99 to Customer A's account and reallocated Customer A's sale of 100,000 FRE at \$30.80 to Creswell's account. The net result of these trades was that Creswell sold 100,000 shares of FRE at \$30.80 and bought 100,000 shares of FRE at \$27.07 for a profit of over \$367,000. Customer A bought 200,000 shares of FRE at above the then current market price.

25. Another example is Vianna's entry, on March 3, 2008, at 9:33 a.m., of a market order in Creswell's account to buy 30,000 shares of Apple Inc. ("AAPL") and a market order in Customer A's account to sell 30,000 shares of AAPL. Both orders were executed at \$125.37 per share. The market price of AAPL declined, resulting in unrealized losses for Creswell. At 9:46 a.m., Creswell purchased 30,000 shares of AAPL in its account at another broker-dealer for

\$123.68 per share. Within minutes of Creswell's purchase at the other broker dealer, Vianna accessed Maxim's order management system and reallocated Creswell's purchase of 30,000 AAPL at \$125.37 to Customer A and reallocated Customer A's sale of 30,000 AAPL at that price to Creswell. The net result of these trades was that Creswell bought 30,000 shares of AAPL at \$123.68 and sold 30,000 shares at \$125.37, for a profit of over \$45,000. Customer A purchased 30,000 shares of AAPL at \$125.37, above the then current market price.

26. The pattern repeated itself until March 2008, when Employee A was terminated by Customer A.

27. In 29 of the 57 instances in which Vianna entered corresponding orders for the Customer A and Creswell accounts, the market moved so that Creswell's original trade was profitable and Customer A's original trade was unprofitable. In each such instance, Vianna allowed the orders to remain as they originally had been entered.

28. Vianna entered the corresponding orders in the Creswell and Customer A accounts with the intention of misusing his access to Maxim's order management system to switch the account allocations for the original orders when the market moved against Creswell and in favor of Customer A. Vianna's purpose was to transfer all trading risk from Creswell to Customer A, so that Creswell would profit no matter which way the market moved.

29. Creswell's corresponding trades with Customer A generated net profits of over \$3.3 million for Creswell.

30. Vianna received ill-gotten gains through the fraudulent scheme, including at least \$125,000 in commissions paid to him with respect to the corresponding trades in the Customer A

and Creswell accounts.

FIRST CLAIM FOR RELIEF

**Violations of Section 17(a) of the Securities Act
(Vianna)**

31. The Commission realleges and incorporates paragraphs 1 through 30 by reference as if fully set forth herein.

32. The shares of common stock traded in the Creswell and Customer A accounts are securities within the meaning of Section 2(1) of the Securities Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10).

33. Vianna, directly or indirectly, singly or in concert, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce, or by the use of the mails, (a) has employed, is employing, or is about to employ, devices, schemes, or artifices to defraud; (b) has obtained money or property by means of, or has otherwise made untrue statements of material fact, or has omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) has engaged, is engaging, or is about to engage in transactions, practices, or courses of business which operate, operated, or would operate as a fraud or deceit upon the purchasers of securities.

34. By reason of the foregoing, Vianna, singly or in concert, directly or indirectly, has violated, is violating, and unless enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 (Vianna)

35. Paragraphs 1 through 34 are hereby realleged and incorporated by reference.
36. Vianna, directly and indirectly, singly or in concert, knowingly or recklessly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange: (a) has employed, is employing, or is about to employ, devices, schemes, or artifices to defraud; (b) has made, is making, or is about to make untrue statements of material fact, or has omitted, is omitting, or is about to omit to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) has engaged, is engaging, or is about to engage in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon other persons.
37. By reason of the foregoing, Vianna, directly or indirectly, singly or in concert, has violated, is violating, and unless enjoined will again violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5.

THIRD CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 17(a) of the Exchange Act and Rule 17a-3 (Vianna)

38. Paragraphs 1 through 37 are hereby realleged and incorporated by reference.
39. Among other things, Vianna altered information in Maxim's order management

system so that Maxim's records incorrectly identified the customers placing the corresponding orders described above. Accordingly, Vianna caused and knowingly provided substantial assistance to Maxim's violations of Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rule 17a-3 thereunder, 17 C.F.R. § 240.17a-3, which required Maxim to make and keep current, among other things, "an itemized daily record of all purchases and sales of securities" which shows "the account for which each such transaction was effected" (Rule 17a-3(a)(1)) and a "memorandum of each brokerage order" including "the account for which entered." (Rule 17a-3(a)(6)).

40. By reason of the foregoing and Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Vianna aided and abetted the violation of, and unless enjoined will continue to aid and abet the violation of, Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rule 17a-3 thereunder, 17 C.F.R. § 240.17a-3.

FOURTH CLAIM FOR RELIEF

Equitable Relief – Unjust Enrichment (Creswell)

41. Paragraphs 1 through 40 are hereby realleged and incorporated by reference.
42. Creswell received, directly or indirectly, funds which are the proceeds of the unlawful activities alleged herein and to which it has no legitimate claim.
43. Creswell obtained the funds as part of and in furtherance of the securities violations alleged herein and under circumstances in which it is not just, equitable, or conscionable for it to retain the funds, and accordingly, Creswell has been unjustly enriched by

ill-gotten gains.

44. The Commission is entitled to an order requiring Creswell to disgorge these funds plus prejudgment interest thereon.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enter a Final Judgment permanently restraining and enjoining Vianna from violating Section 17(a) of the Securities Act, 15 U.S.C. §77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. §§ 78j(b), and Rules 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and from aiding and abetting violations of Section 17(a) of the Exchange Act, 15 U.S.C. § 78q(a), and Rule 17a-3 thereunder, 17 C.F.R. § 240.17a-3

II.

Enter a Final Judgment ordering Vianna and Creswell to disgorge their ill-gotten gains, plus prejudgment interest thereon and enter an order freezing Creswell's assets during the pendency of this action to preserve those assets for ultimate disgorgement;

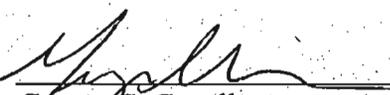
III.

Enter a Final Judgment imposing civil money penalties upon Vianna pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

IV.

Grant such other and further relief as the Court may deem just and proper.

Dated: March 8, 2010
New York, New York

By: 

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