

Spatt Tomlinson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.

★ DEC 04 2006 ★

LONG ISLAND OFFICE

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

CHINA ENERGY SAVINGS TECHNOLOGY, INC.,
NEW SOLOMON CONSULTANTS, CHIU WING
CHIU, LAI FUN SIM a/k/a Stella Sim, SUN LI, JUN
TANG ZHAO,

DEFENDANTS,

and

AMICORP DEVELOPMENT LIMITED, ESSENCE
CITY LIMITED, PRECISE POWER HOLDINGS
LIMITED, YAN HONG ZHAO, AI QUN ZHONG,
TUNG TSANG,

RELIEF DEFENDANTS.

Case No.

CV - 06 6402

SPATT, J.

TOMLINSON, M

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges as

follows:

SUMMARY

1. This case involves the illegal sale and price manipulation of the common stock of China Energy Savings Technology, Inc. ("China Energy" or the "Company") in violation of the federal securities laws of the United States. The scheme, commonly known as a "pump and dump," was orchestrated by Chiu Wing Chiu ("Chiu"), Lai Fun Sim

(“Sim”), Sun Li (“Sun Li”) and Jun Tang Zhao (“J. Zhao”) (collectively, “Individual Defendants”), and others acting in concert with them. Defendant New Solomon Consultants (“New Solomon”) is the majority shareholder of China Energy and is controlled by Chiu, its sole director. Defendants China Energy and New Solomon, in concert with, and acting through and by the Individual Defendants, their officers, consultants and inside shareholders, engaged in a scheme and artifice to defraud investors in the capital markets of the United States by obtaining a listing of China Energy’s stock on the Nasdaq National Market System (“NMS”) based on false and misleading information; causing the price of China Energy’s stock to increase artificially through nominee transactions and through the dissemination to investors and the public of false and misleading material information about China Energy; and selling into the United States capital markets at artificially inflated prices millions of shares of China Energy stock, which the Individual Defendants and other insiders had acquired at little or no cost. No registration statement was filed or in effect for the Defendants’ transactions involving China Energy shares. The Individual Defendants and others acting in concert with them realized in excess of \$25,000,000.00 from this scheme.

2. The Individual Defendants, China Energy and New Solomon (collectively “Defendants”), in concert with others not named in this Complaint, utilized straw parties and nominees to mask Chiu’s control of China Energy and New Solomon and to conceal Defendants’ illegal trading in China Energy shares.

3. By virtue of this conduct, Defendants violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Section 5 (a) and (c) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77e(a) and (c)] and unless enjoined, will continue to engage in transactions, acts, practices, and courses of business similar to those alleged in this Complaint.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to authority conferred by Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)] seeking permanently to enjoin the Defendants from engaging in the wrongful conduct alleged in this Complaint and seeking a temporary restraining order and preliminary injunction freezing assets, and ancillary relief. The Commission also seeks a final judgment ordering Defendants to pay disgorgement, civil money penalties and other relief pursuant to Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)].

5. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 77u(e) and 78aa]. Defendants, directly or indirectly, singly or in concert, have made use of the means or instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

6. Venue lies in this district pursuant to 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 within the Eastern District of New York.

DEFENDANTS

7. Defendant China Energy is a corporation formed under the laws of the State of Nevada and during the relevant period had its principal place of business in Hong Kong.

8. Defendant New Solomon is a corporation formed under the laws of the British Virgin Islands and during the relevant period had its principal place of business in Hong Kong.

9. Defendant Chiu, age 45, is a resident of Hong Kong or the People's Republic of China. During the relevant period, Defendant Chiu exercised control over New Solomon and China Energy.

10. Defendant Sim, age 38, is a resident of Hong Kong. During the relevant period, Sim was Corporate Secretary and a Director of China Energy.

11. Defendant Sun Li, age 35, is a resident of Hong Kong or the People's Republic of China. During the relevant time period, Sun Li acted as a straw party for Chiu and was identified as Chief Executive Officer of China Energy and as having a controlling interest in New Solomon.

12. Defendant J. Zhao, age 42, is a resident of Hong Kong. During the relevant time period, J. Zhao was identified as the president and sole director of Precise Power. At times relevant to this Complaint, J. Zhao was purportedly an employee of China Energy. Upon information and belief, J. Zhao is a relative of Chiu.

RELIEF DEFENDANTS

13. Amicorp Development Ltd. ("Amicorp") is a British Virgin Island company located in Hong Kong. During the relevant period, Amicorp was named owner of brokerage account number XXXX-9669 at Capital Growth Financial LLC ("the Amicorp Account"). Defendants used the Amicorp Account in furtherance of their scheme to defraud and proceeds of the Defendants' fraud are in the Amicorp Account.

14. Essence City Ltd. ("Essence City") is a British Virgin Island company located in Hong Kong. During the relevant period, Essence City was the named owner of brokerage account number XXXX-1282 at Capital Growth Financial LLC ("the Essence City Account"). Defendants used the Essence City Account in furtherance of their scheme to defraud and proceeds of the Defendants' fraud are in the Essence City Account.

15. Precise Power Holdings Ltd. ("Precise Power") is a British Virgin Island company located in Hong Kong. During the relevant period, Precise Power was the

named owner of brokerage account number XXXX-5005 at Capital Growth Financial LLC (“the Precise Power Account”). Defendants used the Precise Power Account in furtherance of their scheme to defraud and proceeds of the Defendants’ fraud are in the Precise Power Account.

16. Yan Hong Zhao (“Y. Zhao”), age 45, is a resident of Hong Kong or the People’s Republic of China. During the relevant period, Y. Zhao was Defendant Chiu’s nominee and maintained brokerage account number XXXX-9299 at Capital Growth Financial LCC (“Y. Zhao Account”). At times relevant to this Complaint, Y. Zhao was an employee and director of China Energy. Defendants used the Y. Zhao Account in furtherance of their scheme to defraud and proceeds of the Defendants’ fraud are in the Y. Zhao Account.

17. Ai Qun Zhong (“Zhong”), age 35, is a resident of the People’s Republic of China. During the relevant period, Zhong was Defendant Chiu’s nominee and maintained the Amicorp Account.

18. Tung Tsang (“Tsang”), age 45, is a resident of Hong Kong. During the relevant period, Tung was Defendant Chiu’s nominee and maintained the Essence City Account.

FACTUAL ALLEGATIONS

Chiu’s Formation and Control of China Energy and the Starway Transactions

19. In 2004, the Individual Defendants initiated an elaborate series of transactions designed to enable Chiu and others associated with Chiu to: (a) acquire tens of millions of shares of a public company; (b) manipulate its stock price through fraudulent devices including materially misleading press releases and public filings, insider stock transactions, and share giveaways; and (c) sell shares at artificially inflated prices. Through straw parties and nominees, Chiu, Sim, and J. Zhao concealed Chiu’s conduct and self-dealing.

20. The first step in the scheme was to acquire a public company. In June 2004, Chiu and Sim, through a straw party and in concert with others not named in this Complaint, acquired Rim Holdings, Inc. ("Rim"), a Nevada shell corporation. In August 2004, Rim was renamed China Energy. In addition to using a straw party in the acquisition of Rim to conceal Chiu's involvement in the transaction, Chiu designated Sun Li to be the Chief Executive Officer of China Energy and Sim to be its Corporate Secretary and a member of its Board of Directors. Sun Li and Sim played their respective roles for Chiu, which included signing China Energy's public filings and communicating with the public on material events involving China Energy.

21. Between June 2004 and July 2005, through self-dealing among entities and individuals controlled by Chiu, Chiu and Sim orchestrated China Energy's acquisition of a British Virgin Island holding company named Starway Management Limited ("Starway" and the "Starway Transactions") and Starway's sole purported asset, a Chinese company which manufactures and markets energy related products. The purpose of the Starway Transactions was to transfer tens of millions of shares of China Energy stock to Chiu's control without revealing Chiu's identity. At Chiu's direction, and with Sim's assistance, China Energy gave Chiu-controlled entities over 22 million shares worth approximately \$250 million for an asset China Energy valued on its corporate books at no more than \$20 million. In turn, a Chiu-controlled entity assigned 600,000 of these shares to Essence City; 544,477 of the shares to Y. Zhao; 340,293 shares to an individual who subsequently transferred them to Amicorp; and, 100,000 shares to an entity that subsequently transferred them to Precise Power.

22. The Starway transactions resulted in Chiu's gaining control of more than 65% of China Energy's outstanding common stock.

The Scheme to List China Energy on the Nasdaq National Market System

23. In order for Defendants to maximize profits from their scheme, they fraudulently obtained a listing for China Energy on the Nasdaq National Market System

("NMS"). In order to qualify for a listing on the NMS, a company must have a shareholder base of at least 400 shareholders who each owned 100 or more shares.

24. While the Starway Transactions gave Chiu control of China Energy stock, China Energy did not meet the 400 shareholder-listing requirement because virtually all of its shareholders were insiders or consultants to the Company. Chiu therefore enlisted an individual in the United States ("U.S. Operative") to obtain the names and addresses of individuals to receive 100 shares or more of China Energy stock at no cost. Through this deceptive device of a stock giveaway, Defendants were able to create the appearance of an adequate shareholder base and obtain a listing for China Energy on the Nasdaq NMS.

25. In November 2004, at Chiu's and Sim's direction, the U.S. Operative transferred 40,000 shares of restricted stock he had received from the company into the name of Defendant J. Zhao. These 40,000 shares were then transferred from Zhao to the individuals designated by the U.S. Operative to receive the free shares of China Energy stock. As compensation for promoting China Energy stock and in connection with the offer or sale of China Energy stock, Defendants' U. S. Operative was improperly given 40,000 shares of stock registered pursuant to Form S-8 ("S-8 shares") to replace the 40,000 shares transferred to J. Zhao for the giveaway.

26. On or about December 2, 2004, the Company filed a listing application with Nasdaq to have its stock quoted on the Nasdaq NMS. The application bore the purported signature of Defendant Sun Li as China Energy's Chief Executive Officer. Each of the Defendants knew, or were reckless in not knowing, that Sun Li was acting as a front for Chiu, who controlled China Energy. The Company's application represented that as of November 18, 2004, there were 467 "round lot" shareholders of its stock, when as Defendants knew, or were reckless in not knowing, the shareholder base had been contrived through a stock giveaway and the shareholders were not *bona fide* investors for value.

27. On December 3, 2004, at Chiu's and Sim's direction, the Company issued a press release announcing its Nasdaq NMS application. The press release stated that the Company met all of the listing requirements, which Defendants knew, or were reckless in not knowing, was false. Defendants failed to inform Nasdaq or the public that its shareholder base was not the result of genuine economic interest in the Company, but rather was contrived through a stock giveaway and that the 467 shareholders were not *bona fide* investors for value. Defendants did not disclose, as well, that the U.S. Operative was compensated with Company stock for his role in creating the sham shareholder base.

28. Each of these material misrepresentations and omissions were made in subsequent filings by the Company, including a Form 8-K containing the materially false press release announcing the listing application and subsequent quarterly and annual reports filed with the Commission.

Defendants' First "Pump" of China Energy's Trading Volume and Share Price

29. Between in or about November 24 and December 9, 2004, Chiu, Sim, J. Zhao and others acting at their direction bought and sold shares of China Energy stock using brokerage accounts in J. Zhao's name and the names of nominees and straw parties. The purpose of these transactions was to create the appearance of real market activity in China Energy shares reflecting real economic interest by *bona fide* investors for value. The Defendants' trading of China Energy shares was a contrivance by them to increase artificially the trading volume and price of China Energy stock.

30. The manipulative devices implemented by Chiu, Sim, J. Zhao and others acting with them to pump the price of China Energy's stock succeeded. Between November 24 and December 9, 2004, China Energy's share price rose on increased volume from \$12 to its all-time high of \$28 a share. During this fifteen day period, the Defendants' trading represented an average 56% of the buy side volume. During the first ten days of the pump, the Defendants' buying activity represented 70% of the volume,

and on three days during the period, the Defendants accounted for 90% of the buy side volume in the stock. During this same period, the Defendants submitted China Energy's listing application to Nasdaq and issued public statements in the form of press releases and public filings with the Commission that misrepresented that application. These misrepresentations regarding the Nasdaq listing application falsely gave added veracity to the bogus trading activity.

31. Having succeeded at increasing the trading volume and price of China Energy shares, Chiu, New Solomon, J. Zhao and other insiders working with them began selling their shares at the artificially inflated prices. Chiu traded his shares through brokerage accounts created in the names of straw parties and nominees to conceal his identity. On two days in December alone, Chiu-controlled accounts sold approximately 80,000 shares totaling approximately \$1.2 million in proceeds.

The One-for One Stock Promotion

32. In the spring of 2005 and again in the fall of 2005, Chiu and Sim, acting in concert with others, implemented another manipulative device to pump the trading volume and price of China Energy shares. This manipulative device involved giving one share of restricted China Energy stock for every share of China Energy purchased by an investor on the open market. By this device, the Defendants "primed the pump" to create the false impression of real economic interest by *bona fide* investors for value.

33. To implement this one-for one giveaway, Chiu and Sim instructed their U.S. Operative to communicate the one-for-one offer to numerous existing shareholders, including many who had received free shares in the Nasdaq-listing giveaway scheme. As a result, the shareholders purchased shares on the open market and were given one restricted share for every purchased share.

34. The Defendants did not disclose this one-for-one giveaway to the public in any press release or filing with the Commission.

Defendants Improperly Issued Millions of Form S-8 Shares to Persons Acting in Concert With Them

35. A public company such as China Energy is permitted to register shares pursuant to Form S-8 for issuance to employees or to consultants who provide *bona fide* services to it. Companies are prohibited from using Form S-8 stock as compensation for capital-raising or stock promotion activities.

36. China Energy, at the direction of Chiu and Sim, issued hundreds of thousands of S-8 shares to entities and individuals who did not render *bona fide services* to China Energy. In 2004 and 2005, China Energy, at the direction of Chiu and Sim, issued more than 700,000 S-8 shares to entities and individuals controlled by Chiu or the other Defendants, including, on September 21, 2004, 150,000 shares to J. Zhao, 140,000 shares to Y. Zhao, and 230,000 shares to an entity controlled by Chiu. These entities and individuals did not provide *bona fide services* to China Energy and therefore were not entitled to receive S-8 stock. All of the entities and individuals sold the S-8 stock into the U.S. market shortly after they received it, reaping millions of dollars in profits.

37. At Chiu's and Sim's direction, China Energy also issued tens of thousands of S-8 shares during the same period as compensation to Defendants' U.S. Operative and others who participated in the fraudulent scheme to manipulate the price of China Energy stock. These S-8 shares were issued in connection with the purchase or sale of securities, the raising of capital and promotion of China Energy stock and not for lawful purposes.

Defendants Sell Millions of Shares of China Energy Stock On the U.S. Market and Reap the Proceeds of Their Fraud

38. Defendants and others acting in concert with them sold their shares into the U.S. market at the artificially inflated prices created by their fraud, enabling Defendants and others working with them to reap tens of millions of dollars in proceeds from their manipulative devices.

39. New Solomon sold 2.3 million shares of China Energy stock, generating proceeds of \$17 million.

40. Although each of the Relief Defendants represented in filings with the Commission that they received their stock as compensation for consulting services to China Energy, in fact they did not receive their stock from China Energy. Instead, their shares came directly or indirectly from an entity controlled by Chiu in connection with the Starway transactions.

41. Throughout the period of the fraud and the period of time relevant to this Complaint, the Relief Defendants sold China Energy shares generating proceeds in excess of \$9.5 million through brokerage accounts Chiu controlled at Capital Growth Financial LLC ("Capital Growth"), a registered broker-dealer having its principal place of business in Boca Raton, Florida. The four Capital Growth accounts were opened and titled in the names of Relief Defendants. The Relief Defendants acted at all relevant times pursuant to the direction and the control of Chiu.

CLAIMS FOR RELIEF

COUNT ONE

**Against Defendants for Fraud in Connection
with the Purchase or Sale of Securities
in Violation of Section 10(b) of the Exchange Act
[15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]**

42. Plaintiff realleges and incorporates herein paragraphs 1 through 41 above.

43. From at least June 2004 through the present, Defendants, directly or indirectly, singly or in concert, have made, and are making, use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of the facilities of the Nasdaq National Market System, in connection with the

purchase or sale of securities issued by China Energy, have knowingly or with recklessness: (a) employed, or are employing devices, schemes, or artifices to defraud; (b) made, or are making untrue statements of material facts or have omitted, or is omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged, or are engaging, in acts, practices, or courses of business which have operated, or are operating as a fraud or deceit upon persons, in connection with the purchase or sale of securities issued by China Energy.

44. By reason of the foregoing, Defendants, directly or indirectly, singly or in concert, have violated, are violating, and unless enjoined, will continue to 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] thereunder.

COUNT TWO

Against Defendants for Violations of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §77e]

45. Plaintiff realleges and incorporates herein paragraphs 1 through 41 above.

46. The China Energy stock that Defendants have offered and sold to the public as alleged herein constitute “securities” as defined in the Securities Act and the Exchange Act.

47. Defendants, directly or indirectly, singly or in concert, have made, and are making, use of the means or instruments of transportation or communication in interstate commerce, or of the mails, to offer and sell securities through the use or medium of a prospectus or otherwise when no exemption from registration was available.

48. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate, Sections 5 (a) and 5 (c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

COUNT THREE

Against Relief Defendants

49. Plaintiff realleges and incorporates herein paragraphs 1 through 41 above.

50. By virtue of the foregoing, Relief Defendants were unjustly enriched through the monies derived as proceeds of the fraud and shares of China Energy stock that they received from the Defendants and for which they did not give adequate consideration. These monies and shares derived directly or indirectly from the illegal conduct of the Defendants.

51. Relief Defendants have control over assets or proceeds directly or indirectly related to the violations of the federal securities laws by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff the Securities and Exchange Commission, respectfully requests that this Court:

- (a) enter a judgment permanently restraining and enjoining Defendants, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder and Sections 5 (a) and 5 (c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)];

- (b) enter a temporary restraining order and an asset freeze against Defendants and Relief Defendants;
- (c) enter an order directing relief defendants to disgorge any ill-gotten gains realized from the conduct alleged herein and to pay any prejudgment interest thereon;
- (d) order Defendants to pay an amount equal to all moneys obtained through the illegal activities described above plus prejudgment interest thereon, and to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u-1];
- (e) order expedited discovery and enter an order preventing the destruction or alteration of documents against Defendants and Relief Defendants;
- (f) as to Defendants Chiu, Sim, Li and J. Zhao, enter officer and director and penny stock bars under Section 21(d) of the Exchange Act and 20(g) of the Securities Act; and
- (g) grant such other relief as this Court deems just and proper.

By: 

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December 4, 2006

Washington, D.C.