

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

FILE

JUN 05 2002

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

vs.)

JOSEPHINE ANNE PAGANO,)

Defendant.)

02-72282

AVERN COHN

MAGISTRATE JUDGE SCHEER

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

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

INTRODUCTION

1. The Commission brings this action to restrain and enjoin Defendant Josephine Anne Pagano ("Pagano") from continuing to violate the antifraud provisions of the federal securities laws. Pagano purchased the publicly traded securities of Florafax International, Inc. ("Florafax") on the basis of material, non-public information regarding merger negotiations between Florafax and Gerald Stevens, Inc. ("Gerald Stevens"), which information she misappropriated from a relative who worked for Florafax. Between December 1, 1998 and December 9, 1998, the date on which Florafax announced after business hours that it had entered into a merger agreement with Gerald Stevens, Pagano bought 9,150 shares of Florafax common stock. The Commission seeks disgorgement of all ill-gotten gains plus prejudgment interest thereon, civil money penalties, and a permanent injunction against further violations of 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.

DEFENDANT

2. **Pagano**, age 53, resides in Grosse Ile, Michigan. Throughout 1998, Pagano was related to a senior executive of Florafax.

JURISDICTION AND VENUE

3. 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), 78u(e) and 78aa.

4. Defendant's acts and practices which constitute violations of the Exchange Act occurred within the Eastern District of Michigan, where Defendant resided during the relevant period.

5. Defendant, directly and indirectly, made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, or the facilities of a national securities exchange, in connection with the acts, practices, and courses of conduct complained of herein.

FACTUAL ALLEGATIONS

6. Before its merger with Gerald Stevens, Florafax was a Florida-based company which primarily generated floral orders and provided floral plant services to retail florists throughout the United States. From May 30, 1997, through May 3, 1999, Florafax's common stock was quoted on the National Association of Securities Dealer's Small Capitalization Market. On December 9, 1998, after the stock markets closed, Florafax announced that it had entered into a merger agreement with Gerald Stevens. In May 1999, Florafax and Gerald Stevens

completed their merger, after which Florafax's common stock was listed under the name Gerald Stevens.

7. Pagano's relative was a high level executive with Florafax at all relevant times. In late October 1998, senior Florafax management informed Pagano's relative that the company was in merger negotiations with Gerald Stevens. Pagano's relative understood that this was material, non-public information, which was to be kept confidential.

8. Over the course of many years, Pagano and her relative developed a relationship of mutual trust and confidence by exchanging information regarding their various business endeavors. As a result, Pagano had a duty to refrain from trading in Florafax common stock based on confidential information she received from her relative.

9. On or before December 1, 1998, Pagano learned of Florafax's merger negotiations from her relative. In breach of her duty to refrain from trading based on this information, and without her relative's knowledge, she began to buy shares of Florafax common stock. Although she had several existing brokerage accounts at the time, Pagano made these purchases at a newly-opened brokerage account under her former married name, Josephine Radakovic. Between December 1, 1998 and December 9, 1998, Pagano bought 9,150 shares of Florafax common stock. She financed her purchases, totaling approximately \$70,000, by obtaining a bank loan and by borrowing money on margin against her pre-existing brokerage accounts.

10. On December 1, 1998, the day Pagano began her purchases, Florafax's stock price closed at \$6 15/16 per share. By December 9, 1998, Florafax's closing price had increased to \$10 5/16 per share, and in the days following the announcement of the merger agreement,

Florafax's stock price settled at a closing price of approximately \$10 per share. Pagano's illicit purchases of Florafax stock earned her an illegal profit of \$20,040.63.

COUNT I

**VIOLATIONS OF SECTION 10(b)
OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER**

11. The Commission realleges and repeats the allegations set forth in Paragraphs 1 through 10 of this Complaint as if fully stated herein.

12. From December 1, 1998 through December 9, 1998, Defendant, directly or indirectly, by use of the means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of securities, as described herein, has willfully, knowingly or recklessly:

- a) employed devices, schemes or artifices to defraud;
- b) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or
- c) engaged in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

13. By reason of the foregoing, Defendant, directly or indirectly, has violated 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.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

Permanent Injunctive Relief

Issue a Permanent Injunction, restraining and enjoining Defendant Pagano, her agents, servants, employees, attorneys, and all persons in active concert or participation with her, from violating 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.

Disgorgement

Issue an Order requiring Defendant Pagano to disgorge all ill-gotten profits or proceeds that she received, directly or indirectly, as a result of the acts and courses of conduct complained of herein, with prejudgment interest.

Penalties

Issue an Order directing Defendant Pagano to pay civil money penalties pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

Further Relief

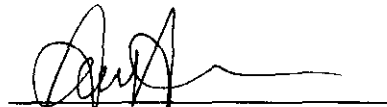
Grant such other and further relief as may be necessary and appropriate.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be

entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,



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June 3, 2002

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