

FILED  
CHARLOTTE, N.C.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
*STAVI* CHARLOTTE DIVISION

SEP 20 2000

U.S. DISTRICT COURT  
W. DIST. OF N.C.

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

DANIEL MARCUS BOYD, III,

Defendant.

CIVIL ACTION NO. 5:00CV144V

COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF

The plaintiff, Securities and Exchange Commission ("Commission"), files its complaint and alleges that:

**OVERVIEW**

1. This case involves unlawful insider trading in the stock of Community Bank & Trust Company ("Community Bank") by Daniel Marcus Boyd III ("Boyd"), the former chairman and chief executive officer of Carolina First Bancshares, Inc. ("Carolina First"). From November 1997 through early March 1998, Boyd purchased Community Bank shares for himself and for members of his family while failing to reveal to the sellers of those shares that as chairman and chief executive officer of Carolina First he was engaged in a series of contacts to urge the management of Community Bank to allow Carolina First to acquire their institution. Boyd misappropriated information about this corporate opportunity from Carolina First and used it to benefit himself and his family.
2. Defendant Boyd has engaged in acts, practices and courses of business which have constituted, constitute and will constitute violations of Section 10(b) of the Securities and Exchange Act of 1934

("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

### JURISDICTION AND VENUE

3. The Commission brings this action pursuant to Sections 21(d) and (e), and 21A of the Exchange Act, as amended, [15 U.S.C. §§ 78u(d) and (e), and 78u-1] to enjoin Boyd from engaging in the acts, practices, and courses of business alleged in this complaint and for other relief.

4. The Court has jurisdiction over this action and venue lies in this district pursuant to Sections 20(b) and 20(c) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(c) and Sections 21(d) and (e), 21A and 27 of the Exchange Act, as amended, [15 U.S.C. §§ 78u(d) and (e), 78a-1 and 78aa].

5. Boyd, directly and indirectly, made use of the means and instrumentalities of transportation and communication in interstate commerce, and of the mails, in connection with the acts, practices, and courses of business alleged herein.

6. Certain of the acts, practices and courses of business alleged herein occurred within this district. Boyd resides in this district.

7. Unless restrained and enjoined by this Court, Boyd will continue to engage in transactions, acts, practices and courses of business as set forth herein, and in transactions, acts, practices and courses of business of similar purport and object.

### DEFENDANT

8. Defendant Boyd, age 62, lives in Lincolnton, North Carolina. During the time of the violations alleged herein, Boyd was the chairman and chief executive officer of Carolina First and was also a member of the North Carolina Banking Commission.

## CAUSE OF ACTION

### **Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5 Thereunder By Boyd In Connection With Trades In The Stock Of Community Bank & Trust Company**

9. As described throughout this complaint, this case involves unlawful insider trading activity in the stock of Community Bank, a bank formerly headquartered in Marion, North Carolina. From November 1997 through early March 1998, Boyd purchased shares of Community Bank stock for himself and members of his family while at the same time conducting discussions with Community Bank officers, which ultimately resulted in the acquisition of that institution by Carolina First.

10. By December 1997, Community Bank had approximately \$95 million in assets, seven offices located in western North Carolina and approximately 1.3 million shares outstanding. Although publicly traded, Community Bank's stock was not listed on any exchange, and there were no market makers for the company.

### BOYD'S ACTIONS TO ACQUIRE COMMUNITY BANK

11. In the fall of 1997, Boyd served as the chairman and chief executive officer of Carolina First. His duties included directing Carolina First's attempts to acquire other banks.

12. In October 1997, a large Community Bank shareholder approached Boyd to try to persuade Boyd to buy his shares in that institution. Boyd declined to buy the shares and instead arranged to meet with Community Bank's chairman.

13. Boyd met with Community Bank's chairman on November 5, 1997. At the meeting, the two discussed the possibility that Carolina First might acquire Community Bank. The two also discussed the organization of the combined institution.

14. On November 17, 1997, Boyd wrote to Community Bank's chairman, telling him that Boyd believed that Community Bank was worth between \$15.50 and \$18.50 per share. Boyd wrote that in the event of an acquisition Community Bank would be entitled to at least two seats on the board of the combined institution. He included an attachment describing how a combination of the two institutions would be organized and showing the benefits of such a combination, including greater value to shareholders.

15. Boyd began visiting Community Bank's branch offices in mid-November 1997. He examined the locations of these offices and those of their competitors.

16. On November 24, 1997, Boyd sent a handwritten letter marked "confidential" to the large Community Bank shareholder giving a timetable for his planned contacts with Community Bank's management. Boyd noted that he had met with Community Bank's chairman and revealed that he had visited Community Bank's branch offices. Boyd then disclosed that in the next two to three weeks, he planned to:

- a. Visit Community Bank's chairman again and reveal that he had purchased stock in Community Bank;
- b. Reveal the extent of his stock purchases and "push the subject hard;"
- c. Show examples of Community Bank's poor financial performance compared with that of its peers "if needed to bring about a sense of urgency;" and
- d. [Make an] "offer."

17. Boyd continued to contact Community Bank's chairman during December 1997. The chairman had learned of Boyd's purchases of Community Bank stock and expressed his displeasure to Boyd about these purchases.

18. In early January 1998, Boyd wrote a letter on his personal stationary to Community Bank's chairman asking for a meeting with the chairman and another Community Bank officer. Boyd requested financial information about Community Bank, including copies of that institution's 1996 annual report, 1997 third quarter report and information about the size of the deposits and loans of each Community Bank branch. Boyd signed this letter as a "shareholder."
19. At this meeting on January 8, 1998, Boyd stated that he intended to propose to Carolina First's board that the bank should merge with Community Bank. He explained how a merger could benefit both banks and stated that he would recommend to Carolina First's board that it offer \$20.50 for each share of Community Bank or 695 shares of Carolina First's stock for each 1000 shares of Community Bank's stock.
20. After informing the directors of Carolina First about his discussions with Community Bank's management, Boyd attended a meeting of the board of directors of Carolina First on January 20, 1998. He told the board that he had purchased some shares of Community Bank on behalf of Carolina First and that he had met with some of Community Bank's officers. Boyd did not reveal that he had purchased Community Bank shares for himself or his family members. Carolina First's board authorized the bank's management to proceed to pursue Community Bank as an acquisition target.
21. In late January 1998, Boyd asked the large Community Bank shareholder to encourage other shareholders to write Community Bank's management to convince them to sell the bank. Boyd wrote to the shareholder, marking his letters as "confidential," to supply information to be passed along to the other shareholders for use in their correspondence to Community Bank's management. This information included notations that Community Bank was performing poorly based on various financial ratios, that an acquisition of Community Bank would provide for greater liquidity and that an exchange of stock would be tax-free while a cash purchase would be taxable.

22. Community Bank's board of directors eventually agreed to allow Carolina First to acquire their institution and executed a letter of intent on April 15, 1998. Carolina First publicly announced the acquisition on the same day. Carolina First's acquisition of Community Bank was consummated on December 23, 1998. Each share of Community Bank's stock was exchanged for .73 shares of Carolina First's stock.

#### **BOYD'S PURCHASES OF COMMUNITY BANK STOCK**

23. Shortly after his meeting with the large Community Bank shareholder described in Paragraph 12 above, Boyd acquired a list of Community Bank shareholders seeking to sell their stock.

24. Boyd began purchasing Community Bank stock in November 1997. He continued to purchase shares while contemporaneously urging Community Bank's chairman to agree to an acquisition by Carolina First, while visiting Community Bank's branch offices, while writing to a Community Bank shareholder of the steps he planned to take, while acquiring financial information on Community Bank and while supplying information for other Community Bank shareholders to use in their letters to pressure the bank's board of directors to agree to an acquisition.

25. Boyd used a standard method when approaching the owners of Community Bank stock. He called them and introduced himself as "Dan Boyd," even though he normally uses "Mark" as his first name. Boyd variously stated that he was in the oil business, owned a restaurant or was retired and that he lived in Lincolnton, Gastonia or Montreat, North Carolina. While these statements were literally true, Boyd omitted to add that he was the chairman and chief executive officer of Carolina First and had contacted officers of Community Bank about a possible acquisition of that institution. He frequently stated that he wanted to buy Community Bank shares for his grandchildren.

26. Boyd usually began his negotiations with the Community Bank shareholders by offering to pay \$8.00 or \$8.50 per share for their shares. These figures were far below the possible purchase price of \$15.50 to \$18.50 per share Boyd mentioned in his first letter to the chairman of Community Bank.
27. After purchasing their Community Bank shares, usually in face-to-face transactions, Boyd had the sellers execute letters of authorization allowing the shares to be transferred into the brokerage accounts of Boyd or his family members as Boyd directed. Boyd then mailed these letters to his brokerage firm or had the selling shareholders do so.
28. Boyd never told any of the selling Community Bank shareholders that he was the chairman and chief executive officer of Carolina First. Likewise, he failed to mention that he had been in contact with Community Bank officials about a possible acquisition of that institution by Carolina First.
29. When one seller stated that he had hoped that Community Bank would be acquired, causing the value of his shares to increase, Boyd said that he had heard from a Community Bank officer that the bank wanted to remain independent. Boyd remained silent when another Community Bank shareholder expressed his disappointment that the institution had not been acquired. As late as January 23, 1998, Boyd expressly denied to a selling shareholder that he possessed any knowledge about Community Bank that the shareholder did not have.
30. Between November 18, 1997, and March 2, 1998, using the methods described above, Boyd purchased a total of 19,299 Community Bank shares from twenty-eight sellers for himself and members of his family. Despite telling many sellers that he wished to purchase shares for his grandchildren, Boyd in fact purchased 14,909 Community Bank shares for himself, 2,000 shares for his wife, 1,240 shares for his son and 1,150 shares for his stepson. Boyd spent \$165,859.50 for the shares he purchased for himself and his family members.

31. Using the conversion ratio given in paragraph 22 for the exchange of Community Bank's stock for that of Carolina First and the December 22, 1998, closing price of Carolina First's stock of \$26.36, the Community Bank shares held by Boyd, his wife, his son and his stepson on that date were worth \$286,890.91, \$38,485.60, \$23,861.07, and \$22,129.22, respectively, for a total of \$371,366.80. Based on the difference between this total and the amount Boyd spent to purchase these shares, he and his family members stood to gain \$205,507.30.

### **THE CRIMINAL CASE AGAINST BOYD AND HIS RESCISSION OFFER**

32. In September 1998, after an investigation by the Securities Division of the North Carolina Department of the Secretary of State, Boyd was indicted on twenty counts of securities fraud by grand juries in three North Carolina counties.

33. On April 19, 1999, Boyd pled guilty to two misdemeanor counts of securities fraud.

34. After his indictment, Boyd made a rescission offer to the Community Bank shareholders from whom he had purchased stock for himself and his family members. The shareholders were made whole by either rescinding the transactions and getting their Community Bank stock returned to them for conversion into Carolina First shares or keeping the funds Boyd paid to them and receiving the difference between those amounts and the conversion value of Community Bank's stock on the acquisition date.

35. Boyd made his purchases of Community Bank stock based on material, nonpublic information that he obtained in violation of his fiduciary duty to Carolina First and its shareholders. Boyd converted an opportunity presented to Carolina First for his own benefit and that of his family members. In addition, Boyd knew, while making his purchases, that Carolina First would make an attempt to acquire Community Bank upon his later recommendation. He failed to tell the selling



Community Bank shareholders this information, and also failed to reveal that he was the chairman and chief executive officer of Carolina First and that he had been in contact with Community Bank's officers about a possible acquisition.

36. By reason of the foregoing, defendant Boyd, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, of the mails, and of the facilities of a national securities exchange, employed devices, schemes and artifices to defraud, made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in transactions, acts, practices or courses of business which operated as a fraud or deceit 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 [7 C.F.R. § 240.10b-5] promulgated thereunder, and unless enjoined will continue to engage in such violations.

37. Defendant Boyd is liable for civil penalties in the amount of his potential gains and those of his family members.

#### **PRAYER FOR RELIEF**

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

#### I.

Make Findings of Fact and Conclusions of Law that the defendant committed the violations alleged in this Complaint.

#### II.

Grant a Final Judgment of Permanent Injunction restraining and enjoining Defendant Boyd, and his agents, servants, employees and attorneys, and those persons in active concert or participation with them, and each of them, who receive actual notice of the order by personal service or

otherwise, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10.b-5] promulgated thereunder;

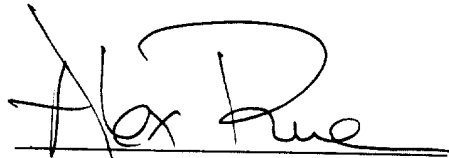
III.

Order Defendant Boyd to pay civil penalties pursuant to the Insider Trading Sanctions Act of 1984 [15 U.S.C. § 78u-1] for the gains he and his family members would have enjoyed but for the rescission offer described above; and

IV.

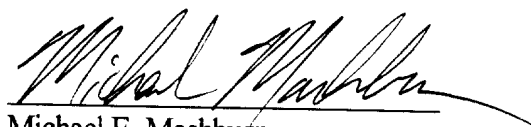
Grant such other relief as this Court may deem just and appropriate.

Respectfully submitted,



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Senior Trial Counsel  
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Dated: September 19, 2000



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