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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

97 CIV. 5853

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AUG 07 1997

U.S. DISTRICT COURT
97 Civ. _____

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

STEVEN H. SCHIFFER,
JOANN R. SCHULZ,
GARY S. KRAMER,
JONATHAN SOLOW,
FRANK J. CANNATA,
PETER G. MINTZ,

Defendants.

COMPLAINT

Plaintiff Securities and Exchange Commission alleges:

SUMMARY

1. This case involves insider trading, market manipulation, false and misleading statements, and sales of unregistered securities through bogus Regulation S transactions relating to Phoenix Laser Systems, Inc. ("Phoenix"), a now-defunct company that

was in the business of developing a laser workstation to perform eye surgery.

2. From May 1992 through August 1992, Steven H. Schiffer (chairman and chief executive officer of Phoenix), Gary S. Kramer (Phoenix's investment relations representative), Jonathan Solow (Phoenix's vice president, secretary, and director), Frank J. Cannata (a stockbroker and consultant to Phoenix), and Peter G. Mintz (a stockbroker), manipulated the price of Phoenix's common stock.

3. From May 1990 to April 1992, Schiffer and Joann R. Schulz (Phoenix's president and chief operating officer) caused Phoenix to make materially false and misleading statements in Commission filings concerning the number of orders for Phoenix's product, the status of its Food and Drug Administration ("FDA") applications, and anticipated revenue from the sale of its product.

4. From January 1991 through July 1993, while in possession of material, nonpublic information concerning the matters about which Phoenix made the false statements described in paragraph 3 above, Schiffer sold approximately 1.5 million shares of Phoenix stock directly for approximately \$4.2 million, and he sold approximately 2 million shares through the purported Regulation S transactions as described below in paragraph 5, for approximately \$11 million, thereby avoiding losses of \$15.2 million. Similarly, between December 1991 and September 1993, while in possession of such material, nonpublic information, Schulz sold a total of

251,050 shares of Phoenix stock for approximately \$626,000, thereby avoiding losses of \$626,000.

5. Between September 1992 and July 1993, Schiffer and Kramer violated the Securities Act of 1933 ("Securities Act") by selling approximately 2 million shares of unregistered Phoenix stock for approximately \$11 million. They disguised these sales as transactions that appeared to, but did not, comply with Regulation S, an exemption from the registration requirements of the Securities Act.

6. As explained more fully below, by engaging in such conduct, the defendants violated the registration and antifraud provisions of the Securities Act and the antifraud and reporting provisions of the Securities Exchange Act of 1934 ("Exchange Act") and are likely to commit such violations again unless the Court enjoins them from doing so.

JURISDICTION

7. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act of 1933 [15 U.S.C. §§77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), 21A, and 27 of the Securities Exchange Act of 1934 [15 U.S.C. §§78u(d), 78u(e), 78u-1, and 78aa].

8. The defendants made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection with the acts, practices, and courses of business alleged herein.

9. The Commission brings this action pursuant to authority

conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§77t(b) and 77t(d)] and Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§78u(d) and 78u-1].

PARTIES

10. Defendant Steven H. Schiffer, 45, lives in Santa Monica, California. He was the chairman of the board and chief executive officer of Phoenix from December 1987 until September 1993. Schiffer was a "controlling person" of Phoenix within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

11. Defendant Joann R. Schulz, 56, lives in St. Petersburg, Florida. She was Phoenix's president and chief operating officer from March 1991 to November 1993. Schulz was a "controlling person" within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

12. Defendant Gary S. Kramer, 59, lives in Miami Beach, Florida. During all relevant times, Phoenix employed him as an investor relations representative.

13. Defendant Jonathan Solow, 50, lives in Miami, Florida. From October 1989 to August 1993, he had various positions at Phoenix, including vice-president, director, and secretary.

14. Defendant Frank J. Cannata, 52, lives in Alpharetta, Georgia. From January 1992 to September 1992, he was associated with registered broker-dealers headquartered in New York, New York. From July 1992 to December 1993, Cannata was employed as a consultant to Phoenix, pursuant to a written agreement which

provided that he would receive thousands of dollars of monthly compensation from Phoenix.

15. Defendant Peter G. Mintz, 39, lives in Mount Vernon, New York. From March 1989 to June 1994, he was associated with a registered broker-dealer, headquartered in New York, New York, as an analyst writing research reports about Phoenix, and as a registered representative, executing orders for customers.

FIRST CLAIM

**Manipulation--Violations of Exchange Act
Sections 9(a)(2) and 10(b) and Rule 10b-5
thereunder by Schiffer, Kramer, Solow, Cannata,
and Mintz**

16. The Commission realleges and incorporates by reference Paragraphs 1 through 15 above.

17. During all relevant times, Phoenix's common stock was registered with the Commission pursuant to Section 12 of the Exchange Act. Phoenix's common stock traded on the Nasdaq Stock Market, Inc. ("the Nasdaq market") from August 11, 1989 to April 29, 1992, when it began trading on the American Stock Exchange ("AMEX"). The AMEX suspended trading in Phoenix's common stock on January 26, 1995.

18. Between May 1992 and August 1992, Schiffer, with the assistance of Kramer, Solow, Cannata and Mintz, manipulated the price of Phoenix common stock to raise and/or stabilize the stock price in order to maximize proceeds from anticipated sales of securities by the company and to counteract the effect of sales of stock by others. To carry out their manipulative scheme:

(a) Schiffer, Kramer, Solow, and Cannata monitored price movements and the size of the bid and ask quotes concerning Phoenix stock on a real time basis.

(b) Schiffer, Kramer, and Solow orchestrated purchases of Phoenix stock, including purchases in nominee accounts funded by Schiffer and Phoenix. Some of these orders were executed by Mintz.

(c) Schiffer, Kramer and Solow also directed stockbrokers, including Cannata and Mintz, to (1) execute intra-day purchases that caused price increases; and (2) engage in "marking-the-close" transactions that often raised the closing prices. "Marking-the-close" refers to the practice of repeatedly executing the last transaction of the day in a security in order to affect its closing price.

(d) Pursuant to directions from Schiffer, Kramer, or Solow, Cannata and Mintz executed purchases of Phoenix stock for their clients' accounts, during the day and often at or near the end of the trading day, in order to increase the price. The end-of-day purchases frequently caused Phoenix's daily closing price to be higher than it would have been in the absence of those trades.

(e) From May 1992 through August 1992, Cannata and Mintz executed at least 25 purchases of Phoenix stock at the close of the market, which increased the closing price over the previous transaction price. Cannata was responsible for 17 such transactions, 15 of which were at the highest price of the day.

Mintz was responsible for 8 such transactions, 3 of which were at the highest price of the day. In addition, they caused at least 48 intra-day price increases.

19. Cannata executed orders that he solicited while he was simultaneously employed by Phoenix and a registered broker-dealer. He did not disclose to the broker-dealer or to his customers that he had entered into an employment agreement with Phoenix at the same time he was recommending Phoenix stock to his customers.

20. Mintz knew or was reckless in not knowing that he was executing manipulative transactions. He executed numerous at-the-close purchases of Phoenix stock in nominee accounts funded by Schiffer and Phoenix at the direction of officers and employees of Phoenix. 80% of these purchases caused upticks in the price of the stock and 30% were at the high price of the day. Subsequently, Mintz received \$30,000 from Phoenix, purportedly for unrelated services, but, in fact, as compensation for his assistance in connection with the manipulation.

21. The series of transactions in Phoenix stock conducted by Schiffer, Kramer, Solow, Cannata, and Mintz was effected for the purpose of, and with the effect of, creating actual or apparent active trading in Phoenix stock, raising the price of Phoenix stock, and maintaining the price at an artificial level for the purpose of inducing the purchase and sale of Phoenix stock.

22. Schiffer's, Kramer's, Solow's, Cannata's, and Mintz's manipulation of the price of Phoenix stock was knowing or reckless and was a device, scheme or artifice to defraud, which operated or

would operate as fraud or deceit on the market for Phoenix stock and in the offer and sale of Phoenix securities.

23. By reason of the foregoing, Schiffer, Kramer, Solow, Cannata, and Mintz violated Sections 9(a)(2) and 10(b) of the Exchange Act [15 U.S.C. §§78i(a)(2) and 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

SECOND CLAIM

False and Misleading Statements--Violations of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 by Schiffer and Schulz

24. The Commission realleges and incorporates by reference Paragraphs 1 through 15 above.

25. Between May 1990 and April 1992, Schiffer and Schulz caused Phoenix to make materially false and misleading statements in filings with the Commission. Specifically, Phoenix's filings overstated its backlog of orders, underestimated the time it would take to fill this backlog, overstated the revenue that it expected to earn from filling the backlog, and misrepresented the status of its FDA applications. Such information was material to investors.

26. Phoenix could not begin clinical tests of its laser workstation until it obtained an Investigational Device Exemption ("IDE") from the FDA. If the FDA issues an IDE, the manufacturer of the device can select a limited number of investigational sites and begin clinical testing.

27. Phoenix filed three applications for IDEs. One was filed in June 1990 and rejected in July 1990. In September 1990, Phoenix filed an amendment to this application and two additional

applications for slightly different procedures. In October 1990, the FDA rejected the amended application and one of the additional applications citing a number of deficiencies. In January 1991, Phoenix withdrew the third application. Phoenix never filed another IDE application or amendment.

28. After these applications were rejected or withdrawn, Phoenix falsely stated in Forms 10K for fiscal years 1990, 1991, and 1992 that the applications were still pending. In the 1990 and 1991 Forms 10K, it stated that it expected to be authorized to sell workstations when the applications were approved. Phoenix never disclosed the rejection of two of its IDE applications or the subsequent withdrawal of the third.

29. Phoenix's Form 10-K for the fiscal year ended December 31, 1989 (filed May 1990) reported that the company had orders for 30 workstations valued at approximately \$3.9 million and stated that the orders would be filled in 18 months. A Registration Statement that was declared effective on June 22, 1990, also reported that the company had orders for 31 workstations and that it would fill these orders within 12 months of completion of its offering. In fact, at the time of these filings, Phoenix had only 18 orders and, in a best case scenario, would have been able to ship only fourteen workstations valued at \$1.75 million within the time claimed.

30. In a Registration Statement that was declared effective on May 14, 1991, and in its Forms 10-K for the fiscal years ended December 31, 1990 and 1991 (filed in April 1991 and 1992, respectively), Phoenix reported having orders for 48 workstations and

indicated that it would fill these orders within 18 months. In fact, it had received only 25 orders at the time of these filings and, in a best case scenario, it would have been able to ship only 19 workstations within 18 months. Moreover, as noted above, no IDE applications were even pending at the time that the 1990 and 1991 Forms 10-K were filed.

31. Schulz was intimately familiar with the FDA application process and the status of Phoenix's applications. In performing her duties, Schulz supervised researchers at Phoenix who conducted or oversaw product tests required for obtaining FDA approval for its laser workstation.

32. In her capacity as president and director of Phoenix, Schulz signed Phoenix's May 1991 Registration Statement and Forms 10-K for the fiscal years ended December 31, 1990, 1991, and 1992, which she knew or was reckless in not knowing contained the materially false and misleading statements described above.

33. In his capacity as president, chief executive officer, chief financial officer, and chairman the board of Phoenix, Schiffer was a "hands on" manager who was intimately familiar with the operations of the company including the status of product development. He signed Phoenix's June 1990 and May 1991 Registration Statements and Phoenix's Forms 10-K for the fiscal years ended December 31, 1989, 1990, and 1991, which he knew or was reckless in not knowing contained the materially false and misleading statements described above.

34. By reason of the foregoing, Schiffer and Schulz violated 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 Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

THIRD CLAIM

False and Misleading Statements--Violations of Exchange Act Section 13(a) and Rule 13a-1 by Schulz and Schiffer

35. The Commission realleges and incorporates by reference Paragraphs 24 through 34 above.

36. Schiffer and Schulz, as controlling persons of Phoenix within the meaning of Section 20(a) of the Exchange Act, violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder by filing with the Commission materially false statements in periodic reports on Forms 10-K.

37. By reason of the foregoing Schiffer and Schulz, violated Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 13a-1, thereunder [17 C.F.R. §240.13a-1].

FOURTH CLAIM

Bogus Regulation S Transactions--Violations of Securities Act Sections 5(a) and 5(c) by Schiffer and Kramer

38. The Commission realleges and incorporates by reference Paragraphs 1 through 15 above.

39. Between September 1992 and March 1993, Schiffer caused Phoenix to issue 2,050,000 unregistered shares of common stock in the names of three entities: Atlantic Ventures, Inc., N.V., Breadth Investment, N.V., and Metrend Ltd. (collectively referred to as "the

purported offshore entities"), which he owned or controlled. These entities were used to create the appearance that the issuance of shares by Phoenix was exempt from the registration requirements of the Securities Act pursuant to Regulation S when, in fact, Schiffer's ownership or control of the purported offshore entities disqualified the transaction from Regulation S treatment.

40. Schiffer and Kramer used the purported offshore entities as a conduit for selling securities into the U.S. market without registration.

41. Between September 1992 and July 1993, Kramer arranged for and negotiated the sale of these shares into the United States market. Specifically, he sold them for approximately \$11 million to institutions or private investors (not broker-dealers), who sold them to other investors in the United States. These sales were neither registered nor exempt from registration.

42. By reason of the foregoing, Schiffer and Kramer violated Section 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and (c)].

FIFTH CLAIM

Insider Trading--Violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Rule 10b-5 thereunder by Schulz and Schiffer

43. The Commission realleges and incorporates by reference Paragraphs 1 through 15 and 24 through 34 above.

44. Between December 1991 and September 1993, Schulz sold 251,050 shares of Phoenix stock while in possession of material, nonpublic information that:

- (a) Phoenix had far fewer orders for its product than claimed in its filings with the Commission;
- (b) its FDA applications had been rejected or withdrawn; and
- (c) there was no reasonable basis for statements the company made concerning anticipated revenue from the sale of its product.

45. Between January 1991 and January 1992, Schiffer sold approximately 1.5 million shares directly, while in possession of such material, nonpublic information.

46. Between September 1992 and July 1993, Schiffer also sold, approximately 2 million shares of Phoenix stock through the purported Regulation S transactions described above in paragraphs 38 through 42, while in possession of material, nonpublic information.

47. By selling Phoenix stock in this manner, Schiffer and Schulz knowingly avoided substantial losses.

48. By reason of the foregoing, Schiffer and Schulz violated Sections 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 Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

PRAYER

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently enjoin Schiffer from violating Sections 9(a)(2), 10(b), and 13(a) of the Exchange Act, Rules 10b-5 and 13a-1 thereunder, and Sections 5(a), 5(c), and 17(a) of the Securities Act;

II.

Permanently enjoin Schulz from violating Sections 10(b) and 13(a) of the Exchange Act, Rules 10b-5 and 13a-1 thereunder, and Section 17(a) of the Securities Act;

III.

Permanently enjoin Kramer from violating Sections 9(a)(2) and 10(b) of the Exchange Act, Rule 10b-5 thereunder, and Sections 5(a) and 5(c) of the Securities Act;

IV.

Permanently enjoin Cannata, Solow, and Mintz from violating Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder;

V.

Enter an Order requiring Schiffer and Kramer to account for and disgorge the profits they realized as a result of their conduct in violation of Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§77e(a) and (c)] as alleged by the Commission herein, and to pay prejudgment interest thereon;

VI.

Order Schiffer and Kramer to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] as a result of their violations of Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§77e(a) and (c)], in an amount to be determined by the Court;

VII.

Order Schiffer and Schulz to disgorge all losses avoided as a result of their sale of Phoenix stock while in possession of

material, nonpublic information, and to pay prejudgment interest thereon;

VIII.

Order Schiffer and Schulz to pay civil penalties pursuant to the Section 21A of the Exchange Act [15 U.S.C. §78u-1] for their losses avoided as a result of their sales of Phoenix stock that occurred within five years of the date of this Complaint;

IX.

Order Cannata to disgorge all funds received from Phoenix while he was associated with a registered broker-dealer and to pay prejudgment interest thereon;

X.

Order Schiffer, Kramer, Solow, Cannata, and Mintz to pay civil penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], as a result of their violations of Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder;

XI.

Order Schiffer, pursuant to Section 20(e) of the Securities Act [15 U.S.C. §77t(e) and Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)], permanently barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l] or that is required to file reports pursuant to section 15(d) of the Exchange Act [15 U.S.C. §78o(d)];

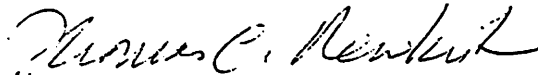
XII.

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

Date: Washington, D.C.

August 7, 1997

Respectfully submitted,



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