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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

SEP 28 1999

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

LAWRENCE BOROWIAK

Defendant,

and

JOANNE BOROWIAK

Relief Defendant.

**MICHAEL W. DUBBINS, CLERK
UNITED STATES DISTRICT COURT**

Civil Action No.

99C 6348

SIMONE WANNING

MAGISTRATE JUDGE KEYS

COMPLAINT

Plaintiff Securities and Exchange Commission ("Plaintiff" or "SEC") for its complaint alleges the following:

SUMMARY

1. Defendant Lawrence Borowiak ("Borowiak") was involved in a scheme to overstate the earnings of Mercury Finance Company ("Mercury") in its periodic reports filed with the SEC and in its press releases from 1995 through January 1997. In addition, while in possession of material, confidential and non-public information concerning Mercury, including information regarding the overstatement of Mercury's earnings, Borowiak traded on inside information by selling 45,018 shares of Mercury stock in his and his wife Joanne Borowiak's brokerage accounts.

2. Borowiak directly or indirectly has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)] and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§78j(b) and 78m(b)(5)] and Rules 10b-5 and 13b2-1 [17 C.F.R. §§240.10b-5 and 240.13b2-1] promulgated thereunder.

3. Plaintiff brings this action to enjoin such acts, practices and courses of business, and for other equitable relief, pursuant to Sections 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Sections 21(d), 21(e) and 21A of the Exchange Act [15 U.S.C. §§78u(d), 78u(e) and 78u-1(a)].

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§78u and 78aa].

5. Defendant will, directly and indirectly, unless enjoined, have the opportunity to engage in the acts, practices and courses of business set forth in this Complaint and in acts, practices and courses of business of similar purport and object.

6. Defendant, directly or indirectly, has made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts and practices alleged herein within this jurisdiction.

DEFENDANT AND RELIEF DEFENDANT

7. At all times relevant herein, Borowiak, who is currently 49 years old, was a resident of Mundelein, Illinois.

8. Borowiak was hired by Mercury Finance Company ("Mercury") in 1984 as a staff accountant. In approximately 1986, Borowiak became the accounting manager for Mercury's accounting department. In 1995, Borowiak was promoted to assistant vice president.

9. From approximately 1990 through the relevant period, Borowiak reported directly to Mercury's Chief Financial Officer and was responsible primarily for combining the home office general ledger with the general ledgers of the branch offices using the financial data on Mercury's mainframe computer system.

10. At all times relevant hereto, Relief Defendant Joanne Borowiak, who is 43 years old, lived in or near Mundelein, Illinois. Relief Defendant Joanne Borowiak is Defendant Borowiak's wife, and has been at all relevant times.

RELATED ENTITY

11. Mercury was incorporated under Delaware law in 1988. During the relevant period, its principal offices were in Lake Forest, Illinois. Mercury was primarily a "sub-prime" lender engaged in extending short-term installment loans directly to consumers and acquiring installment sales finance loans from used automobile dealers and retail vendors.

12. Mercury's common stock was registered with the SEC under Section 12(b) of the Exchange Act [15 U.S.C. §781(b)] and, during the relevant period, traded on the New York Stock Exchange ("NYSE").

13. At all relevant times hereto, Mercury has filed periodic reports with the SEC, pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)].

14. At all relevant times hereto, Mercury released financial information periodically to the public via press releases.

FACTUAL BACKGROUND

15. Mercury maintained a general ledger which reflected Mercury's financial accounts ("General Ledger"). Mercury's General Ledger was the source from which its trial balance, financial statements and other reports were prepared. In addition, Mercury's General Ledger was also the source for the financial information contained in Mercury's periodic reports and press releases.

16. On March 29, 1996, Mercury filed a 1995 10-K with the SEC, including an independent auditor's report, reporting, among other things, that net earnings, for 1995, were \$110,907,000 ("1995 10-K").

17. On November 21, 1996, Mercury filed a Restated 1995 10-K with the SEC, including an independent auditor's report, reporting, among other things, that net earnings, for 1995, were \$98,900,000 ("Restated 1995 10-K").

18. On January 23, 1997, Mercury issued a press release reporting that net earnings for the year ended December 31, 1996 were \$120,700,000 ("January 23 Press Release").

19. On or about January 29, 1997, Mercury issued a press release stating that accounting irregularities had been found, Mercury's Principal Accounting Officer had disappeared and Mercury's net earnings for 1996 were actually \$56,700,000 ("January 29 Press

Release"). The January 29 Press Release also restated Mercury's 1995 net earnings, from the previously reported \$98,900,000, to \$76,900,000.

FALSE 1995 ENTRIES

20. In approximately March 1995, Borowiak made, or caused Mercury's employees to make, a \$3,000,000 entry into Mercury's General Ledger which represented interest earned from customers ("March 1995 Entry").

21. At the time Borowiak caused this entry, he knew, or was reckless in not knowing, that Mercury had not earned the interest underlying the March 1995 Entry.

22. The effect of the March 1995 Entry was to understate Mercury's liabilities and to overstate Mercury's gross income by \$3,000,000.

23. In approximately December 1995, Borowiak created, or caused Mercury's employees to create, a new General Ledger account named "Accounts Receivable-Lyndon."

24. Borowiak then made a series of entries, or instructed Mercury's employees to make a series of entries, amounting to \$31,850,000 into the Accounts Receivable-Lyndon account. At the same time, he instructed Mercury's employees to increase several income accounts by an aggregate of \$25,750,000 and reduce several expense accounts by an aggregate of \$6,100,000 (the "December 1995 Entries").

25. At the time Borowiak entered, or caused the December 1995 Entries, he knew, or was reckless in not knowing, that the December 1995 Entries were inappropriate.

26. The effect of the December 1995 Entries was to overstate Mercury's receivables and earnings by \$31,850,000 during this period.

27. The adjusting entries referred to in Paragraphs 20 and 24, had a net effect of materially overstating Mercury's Net Earnings by approximately \$22,700,000 in the 1995 10-K and Restated 1995 10-K filed with the SEC.

FALSE 1996 ENTRIES RELATED TO THE FALSE 1995 ENTRIES

28. In or about February 1996, when Mercury's independent auditors were conducting the 1995 year-end audit, they questioned the balance in the Accounts Receivable-Lyndon account.

29. Borowiak was instructed by Mercury's CFO "to flush out" the accounts receivable account by reversing the December 1995 Entries.

30. As a result, in approximately March 1996, Borowiak made a series of entries, or caused Mercury's employees to make a series of entries reducing Mercury's accounts payable by a total of \$31,850,000 ("March 1996 Entries").

31. At the time Borowiak entered or caused the March 1996 Entries, he knew, or was reckless in not knowing, that the accounts payable should not have been reduced.

32. In or about October 1996, when Mercury's independent auditors were conducting the 1996 year-end audit, they questioned the balance in one of the accounts payable accounts and Mercury's CFO agreed to have an adjustment made.

33. As a result, in approximately December 1996, Borowiak entered, or caused Mercury's employees to make a \$30,000,000 entry reversing part of the March 1996 Entries in Mercury's accounts payable and increasing the finance receivables ("December 1996 Entry 1").

34. At the time Borowiak entered or caused the December 1996 Entry 1, he knew, or was reckless in not knowing, that the finance receivables should not have been increased.

FALSE 1996 ENTRIES

35. In or about December 1996, Borowiak reclassified, or caused Mercury's employees to reclassify a \$26,000,000 expense, which occurred when loan collateral was sold for less than the value of the loan, as an asset ("December 1996 Entry 2").

36. At the time Borowiak entered or caused the December 1996 Entry 2, he knew, or was reckless in not knowing, that the deficiency balance on collateral sold should not have been an asset.

37. The effect of the December 1996 Entry 2 was to overstate Mercury's assets by \$26,000,000 and concurrently understate expenses by the same amount.

38. The December 1996 Entry 2 materially overstated Mercury's Net Earnings by approximately \$14,000,000 in the January 23 Press Release.

39. Borowiak also generated false reports, which were called "comparison reports" to conceal the true value of the repossession accounts. Borowiak gave those false reports to Mercury's independent auditors.

BOROWIAK'S SALES OF MERCURY STOCK

40. Following Mercury's January 23 Press Release, the price of Mercury's stock rose to \$16 per share, a 52 week high.

41. On or before January 23, 1997, Borowiak knew that Mercury had accounting irregularities which caused Mercury's earnings, as released to the public, for fiscal 1996, to be

overstated. Borowiak knew that the information regarding Mercury's overstatement of earnings was material, confidential and non-public.

42. On or before January 27, 1997, Borowiak knew that Mercury's CFO could not be located during the time that Mercury's independent auditors were performing Mercury's year end audit and were questioning the information released to the public in the January 23 Press Release. Borowiak knew that this information was material, confidential and non-public.

43. On or about January 27, 1997, after learning the information described in Paragraphs 40 and 41 above, Borowiak caused to be sold 45,018 shares of Mercury in his and his wife Joanne Borowiak's brokerage accounts for approximately \$15 per share. The proceeds from the aforementioned sales of Mercury stock went into the same accounts. On January 28, 1997, Mercury stock closed at \$ 14 7/8 per share.

44. Following the January 29 Press Release but before the market opened on January 29, trading in Mercury stock was halted.

45. When trading in Mercury stock resumed on January 31, Mercury stock fell 89%, from its January 28 closing price, to \$ 1 5/8 per share.

46. As a result of Borowiak's sales of Mercury stock on January 27 and 28, 1997, Borowiak and Joanne Borowiak avoided a loss of, and therefore were unjustly enriched by, approximately \$554,000.

COUNT I

Violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder for Insider Trading

47. Paragraphs 1 through 46 are realleged and incorporated by reference herein.

48. On or about January 27 and 28, 1997, Borowiak, in connection with the offer and sale of securities, namely the securities of Mercury, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud, made untrue statements of material facts 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 engaged in acts, practices and courses of business which operated and would operate as a fraud and deceit upon purchasers and prospective purchasers of the securities.

49. While employed by Mercury, Borowiak sold shares of Mercury securities while in possession of material, non-public information regarding Mercury, as described in Paragraphs 1-46 above.

50. Borowiak knew or was reckless in not knowing the facts and circumstances described in Paragraphs 47 through 49 above.

51. As a result of the activities described in Paragraphs 47 through 50 above, Borowiak violated Section 17(a) of the Securities Act [15 U.S.C. §78q(a)] and 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].

COUNT II

**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] promulgated thereunder for
Fraud on the Market**

52. Paragraphs 1 through 46 above are realleged and incorporated by reference herein.

53. From January 1, 1995 through January 23, 1997, Borowiak, in connection with the purchase and sale of securities of Mercury, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud, made untrue statements of material facts 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 engaged in acts and practices which operated as a fraud and deceit upon purchasers and prospective purchasers of the securities by overstating Mercury's net earnings for 1995 and 1996 as more fully set forth in Paragraphs 16 through 39 above.

54. Borowiak knew, or was reckless in not knowing, of the activities described in Paragraphs 52 and 53 above.

55. By reason of Borowiak's acts and practices described in Paragraphs 52 through 54 Borowiak violated 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].

COUNT III

**Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)] and
Rule 13b2-1 [17 C.F.R. §240.13b2-1] under the Exchange Act**

56. Paragraphs 1 through 46 above are realleged and incorporated by reference herein.

57. From January 1, 1995 through January 23, 1997, Borowiak, knowingly circumvented Mercury's system of internal accounting controls and knowingly falsified Mercury's books, records, and accounts required to be maintained under Section 13(b)(2)(A).

58. By reason of Borowiak's acts and practices described in Paragraphs 56 and 57, Borowiak violated Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. §240.13b2-1].

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that this Court:

I.

Find that Borowiak committed the violations alleged above.

II.

Grant a Final Judgment and an Order of Permanent Injunction, Civil Penalties and Other Relief, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining Defendant Lawrence Borowiak and his agents, servants, employees, attorneys, and assigns and those persons in active concert or participation with him, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and Sections 10(b) and 13(b)(5) of the Exchange

Act [15 U.S.C. §§78j(b) and 78m(b)(5)] and Rules 10b-5 and 13b2-1 [17 C.F.R. §§240.10b-5 and 240.13b2-1] promulgated thereunder.

III.

Grant an Order requiring Defendant Lawrence Borowiak and Relief Defendant Joanne Borowiak to pay to the registry of this Court disgorgement of avoided losses plus prejudgment interest.

IV.

Grant an Order requiring Defendant Lawrence Borowiak to pay to the SEC a civil penalty pursuant to Sections 21A and 21(d)(3) of the Exchange Act [15 U.S.C. §§78u-1 and 78u(d)(3)].

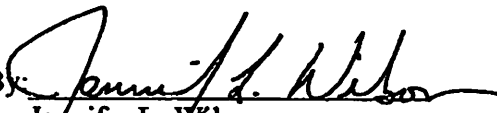
V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant an Order for such further relief as the Court may deem appropriate.

Respectfully submitted,

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