

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

DAVID E. LIPSON,

Defendant.

No. 97-C V-2661  
Hon. Ronald A. Guzman

**DOCKETED**

JAN 12 2000

**ORDER AND FINAL JUDGMENT OF PERMANENT INJUNCTION,  
DISGORGEMENT, PREJUDGMENT INTEREST AND PENALTIES AS TO  
DEFENDANT DAVID E. LIPSON**

This civil action came before the Court on a Complaint filed by the Securities and Exchange Commission ("Commission") alleging that the defendant, David B. Lipson ("Lipson"), committed securities fraud by selling a total of 365,000 shares of Supercuts, Inc. common stock on four occasions in March and April 1995 while he was in possession of material, non-public information that in May 1995 Supercuts would announce disappointing earnings for the first quarter. At the time of these sales, the defendant was the chairman and chief executive officer of Supercuts. The Complaint alleged that the defendant avoided losses of \$621,875, which he would have incurred had he sold the stock after the disappointing earnings news was announced to the public and the price of Supercuts stock fell by 15 percent.

Based on these allegations of insider trading, the Complaint alleged that Mr. Lipson violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

In addition, the Complaint alleged that Mr. Lipson, as an officer, director and holder of more than 10 percent of Supercuts stock, was obliged to report the four insider sales transactions to the Commission, but failed to do so, in violation of Section 16(a) of the Exchange Act [15 U.S.C. §78p(a)] and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. §§ 240.16a-2 and 240.16a-3].

The defendant demanded that the issue of liability on the Secs. 17(a) and 10(b) and Rule 10b-5 allegations be determined by a jury. The parties agreed that liability on the Sec. 16(a) and Rule 16a-2 and 16a-3 reporting allegations should be decided by the Court.

On April 26, 2000, following an 11-day trial, the jury returned a verdict finding the defendant liable for securities fraud with respect to all four sales of Supercuts stock as alleged in the Complaint. Defendant's motion for judgment as a matter of law was orally denied immediately after the verdict was rendered. Thereafter, on May 5th, defendant filed its renewed motion for judgment as a matter of law. That motion, now fully briefed, is hereby denied.

The parties have submitted legal memoranda on the issue of liability on the Sec. 16(a) and Rule 16a-2 and 16a-3 reporting allegations. We find the evidence has established that Mr. Lipson was an officer, director, and a holder of more than 10 percent of Supercuts Inc. stock at the time of the sales. He personally orchestrated, controlled and determined the timing and manner of the four sales of stock in question and personally benefitted from the proceeds of such sales. As such he was required under Section 16 (a) of the Exchange Act [15 USC Section 78 p (a)] to report the four sales transactions through his sons account to the Commission. He failed to do this and thus we find he also violated the reporting requirements under Section 16(a) of the Exchange Act and Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2 and 240.16a-3].

Relief is to be determined by the Court, because it is either equitable in nature (injunction, disgorgement and prejudgment interest) or is the responsibility of the Court pursuant to statute (civil penalties pursuant to Sec. 21A of the Exchange Act, 15 U.S.C. § 78u- 1).

The Court has entered Findings of Fact and Conclusions of Law in support of this Order and Final Judgment, which are incorporated herein by reference. The 'Court finds that the plaintiff has made a proper showing under Sec. 20(a) of the Securities Act [15 U.S.C. § 77t(a)] and Secs. 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and (e)] entitling it to a permanent injunction against Mr. Lipson for violations of the antifraud and reporting statutes as alleged in the Complaint. The Court also finds that the defendant should disgorge the full amount of losses avoided by selling Supercuts stock before public announcement of disappointing earnings, as measured by the difference between the price at which the defendant sold Supercuts stock and the price of Supercuts stock at the close of the markets on May 12, 1995, the day on which the poor earnings were announced. The Court also finds that prejudgment interest should be paid upon the disgorged amount for the period from April 19, 1995, the date of the last of the four stock sales, to and including August 1, 2000, based on the Internal Revenue Service underpayment interest rate, 26 U.S.C. § 6621(a)(2).

Finally, the Court finds that a civil penalty of three times the amount of losses avoided is appropriate in this case given the defendant's high rank and responsibilities to shareholders at Supercuts, the fact that the jury found the law to have been violated on four separate occasions, the failure of the defendant to take responsibility for his actions or to express remorse, the deterrent effect of such a sanction in light of the defendant's wealth and ability to pay, and the absence of any other legal forum in which sanctions are likely to

be imposed.

I

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant David B. Lipson, his agents, servants, employees, attorneys-in-fact and all those persons having active concert and participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §240.10b-5], directly or indirectly, through the use of any means or instrumentality of interstate commerce or of the mails, or of the facilities of a national securities exchange, by:

- (1) employing any device, scheme, or artifice to defraud,
- (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or
- (3) engaging in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit on any person, in connection with the purchase or sale of any security.

**II**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant David B. Lipson, his agents, servants, employees, attorneys-in-fact and all those persons having active concert and participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], directly or indirectly, through the use of any means or instrumentality of transportation or communication in interstate commerce, or use of the mails, to:

- (1) employ any device, scheme, or artifice to defraud;
- (2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

**III**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant David E. Lipson, his agents, servants, employees, attorneys-in-fact, and all those persons having active concert and participation with them who receive notice of this Final

Judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from violating Section 16(a) of the Securities Exchange Act of 1934 [15 U.S.C. § 78p(a)] and Rules 16a-2 and 16a-3 promulgated thereunder [17 C.F. R. §§ 240.16a-2 and 16a-3], directly or indirectly, by:

- (1) with respect to any class of any equity security that is registered pursuant to section 12 of the Securities Exchange Act of 1934 of which Lipson is the beneficial owner of more than 10 per cent of the class or is an officer or director of the issuer, failing to file with the Commission and with any national securities exchange on which such security is registered, within ten days after Lipson becomes such a beneficial owner, officer, or director, a statement on Form 3 [17 C.F.R. § 249.103] of the amount of all equity securities of such issuer of which he is the beneficial owner; or
- (2) with respect to any class of any equity security that is registered pursuant to section 12 of the Securities Exchange Act of 1934 of which Lipson is the beneficial owner of more than 10 per cent of the class or is an officer or director of the issuer, failing to file with the Commission and with any national securities exchange on which such security is registered, within ten days after the close of any calendar month in which there was any change in Lipson's beneficial ownership of such securities, a statement on Form 4 [17 C.F.R. § 104] indicating his ownership of such securities at the close of the calendar month and such changes in his ownership as have occurred during such month.

IV

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant David E. Lipson pay a total of \$2,835,597 consisting of: (a) \$621,875, representing disgorgement of profits predicated on the acts alleged in the complaint, (b) prejudgment interest thereon of \$348,097; and (c) \$1,865,625, representing a penalty pursuant to Section 21A of the Exchange Act predicated on the acts alleged in the Complaint. Payment of \$2,835,597 shall be made within fifteen (10) days of the entry of this FINAL JUDGMENT as described in paragraphs V and VI below.

V

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that payment of \$969,972 of the amount described in paragraph IV, representing disgorgement and prejudgment interest, shall be made into the registry of this Court by certified check or money order to the order of "Clerk, United States District Court, N.D. Ill." within 10 days after receipt of this Final Judgment by counsel for Defendant Lipson, accompanied by a letter explaining that the deposit is made in partial satisfaction of this judgment and identifying the name of the action and the civil action number. At the same time payment is remitted, defendant Lipson shall send a photocopy of his check or money order to the Secretary of the Commission at the following address:

Office of the Secretary  
Securities and Exchange Commission  
450 Fifth Street, N.W.,  
Mail Stop 6-9  
Washington, D.C. 20549-0609

The photocopy shall be accompanied by a letter that identifies Lipson as the defendant in this action, the civil action number assigned to the Complaint, the District Court in which the Complaint and this Final Judgment were filed, and the Commission's internal case number (HO-3146). Copies of all such letters to the Court and to the Secretary of the Commission shall be sent simultaneously to counsel of record for the Commission, James A. Kidney, Esq., Assistant Chief Litigation Counsel, 450 Fifth Street, N.W., Mail Stop 8-8, Washington, D.C. 20549-0808.

**VI**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that payment of the remaining \$1,865,625 of the amount described in paragraph IV, representing payment of a penalty, shall be made to the Comptroller of the Securities and Exchange Commission, who shall forward said amount to the United States Treasury. Defendant Lipson shall make such payment by certified check or money order to the order of "Comptroller, United States Securities and Exchange Commission" within 10 days after receipt of this Final Judgment by counsel for Defendant Lipson, accompanied by a letter explaining that the deposit is made in partial satisfaction of this judgment and identifying Mr. Lipson as the defendant in this action, the civil action number assigned to the Complaint, the District Court in which the Complaint and this Final Judgment were filed, and the Commission's internal case number (HO-3146). Payment shall be sent to the following address:

Office of the Comptroller  
United States Securities and Exchange Commission  
450 Fifth St., N.W.  
Stop 0-3



Washington, D.C. 20549-0303

At the same time payment is remitted, defendant Lipson shall send a photocopy of his check or money order and correspondence to the Secretary of the Commission and to Mr. Kidney at the addresses identified in paragraph V above.

## VII

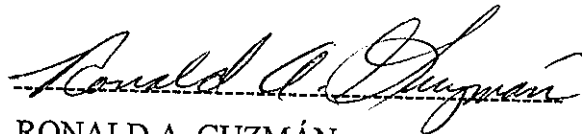
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that upon receipt of any monies paid into the registry of this Court pursuant to Paragraph V above, the Financial Deputy Clerk shall deposit such checks or money orders into an interest bearing account, with interest earned on the money accredited to the account, and such costs and fees as may be incurred deducted from the account as required by the Financial Deputy Clerk. The Commission may prepare and submit a plan of distribution for the Court's consideration. Such plan may provide for the appointment of a Fund Administrator to conserve the funds in the Account and to oversee a Court-approved plan of distribution to persons having valid claims under the federal securities laws arising out of the activities alleged in the Complaint or may call for payment of the funds to the Treasury of the United States. At such time as a Fund Administrator may be appointed, the Clerk of the Court shall transfer the funds from the registry of the Court to the control of the Fund Administrator upon the Administrator's request. Irrespective of the submission of a plan of distribution or appointment of a Fund Administrator, the Commission may move the Court for the appointment of a Tax Accountant to prepare and file appropriate tax returns for the Fund.

VIII

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement of this Final Judgment.

IX

There being no reason for delay, the Clerk of the Court is hereby directed to enter this Final Judgment forthwith.



RONALD A. GUZMÁN  
UNITED STATES DISTRICT JUDGE

Date: 1/11/01