

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION
100 F. STREET N.E.
WASHINGTON, DC 20549,

PLAINTIFF,

v.

STEPHEN H. GUTH,
DEFENDANT.

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Case: 1:12-cv-00842
Assigned To : Walton, Reggie B.
Assign. Date : 5/24/2012
Description: General Civil
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COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY

1. This case involves unlawful trading in the securities of Omrix Biopharmaceuticals, Inc. ("Omrix") by defendant Stephen H. Guth, a former Chief Financial Officer of the company. From June through August of 2008, Johnson & Johnson, Inc. ("J&J") took substantial steps to commence a tender offer for the common stock of Omrix. Between October and November 2008, through communications with the Chief Executive Officer of Omrix, Guth learned that such a transaction was likely.
2. While in possession of that material nonpublic information, Guth purchased Omrix securities. The trading resulted in profits exceeding \$60,000.
3. By engaging in the conduct set forth in this complaint, defendant Guth violated Section 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder.

4. The Commission seeks an injunction against future violations, disgorgement of illicit profits, prejudgment interest thereon, and a civil money penalty pursuant to Section 21A of the Exchange Act.

JURISDICTION

5. The 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].

DEFENDANT

6. Stephen H. Guth, age 59, is a citizen of the United States and resides in the United Kingdom. He is a self-employed consultant. From March of 1996 through 2000, he served as the Chief Financial Officer for Omrix. Prior to joining Omrix, Guth worked as an accountant in the United States and Europe.

RELEVANT ENTITIES

7. Omrix Biopharmaceuticals, Inc. at all relevant times was a Delaware company with its principal offices in New York and operations in Israel and Brussels. Its common stock was registered pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ Global Market.

8. Johnson & Johnson, Inc. is a Delaware company with offices worldwide. On November 24, 2008, J&J announced its intent to acquire the outstanding shares of Omrix common stock through a tender offer at \$25 per share. J&J completed its tender offer acquisition of Omrix on December 20, 2008.

SUBSTANTIAL STEPS TO COMMENCE A TENDER OFFER

9. On June 17, 2008, a special committee of the board of directors for Omrix, (“Special Committee”) selected UBS Securities LLC (“UBS”) as its financial advisor with respect to an inquiry from a group of investors about a possible sale of Omrix.

10. On July 9, 2008, the Special Committee authorized UBS to contact J&J to determine if J&J had an interest in acquiring Omrix.

11. By July 23, 2008, J&J had expressed interest in a potential transaction, had provided Omrix a preliminary due diligence list, and was reviewing Omrix’s proposed nondisclosure agreement.

12. On August 1, 2008, J&J and Omrix executed a Non-Disclosure Agreement, and J&J commenced its formal due diligence review of Omrix.

13. On August 26, 2008, J&J submitted a proposal letter to purchase Omrix for \$25 per share.

OMRIX CEO COMMUNICATES WITH GUTH

14. On October 3, 2008, the Chief Executive Officer of Omrix (who was also an Omrix director) sent Guth an unsolicited e-mail. The e-mail included a list of transactional due diligence questions for Guth to answer, without revealing details about any specific transaction. The questions pertained to Omrix and related to transactions that had occurred while Guth worked for the company.

15. At the time he received the e-mail, Guth knew or had reason to know that that the sender was the Chief Executive Officer and a director of Omrix. He also knew or had reason to know that the information he received from the Chief Executive Officer was nonpublic.

16. Later on October 3, 2008, Guth purchased 1500 shares of Omrix common stock.

17. On October 5, 2008, Guth replied to the e-mail, answering the due diligence questions.
18. On October 10, 2008, Guth purchased an additional 1500 shares of Omrix common stock.
19. Guth continued to have additional communications with the Chief Executive Officer regarding various due diligence questions. On October 20, 2008, Guth purchased an additional 2000 shares of Omrix.
20. On November 14, 2008, the Chief Executive Officer of Omrix sent Guth an additional e-mail string that included J&J counsel's reply to a due diligence question regarding certain assets of Omrix.
21. On November 19, 2008, Guth purchased an additional 2000 shares of Omrix common stock.
22. On November 24, 2008, Omrix and J&J jointly made a public announcement of J&J's tender offer for the common stock of Omrix at \$25 per share.
23. On December 9, 2008, Guth sold all of his Omrix stock, realizing profits in excess of \$60,000.

**CLAIM FOR RELIEF UNDER SECTION 14(e) OF
THE EXCHANGE ACT [15 U.S.C. § 78n(e)]
AND RULE 14e-3 [17 C.F.R. § 240.14e-3]**

24. Paragraphs 1 through 23 are realleged and incorporated herein by reference.
25. Prior to the public announcement of the tender offer for Omrix, and after a substantial step or steps to commence the tender offer had been taken, Guth, while in possession of material information relating to the tender offer, which information he knew or had reason to know was nonpublic and had been acquired directly or indirectly from an officer and director of

the issuer of the securities sought or to be sought by the tender offer, purchased securities of Omrix on the dates alleged above.

26. By reason of the foregoing conduct Guth violated Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

- (a) permanently restrain and enjoin defendant Guth and each of his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice, from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3];
- (b) order defendant Guth to disgorge his illicit profits from the trading alleged herein, plus prejudgment interest thereon; and
- (c) order defendant Guth to pay a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and
- (d) grant such other and further relief as the court deems just and proper.

Dated May 24, 2012

Respectfully submitted,



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