

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

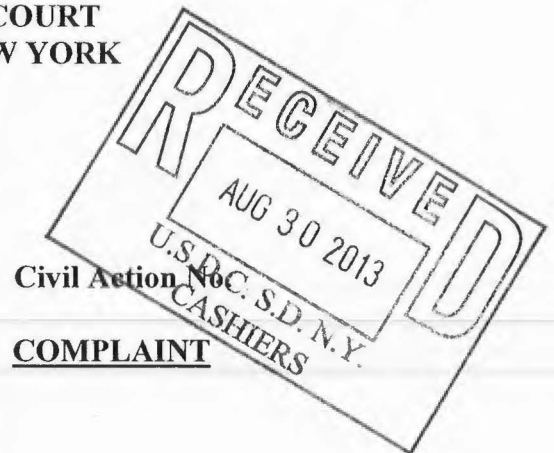
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PHILLIP J. DEZWIREK,

Defendant.



Plaintiff Securities and Exchange Commission alleges:

SUMMARY

1. This matter involves Phillip J. DeZwirek's ("DeZwirek") insider trading in the common stock of CECO Environmental Corp. ("CECO") and API Technologies, Corp. ("API"). At the time of his trading, DeZwirek was each company's Chairman and CEO (he was also API's Treasurer) and was a beneficial owner of more than 10% of each company's equity securities.

2. On four dates in March and October 2008, DeZwirek, while in possession of material non-public information concerning new contract bookings, purchased CECO common stock in the brokerage account of a privately-owned holding company that he controlled days before CECO issued press releases announcing those new contract bookings. DeZwirek's purchases violated CECO's insider trading policy which prohibited company employees from buying or selling company stock while in possession of material nonpublic information about the company. On the day of each press release, CECO's stock price increased almost 10% and 33%, respectively, and, as a result, the value of the stock DeZwirek purchased in March 2008

increased by \$51,785 and the value of the stock he purchased in October 2008 increased by \$44,657.

3. Between October 27 and November 24, 2010, DeZwirek purchased 140,666 shares of API common stock in his personal brokerage account while he was in possession of material nonpublic information that API and a private equity firm ("PE Firm") were actively trying to jointly acquire SenDEC Corp. ("SenDEC"), a privately-held New York corporation. DeZwirek's purchases violated API's Code of Ethics which prohibited company employees from using material nonpublic information for personal advantage.

4. On January 10, 2011, API publicly announced that it acquired all the equity of SenDEC and that API would issue 22 million API shares to PE Firm in exchange for \$30 million. On the day of this announcement, API's stock price increased over 30% from the prior day's close and, as a result, the value of the stock DeZwerik purchased in the preceding two months increased by \$54,836.

5. In addition to his insider trading, DeZwirek also failed to file amended Schedules 13D and Forms 4 and 5 disclosing 268 purchases and sales of CECO and API stock that he executed between 2008 and 2010.

6. The Commission, in the interest of protecting the public from further fraudulent activities, brings this action seeking an order permanently enjoining DeZwirek from further violations of Sections 10(b), 13(d) and 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(d), and 78p(a)] and Rules 10b-5, 13d-2 and 16a-3 thereunder [17 C.F.R. § 240.10b-5, 240.13d-2, and 240.16a-3]. The Commission further seeks an order barring DeZwirek from serving as an officer or director of a publicly traded company under Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] for a period of five (5) years. Finally, the

Commission seeks an order requiring DeZwirek to disgorge his gains from the trades at issue, plus prejudgment interest thereon, and to pay civil monetary penalties.

### **JURISDICTION AND VENUE**

7. The SEC brings this action pursuant to Sections 21(d), 21(e) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3) (A), 78u(e) and 78u-1].

8. This 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) (3) (A), 78u(3) and 78aa].

9. Venue is proper in this District pursuant to Section 27 of the Exchange Act [15 U.S.C. Section 78aa] and 28 U.S.C. Sections 1391(b) and (c), because the stock purchases at issue in this case were transacted on or through the facilities of a national exchange or an electronic inter-dealer quotation system operating in this District.

### **DEFENDANT**

10. **Phillip J. DeZwirek**, 75, is a Canadian citizen who resides in Toronto, Ontario. He was the Chairman of CECO's board of directors from 1979 until May 15, 2013, and was the company's CEO from August 1979 through February 2010. From 2008 through 2010, DeZwirek was also a significant beneficial shareholder of CECO's equity, owning between approximately 14% and 25% of the company's common stock. DeZwirek was API's Chairman from 2006 until January 2011 and the company's CEO from 2006 to 2008, and then again from September 2010 until January 2011. From 2008 to September 2010, he was also API's Treasurer and was the beneficial owner of between 12% and 19% API's common stock

### **OTHER ENTITIES INVOLVED**

11. **CECO Environmental Corp.** is a Delaware corporation whose principal place of business is in Cincinnati, Ohio. CECO's common stock is registered with the Commission

pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ under the ticker symbol CECE.

12. **API Technologies Corp.** is a Delaware corporation whose principal executive offices were in Chicago, Illinois at all relevant times to this matter. At all relevant times, API's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and dually quoted on the OTC Bulletin Board and Pink Quote under the ticker symbol ATNY.

### FACTS

#### **Phillip DeZwirek and CECO Environmental**

13. From as early as 2006, each morning an executive assistant at CECO emailed to DeZwirek an update of all the company's contract bookings from the prior day. DeZwirek was the only person to whom the sales updates were emailed until early 2010.

14. CECO periodically issued press releases announcing the company's new contract bookings. Starting sometime in 2007, CECO began maintaining a log of significant new contract bookings, those valued at \$200,000 or greater, derived from the same daily sales information that had been emailed to DeZwirek. CECO's management used this log to determine when there was a significant amount of new bookings that should be publicly announced via a press release.

15. Once CECO's management determined that a press release should be issued, CECO's president would draft a release and then email it to DeZwirek for his review. When DeZwirek approved the press release and authorized its release, an executive assistant uploaded it to PR Newswire for release.

DeZwirek's March 2008 Trades

16. On March 20, 2008, DeZwirek purchased 10,000 shares of CECO common stock in his holding company's brokerage account at an Ontario broker. On March 24, 2008, DeZwirek purchased an additional 20,000 shares of common stock in the same account. Both of these purchases occurred during CECO's trading blackout period for officers and directors.

17. On March 31, 2008, CECO issued a press release announcing that the company had "booked 33 new orders, each of which has a value of over \$200,000." The release further announced that one of its subsidiary's "China operation booked a significant order just last week" and that company was "in the process of establishing that [Chinese] facility as CECO Filters' manufacturing base in China along the lines of the facility that CECO Filters already has in India." CECO's stock price closed up nearly 10% on the day of this press release was issued.

18. CECO secured thirty of the thirty-three orders referenced in the March 31 press release by March 18. Two additional contracts were secured on March 20 and the final one was secured on March 26, 2008. Thus, when DeZwirek purchased the 10,000 shares on March 20, he had been advised of thirty of the new bookings via the daily sales email summaries. By the time he purchased the 20,000 shares on March 24, he had been advised of thirty-two of the thirty-three new bookings announced in the release.

19. DeZwirek's unrealized gain from his March 2008 CECO stock purchases was \$51,785, calculated by using CECO's closing stock price on March 31, 2008.

DeZwirek's October 2008 Trades

20. On October 8, 2008, DeZwirek was emailed a draft press release announcing that CECO's "September bookings totaled approximately \$22.5 million." DeZwirek was quoted in the release explaining that the company's bookings were "approximately \$5.5 million ahead of

last year's pace," and that the company started October off strong and secured approximately \$6.4 million in new business in the first five business days of the month. CECO's president was quoted in the release as stating that September 2008 was the first time CECO has reached this level of monthly bookings "without a contract in excess of \$3 million. . . We are pleased with the vigorous level of new business opportunities we are experiencing in spite of what is becoming a difficult economy."

21. In addition to the draft press release that was emailed to him on October 8, DeZwirek was advised of all of the sales discussed in the press release via the daily email summaries he received.

22. On October 9, 2008, DeZwirek purchased 20,300 shares of CECO common stock in his holding company's brokerage account, and 8,500 shares in that same account on October 10, 2008. Both of these purchases occurred during CECO's trading blackout period for officers and directors.

23. On October 14, 2008, CECO issued a press release containing essentially the same bookings information and the quotes attributed to DeZwirek and company's president that were in the October 8 draft release, except that the new business for the first five days of October was revised upward to \$7.6 from \$6.4 million. CECO's stock price on October 14 closed up approximately 33% from the prior day's close, indicating that the information contained in the release was material to investors.

24. DeZwirek's unrealized gain for his October 2008 CECO stock purchases was \$44,657, calculated by using CECO's closing stock price on October 14, 2008.

25. DeZwirek's March and October 2008 CECO stock purchases violated the company's insider trading policy which prohibited company employees from buying or selling

company stock while in possession of material nonpublic information about the company. He further violated CECO's insider trading policy from 2008 through 2010 when he failed to preclear over 200 CECO stock transactions and traded company stock on over 100 dates during the company's trading blackout periods.

**Phillip DeZwirek and API Technologies, Corp.**

26. By mid-2010, API began working with PE Firm to identify corporate acquisition targets for API. DeZwirek understood that with the financing that PE Firm would be providing for the potential acquisition, he would be ceding ownership and management control of API if an acquisition occurred.

27. In late July 2010, API and PE Firm entered into a confidentiality agreement to facilitate their exploration of potential business relationships. DeZwirek was advised that API entered into this agreement. API executed the confidentiality agreement with the understanding that PE Firm intended to explore potential opportunities with API. DeZwirek was aware that PE Firm had identified SenDEC as the company it was seeking to acquire and then merge with API.

28. By August 2010, API began conducting due diligence of SenDEC. DeZwirek was aware of API's due diligence efforts.

29. In late September 2010, PE Firm sent a proposed outline of an API-PE Firm-SenDEC transaction setting forth items such as post-transaction board composition, the amount of financing PE Firm would be providing, the satisfaction of the API debt that was used to finance a recent asset purchase, and attaining API's listing on NASDAQ.

30. On October 6, 2010, API and PE Firm entered into a Non-Circumvention Agreement which stated that API would not pursue a transaction concerning SenDEC without

PE Firm's consent. Throughout October 2010, API and PE Firm had continuing discussions about a possible business combination involving API, PE Firm, and SenDEC.

31. On October 11, 2010, two API directors traveled to Rochester, NY, to meet with representatives of PE Firm and SecDEC's management to learn about SenDEC and to discuss API. After this meeting, the API directors thought SenDEC was a good company that would fit well with API.

32. DeZwirek received periodic updates concerning API's progress on reaching an acquisition agreement.

33. On November 15, 2010, an API director emailed DeZwirek telling him that PE Firm expected to send SenDEC a letter of intent between it and PE Firm. The following day, the director emailed DeZwirek a draft letter of intent explaining that he just spoke with PE Firm and reviewed the letter. The director asked for DeZwirek to provide him with his comments about the draft letter of intent. DeZwirek responded to the email asking that the director explain the contents of the letter of intent.

34. The draft letter of intent set forth PE Firm's proposal to purchase all the outstanding equity of SenDEC for \$30 million, plus additional incentive payments for specific achievements after closing. The letter also explained that after the equity firm's acquisition of SenDEC, the latter would be merged into API in all equity transaction for a controlling interest in the newly combined API-SenDEC company, which PR Firm intended to use as the platform for "additional acquisitions in the defense electronics" industry. DeZwirek approved of the transaction structure and understood that he would be ceding equity and management control of API to PE Firm after the transaction closed.



35. On January 9, 2011, API, PE Firm, and SenDEC executed merger agreements, which were publicly announced the next day. Under the terms of the agreement, API acquired 100% of SenDEC's equity and approximately \$30 million in cash, in exchange for the issuance of 22 million API common shares to an affiliate of PE Firm. The merger terms included the provision that API's board and management would be replaced. On January 10, 2011, API's stock price increased over 30% from the prior day's close, indicating that the information contained in the release was material to investors.

36. Between October 27 and November 24, 2010, DeZwirek, in violation of API's Code of Ethics and while in possession of the material non-public information that API and PE Firm were actively pursuing SenDEC, and that he would no longer have ownership or management control of API after the deal closed, purchased a total of 140,666 shares of API common stock in his personal brokerage account. DeZwerik's unrealized gain was \$54,836, calculated by using API's closing stock prices on January 10, 2011, the day the merger was publicly announced.

**DeZwirek and His Holding Company Failed to File Amended Schedules 13D and Forms 4 and 5 Disclosing Their Changes in CECO and API Stock Holdings and Purchases**

37. As a beneficial owner of more than five percent of both CECO's and API's common stock, DeZwirek was required to disclose any material changes in his ownership of the equity securities of these companies. However, from 2008 through 2010 in the case of CECO and in 2010 in the case of API, DeZwirek and his holding company failed to file amendments to their Schedules 13D disclosing their material changes in beneficial ownership of CECO and API stock.

38. As a director, officer, or beneficial owner of more than 10% of CECO's common stock, DeZwirek was also required to disclose any changes in his ownership of CECO and API stock. However, from 2008 through 2010, DeZwirek executed at least 205 CECO and 63 API stock transactions in his and his company's brokerage accounts without filing the required Forms 4 and 5.

**FIRST CLAIM**

**Violation of Section 10(b) of the Exchange Act and Rule 10-5**

39. Plaintiff Commission repeats and incorporates by reference paragraphs 1 through 45 of this Complaint.

40. In violation of his duty to CECO and its shareholders, DeZwirek knowingly or recklessly purchased CECO stock by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange while in possession of material nonpublic information that the company would be issuing press releases announcing new contract bookings.

41. On March 20 and 24, 2008, DeZwirek purchased 10,000 and 20,000 shares of CECO common stock, respectively in his holding company's brokerage account while in possession of material nonpublic information that CECO was going to issue a press release announcing new contract bookings.

42. On March 31, 2008, CECO issued a press release announcing new contract bookings. CECO's stock price on that day closed almost 10% higher than the previous day's close, indicating that the information contained in the press release was material. DeZwirek's unrealized gain from his March 2008 CECO stock purchases, using the company's closing stock price on March 31, 2008 when the company issued the press release, was \$51,785.

43. By reason of the foregoing, defendant has violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

**SECOND CLAIM**  
**Violation of Section 10(b) of the Exchange Act and Rule 10-5**

44. Plaintiff Commission repeats and incorporates by reference paragraphs 1 through 45 of this Complaint.

45. In violation of his duty to CECO and its shareholders, DeZwirek knowingly or recklessly purchased CECO stock by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange while in possession of material nonpublic information that the company would be issuing press releases announcing new contract bookings.

46. On October 9 and 10, 2008, DeZwirek purchased 20,300 and 8,500 shares of CECO common stock, respectively in his holding company's brokerage account while in possession of material nonpublic information that CECO was going to issue a press release announcing new contract bookings.

47. On October 14, 2008, CECO issued a press release announcing new contract bookings. CECO's stock price on that day closed approximately 33% higher than the previous day's close, indicating that the information contained in the press release was material. DeZwirek's unrealized gain from his October 2008 CECO stock purchases, using the company's closing stock price on October 14, 2008 when the company issued the press release, was \$44,657.

48. By reason of the foregoing, defendant has violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

**THIRD CLAIM**  
**Violation of Section 10(b) of the Exchange Act and Rule 10-5**

49. Plaintiff Commission repeats and incorporates by reference paragraphs 1 through 45 of this Complaint.

50. In violation of his duty to API and its shareholders, DeZwirek knowingly or recklessly purchased API stock by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange while in possession of material nonpublic information that API and a private equity firm were actively pursuing SenDEC.

51. Between October 27 and November 24, 2010, however, DeZwirek purchased a total of 140,666 shares of API common stock in his personal brokerage account while in possession of material nonpublic information that API and a private equity firm were actively pursuing SenDEC.

52. On January 10, 2011, API announced the acquisition of SenDEC and API's stock price increased over 30%, indicating that the information contained in the press release was material.

53. DeZwerik's unrealized gain was \$54,836, calculated by using API's closing stock prices on January 10, 2011, the day the acquisition was publicly announced.

54. By reason of the foregoing, defendant has violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

**FOURTH CLAIM**  
**Violations of Section 13(d) of the Exchange Act and Rules 13d-1**

55. Plaintiff Commission repeats and incorporates by reference paragraphs 1 through 45 of this Complaint.

56. Section 13(d) of the Exchange Act and Rule 13d-1 thereunder required DeZwirek, a beneficial owner of more than 5% of CECO's and API's common stock registered under Section 12 to file a statement with the Commission containing the information required in Schedule 13D within 10 days of the acquisition of such stock. Rule 13d-2 also required DeZwirek to file an amendment to the Schedule 13D promptly if any material change in his beneficial ownership occurred, including any change of one percent or more.

57. From 2008 through 2010, DeZwirek owned more than 10% of CECO's and API's stock. During this same time period, he executed purchases and sales of CECO and API stock in his and his personal holding company's brokerage accounts that materially increased or decreased his percentage of beneficial ownership of those securities. However, on at least eight (8) occasions, DeZwirek failed to file with the Commission, as required, amended Schedules 13D disclosing his material change in ownership of CECO and API stock.

58. By reason of the foregoing, Defendant violated and, unless enjoined, will continue to violate Section 13(d) of the Exchange Act [15 U.S.C. §78m(d)] and Rules 13d-1 thereunder [17 C.F.R. 240.13d-1, 13d-2].

**FIFTH CLAIM**  
**Violations of Section 16(a) of the Exchange Act and Rule 16a-3**

59. Plaintiff Commission repeats and incorporates by reference paragraphs 1 through 45 of this Complaint.

60. Section 16(a) of the Exchange Act and Rule 16a-3 thereunder required DeZwirek, a beneficial owner of more than 10% of CECO's and API's common stock registered under Section 12, or an officer or director of the issuer of such securities, to file an initial statement of ownership on Form 3 within 10 days of the acquisition such stock, statements of changes in ownership on Form 4 within two business days after the day on which the transaction was executed, and annual statements of ownership on Form 5 within 45 days of year-end.

61. From 2008 through 2010, DeZwirek owned more than 10% of CECO's and API's stock. During this same time period, he executed at least 268 purchases and sales of CECO and API stock in his and his personal holding company's brokerage accounts. However, with respect to all 268 purchases and sales of CECO and API stock, DeZwirek failed to file with the Commission, as required, Forms 4 and 5 disclosing his changes of beneficial ownership of CECO and API stock.

62. By reason of the foregoing, Defendant violated and, unless enjoined, will continue to violate Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 thereunder [17 C.F.R. 240.16a-3].

#### **REQUEST FOR RELIEF**

The Commission respectfully requests that this Court:

##### **I.**

Permanently enjoin Defendant, his agents, servants, employees, attorneys, and those in active concert or participation with Defendant, who receive actual notice by personal service or otherwise, from Sections 10(b), 13(d), and 16(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(d), and 78p(a)] and Rules 10b-5, 13d-2 and 16a-3 thereunder [17 C.F.R. § 240.10b-5, 240.13d-2, and 240.16a-3].

**II.**

Order Defendant to disgorge an amount equal to the funds and benefits he obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount.

**III.**

Order Defendant to pay a civil money penalty pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. § 78u(d) and 78u-1], for his securities law violations.

**IV.**

Bar Defendant from serving as an officer or director of a publicly traded company pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for a period of five (5) years.

**V.**

Order all additional relief to which the Commission may be entitled.

Respectfully submitted,

Dated: August 30, 2013



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