

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

TODD M. LAVELLE

Defendant.

CASE NO.:  
3:18-cv-226-J-20MCR

CLERK: US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DISTRICT

2018 FEB -8 AM 10:52

FILED

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission alleges as follows:

**SUMMARY**

1. This case involves insider trading by Todd LaVelle in the securities of Emeritus Corporation (“Emeritus”) based on material, non-public information, in advance of the February 20, 2014, announcement that Brookdale Senior Living Inc. (“Brookdale”) would acquire Emeritus.

2. At all relevant times, LaVelle served on the board of managers and as the chief executive officer (“CEO”) of In Home Medical Solutions, LLC (“In Home Medical”), a medical products distributor. One of In Home Medical’s largest customers in terms of revenue during the relevant period was a subsidiary of Emeritus (“Emeritus Subsidiary”).

3. Beginning in or about September 2013, Emeritus senior management engaged in highly confidential merger negotiations with Brookdale senior management. In or about late December 2013 or early January 2014, a senior officer of Emeritus Subsidiary, who was aware of the merger negotiations, provided confidential information about the impending merger to In Home Medical's chief operating officer ("COO"). Because the impending merger potentially had significant business implications for In Home Medical, which obtained over thirty percent of its revenue from sales to Emeritus Subsidiary, In Home Medical's COO relayed the news to LaVelle.

4. After learning of the potential merger from In Home Medical's COO, LaVelle purchased Emeritus securities in advance of the merger's public announcement. By purchasing Emeritus securities while aware of material nonpublic information concerning the impending Emeritus merger, LaVelle misappropriated the information and converted it to his personal use and profit, thereby breaching the duties that he owed to In Home Medical.

5. After the merger was publicly announced on February 20, 2014, the price of Emeritus stock increased by over thirty-six percent. LaVelle sold his securities on the day after the announcement, realizing a profit of approximately \$25,342.

6. By engaging in the conduct described above, and as described more fully below, LaVelle violated 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].

7. The Commission requests the Court to enter a final judgment (1) permanently restraining and enjoining LaVelle from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, by engaging in illegal insider trading or tipping, and (2) ordering LaVelle to disgorge his trading profits from trading in Emeritus securities, with prejudgment interest; and (3) ordering LaVelle to pay a civil monetary penalty.

**JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and (e), 78u-1 and 78aa].

9. Venue is proper under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts or transactions constituting the violations occurred in this district. For example, In Home Medical's principal place of business was in Jacksonville, Florida, and, as detailed below, certain relevant calls and meetings took place in this district.

10. In connection with the conduct alleged in this Complaint, LaVelle, directly or indirectly, made use of the means or instruments of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

**DEFENDANT**

11. Defendant Todd LaVelle, 50, resides in Marietta, Georgia, and was at all relevant times the CEO and a board member of In Home Medical.

**RELEVANT ENTITIES**

12. Brookdale Senior Living Inc., an operator of senior living communities, is a Delaware corporation with its headquarters in Brentwood, Tennessee. Brookdale

common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the symbol “BKD.” On July 31, 2014, Brookdale acquired Emeritus pursuant to a merger agreement that was publicly announced on February 20, 2014.

13. Emeritus Corporation, a senior living service provider, was a Washington corporation with its principal place of business in Seattle, Washington. Emeritus’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the New York Stock Exchange under the symbol “ESC.” Emeritus Subsidiary, a home healthcare provider, was an operating unit of Emeritus until Emeritus was acquired by Brookdale on July 31, 2014.

14. In Home Medical Solutions, LLC, a medical product distribution company, was a Delaware limited liability company with its principal place of business in Jacksonville, Florida.

#### **FACTS**

15. Beginning in September 2013, Brookdale and Emeritus executives conducted highly confidential and nonpublic negotiations regarding a potential acquisition of Emeritus by Brookdale. In or around November 2013, a senior officer of Emeritus Subsidiary (“Emeritus Subsidiary Executive”) signed a confidentiality agreement with Emeritus concerning the proposed transaction between Brookdale and Emeritus and was made aware of the highly confidential merger discussions that were under way at that time. On or about December 22, 2013, Emeritus’s board authorized management to negotiate a transaction with Brookdale on an exclusive basis.

16. In late December 2013 or early January 2014, Emeritus Subsidiary Executive told In Home Medical's COO about the impending merger between Emeritus and Brookdale. Because the impending merger potentially had significant business implications for In Home Medical, which obtained over thirty percent of its revenue from sales to Emeritus Subsidiary, In Home Medical's COO relayed the news to LaVelle. In Home Medical's COO believed that, if the merger occurred, Emeritus Subsidiary might expand into new markets and purchase more medical supplies from In Home Medical. In Home Medical's COO asked LaVelle to keep the information confidential and not to purchase Emeritus shares, and LaVelle agreed. Based on information and belief, In Home Medical's COO conveyed this information while in this district.

17. In Home Medical's board often discussed confidential information during its meetings. During at least one call among members of In Home Medical's board in January 2014, the members and In Home Medical's COO discussed the potential business implications for In Home Medical of the potential merger.

18. The information concerning the potential merger was confidential and significant to In Home Medical, and the disclosure or misuse of the information by In Home Medical had the potential to harm In Home Medical's relationship and reputation with Emeritus Subsidiary, which was In Home Medical's largest customer.

19. As a member of In Home Medical's board and as In Home Medical's CEO, LaVelle owed a duty to In Home Medical to maintain the information in confidence and refrain from trading on it.

20. On or about January 20, 2014, based on the information that he had learned about the merger as CEO and board member of In Home Medical, LaVelle placed an order to purchase 3,500 shares of Emeritus stock for approximately \$77,000. LaVelle did not disclose his purchase of Emeritus securities to anyone at In Home Medical.

21. LaVelle knew, or was severely reckless in not knowing, that the information he received from In Home Medical's COO regarding the potential merger was material nonpublic information.

22. LaVelle also knew, or was severely reckless in not knowing, that the information he received from In Home Medical's COO regarding the potential merger was conveyed to him in his capacity as an officer and board member of In Home Medical, was intended to be used to evaluate In Home Medical's future business prospects, was confidential to In Home Medical, and was not intended for him to use for his personal purpose or benefit.

23. In trading based on the material nonpublic information he received about the potential Emeritus merger, LaVelle misappropriated information entrusted to him as CEO and a board member of In Home Medical, thereby breaching his duty to In Home Medical.

24. Due diligence and negotiations between Brookdale and Emeritus continued through February 2014, and culminated in a final merger agreement that Brookdale and Emeritus jointly announced on February 20, 2014.

25. On February 21, 2014, shares in Emeritus began trading approximately thirty-seven percent over the previous day's closing price.

26. On February 21, 2014, LaVelle sold his shares in Emeritus, realizing a profit of approximately \$25,342.

**CLAIMS FOR RELIEF**

**COUNT 1**

**Todd LaVelle Violated Section 10(b) of the Exchange Act  
and Rule 10b-5 Thereunder**

27. The Commission repeats and re-alleges Paragraphs 1 through 26 of the Complaint.

28. Defendant engaged in an illegal insider trading scheme in which, in breach of a fiduciary duty and duties of trust or confidence that he owed to In Home Medical and its members, he knowingly, or with severe recklessness, misappropriated material, nonpublic information and used it to purchase and sell securities.

29. By engaging in the conduct described above, Defendant, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of securities, as described herein, knowingly, willfully, or with severe recklessness: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

30. By reason of the foregoing, Defendant, directly or indirectly violated, and, unless enjoined, is reasonably likely to continue to violate, 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] thereunder, by engaging in illegal insider trading or tipping.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests a final judgment:

- A. Finding that Defendant violated the antifraud provisions of the federal securities laws as alleged herein;
- B. Permanently enjoining Defendant from violating, directly or indirectly, 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], by engaging in illegal insider trading or tipping;
- C. Ordering Defendant to disgorge, with prejudgment interest, all illicit trading profits or other ill-gotten gains received as a result of the conduct alleged in this complaint;
- D. Ordering Defendant to pay a civil monetary penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and
- E. Granting such other and further relief as the Court deems just and appropriate.



Dated: February 7, 2018

Of Counsel:

Antonia Chion  
Yuri B. Zelinsky  
Greg Hillson  
Jason Litow

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DM', with a long horizontal flourish extending to the right.

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