

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DAVID A. ZIMLIKI and
RUSSEL P. SCHIEFER,

Defendants.

Civil Action No.

COMPLAINT

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

SUMMARY

1. This matter involves insider trading in the common stock of Golden Enterprises, Inc. ("Golden Enterprises"), formerly a NASDAQ-listed potato chip manufacturer based in Birmingham, Alabama, in advance of the company's July 19, 2016 public announcement that it had executed a merger agreement with Utz Quality Foods, LLC ("Utz") by which Utz would acquire all of the outstanding shares of Golden Enterprises for \$12 per share, which represented a premium of approximately 60-percent over the then market price for Golden Enterprises's stock.
2. Before the public announcement, David A. Zimlik ("Zimlik"), a resident of York, Pennsylvania, misappropriated material nonpublic information concerning the transaction from a close personal friend who was a banker ("Banker") working on related financing for Utz. On the

basis of such information, Zimliki purchased 1,630 shares of Golden Enterprises for an average price of \$6.14 per share.

3. After purchasing Golden Enterprises stock, Zimliki tipped his friend, Defendant Russel P. Schiefer (“Schiefer”), who also was a friend of Banker. On the basis of the information he received from Zimliki, Schiefer purchased 1,333 shares of Golden Enterprises shares for \$7.44 per share the day before the public announcement.

4. Zimliki and Schiefer each sold their Golden Enterprises shares shortly after the transaction was announced, realizing profits of \$9,319 and \$5,877 respectively.

5. By knowingly or recklessly engaging in the conduct described in this complaint, Defendants Zimliki and Schiefer violated, and unless enjoined will continue to violate, Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] to enjoin such acts, transactions, practices, and courses of business and to obtain disgorgement, and such other and further relief as the Court may deem just and appropriate.

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

8. Venue in this district is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Among other things, certain of the acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the Middle District of Pennsylvania. Moreover, Defendants reside within this district.

9. In connection with the conduct alleged in this complaint, Defendants, directly or indirectly, singly or in concert, have made use of the means or instrumentalities of interstate commerce or of the mails, or of the facilities of a national securities exchange.

DEFENDANTS

10. **David A. Zimliki**, age 44, resides in York, Pennsylvania. Zimliki works as a dentist, has never been registered or associated with any entities registered with the Commission.

11. **Russel P. Schiefer**, age 36, resides in York, Pennsylvania. Schiefer is employed as an energy trader in Baltimore, Maryland. Schiefer has never been registered or associated with any entities registered with the Commission.

RELEVANT ENTITIES

12. **Golden Enterprises, Inc.** is a Delaware corporation headquartered in Birmingham, Alabama. Golden Enterprises's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on NASDAQ under the symbol "GLDC" until it filed a Notice of Termination of Registration with the Commission on October 13, 2016.

13. **Utz Quality Foods, LLC** is a privately held snack food company based in Hanover, Pennsylvania.

FACTS

14. In January 2016, Utz's Chief Financial Officer contacted Banker to explore financing options related to a potential business acquisition by Utz. Over the next several months, Banker worked on structuring financing for Utz's contemplated acquisition.

15. In or about May 2016, Banker learned through the financing work he was performing for Utz that Utz was bidding to acquire Golden Enterprises.

16. Over the course of his work related to the Utz-Golden Enterprises transaction, Banker frequently socialized with Zimliki, who was Banker's close friend, neighbor, and the godfather of his daughter.

17. Banker and Zimliki had a history, pattern, and practice of sharing private details about their personal and professional lives and maintaining those confidences. In particular, Banker shared with Zimliki various details about his banking clients and related business transactions, with the expectation that any shared nonpublic information be kept confidential. Zimliki knew that Banker expected him to keep such information confidential including by not trading on it.

18. Zimliki determined from several such in-person conversations with Banker that Utz and Golden Enterprises were involved in a potential transaction along the lines of a merger, acquisition, or buyout.

19. Based on this information that he understood to be nonpublic, on June 14, 2016, Zimliki purchased 1,630 shares of Golden Enterprises stock at prices of \$6.13 and \$6.14 per share.

20. Shortly after purchasing Golden Enterprises stock, Zimliki tipped his friend Schiefer about the transaction. Zimliki told Schiefer that he had recently talked to Banker, and that Banker was working on a deal involving Golden Enterprises. Zimliki further told Schiefer that Golden Enterprises would be a good investment.

21. Schiefer knew Banker and considered him a friend. Schiefer also knew that Zimliki and Banker were close friends and that Utz was Banker's client.

22. On July 18, 2016, based on the information Zimliki shared with him, Schiefer purchased 1,333 shares of Golden Enterprises stock at a price of \$7.44 per share.

23. On July 19, 2016, Golden Enterprises publicly announced that it had executed a merger agreement with Utz by which Utz would acquire all of the outstanding shares of Golden

Enterprises for \$12 per share, which represented a premium of approximately 60-percent over the then market price.

24. On the same day as the public announcement, Schiefer sold all his Golden Enterprises shares, realizing a profit of \$5,877.52

25. The day after the public announcement, Zimliki sold all of his Golden Enterprises shares for a profit of \$9,319.62

CLAIM FOR RELIEF

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] Thereunder

26. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 25, inclusive, as if they were fully set forth herein.

27. By engaging in the conduct described above, Defendants Zimliki and Schiefer, knowingly or recklessly, in the purchase or sale of securities, directly or indirectly, by the use of any means or instrumentalities of interstate commerce, or of the mails or of any facility of any national securities exchange:

- a. Employed devices, schemes or artifices to defraud;
- b. Made untrue statements of material facts or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. Engaged in acts, practices, or courses or business which operated or would operate as a fraud or deceit upon any person.

By engaging in the foregoing conduct, Defendant Zimliki and Schiefer violated, and unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment:

I.

Permanently restraining and enjoining Defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

II.

Ordering Defendants to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint.

III.

Ordering Defendants to pay civil penalties pursuant to Section 21A(a)(2) of the Exchange Act [15 U.S.C. § 78u-1(a)(2)];

IV.

Retaining jurisdiction of this action for purposes of enforcing the Final Judgment and Order.

Respectfully submitted,

Dated: May 4, 2018

s/M Graham Loomis
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