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JUDGE DANIELS

14 CV 5483

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -against- KEVIN MCGRATH, Defendant.	**COMPLAINT** **ECF CASE**

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Kevin McGrath ("McGrath"), alleges as follows:

SUMMARY

1. This case concerns insider trading by defendant McGrath, a partner and account executive at Cameron Associates ("Cameron"), an investor relations firm located in New York, New York. In separate instances, McGrath acquired and traded upon material nonpublic information about Misonix, Inc. ("Misonix") and Clean Diesel Technologies, Inc. ("Clean Diesel"), two Cameron clients for whom McGrath was performing work.

2. On April 7, 2009, McGrath purchased 10,000 shares of Misonix. One month later, on the morning of Thursday, May 7, 2009, McGrath received and edited a draft of a

Misonix press release that was to announce disappointing quarterly financial results for its third quarter ("Earnings Release"). Later that day, McGrath entered an order to sell all of his Misonix shares. McGrath's sell order was executed on Friday, May 8. At mid-day on Monday, May 11, Misonix issued the Earnings Release, which caused the company's stock price to drop by 22 percent by market-close on May 12. By selling his Misonix shares on May 8, McGrath unlawfully avoided losses of $5,400.

3. In May 2011, McGrath received and provided comments to several versions of a press release that was to announce that Clean Diesel had received nearly $2 million in orders for certain of its products (the "May 25 Release"). On Tuesday, May 24, McGrath received an email from a Clean Diesel employee stating that Clean Diesel intended to issue that press release after market-close on Wednesday, May 25. Fourteen minutes after receiving that email, McGrath purchased 1,000 shares of Clean Diesel. The May 25 Release was issued, as scheduled, after market-close on May 25, and caused a 95 percent increase in the company's stock price. McGrath sold his shares in Clean Diesel on May 27, 2011, for unlawful profits of $6,376.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

4. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)]. The Commission seeks:

a) permanent injunctions against McGrath enjoining him from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint;

b) a permanent injunction against McGrath enjoining him from, directly or indirectly, trading in any security of any issuer for whom he, or any firm with which he is associated has, within one year prior to the trade date, performed any investor relations services; provided, however, this injunction shall not prohibit Defendant's firm from (1) receiving shares of such issuers as compensation for services performed, or (2) disposing of shares received as compensation more than one year after the receipt of such shares so long as Defendant's firm provides written notice to the issuer of its intent to dispose of such shares (including the quantity of shares to be sold and the date of the proposed transaction) and, prior to the sale of such shares, receives written authorization of the sale from the management of the issuer;

c) disgorgement of all ill-gotten gains from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest; and

d) civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

Finally, the Commission seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

6. Venue lies in this Court pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1, and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York, and were

effected, directly or indirectly, by making use of means or instrumentalities of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange. McGrath worked in New York, New York at all times relevant to this action. Moreover, many of the communications described herein took place while at least one of the parties to the communication was physically located in New York, New York. Additionally, McGrath used a New York, New York-based firm for placing his trades in the securities of Misonix and Clean Diesel.

DEFENDANT

7. **McGrath,** age 52, resides in Brooklyn, New York. He has been employed at Cameron since 1996. He began, and still continues to function, as an account executive at Cameron. McGrath became a partner of the firm in 2003, and, at all times relevant to the Complaint, was Cameron's only full-time partner. He previously was a partner at an investment advisory firm, and prior to that he worked as a registered representative at two brokerage firms. Before the relevant time period, McGrath held a Series 7 license.

RELEVANT ENTITIES AND INDIVIDUALS

8. **Cameron**, located in New York, New York, is an investor relations firm that primarily services small, publicly traded companies. Cameron had approximately 25 clients at all times relevant to the Complaint, and during and since the time of the relevant conduct, has had approximately ten employees, including several account executives who are each individually responsible for managing clients.

9. **Clean Diesel**, a Delaware corporation headquartered in Ventura, California, is a global manufacturer of emissions and control systems and products. Clean Diesel's common

stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and trades on the NASDAQ under the symbol "CDTI."

10. **Misonix** is a New York corporation headquartered in Farmingdale, New York. Misonix's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and trades on the NASDAQ under the symbol "MSON." Misonix designs, develops, manufactures and markets medical devices and laboratory equipment.

FACTS

INSIDER TRADING IN THE SECURITIES OF MISONIX

11. Misonix became a Cameron client in 2008. In March 2008, Misonix and Cameron entered into a retention agreement containing a confidentiality clause limiting Cameron's use of "any . . . information relating to [Misonix] that is generally not known to the public" to providing investor relations services to Misonix.

12. McGrath performed work on a number of press releases issued by Misonix, and through this work, he regularly received nonpublic information about Misonix.

13. On April 7, 2009, McGrath purchased 10,000 shares of Misonix stock for $9,755. In late April of 2009, McGrath began communicating with Misonix about the Earnings Release. On Wednesday, May 6, 2009, McGrath emailed a Misonix employee inquiring about the timing of the issuance of the Earnings Release, and was informed that the company was targeting May 11 or May 12, 2009, as a release date.

14. McGrath received a draft of the Earnings Release at 9:09 a.m. on Thursday, May 7, 2009, and then emailed his edits to the release later that day, at 1:04 p.m. The draft McGrath edited showed that the company had significant declines in revenue from the prior nine-month period, and also quoted the CEO as anticipating difficult times ahead.

15. At 1:40 p.m. on May 7, 2009, a Misonix employee confirmed in an email to McGrath that Misonix would "finalize [the release] tomorrow." Approximately forty minutes later, McGrath entered a limit order to sell all of his 10,000 Misonix shares at $2.80. The order was executed the next day – Friday, May 8, 2009 – at a total sales price of $27,589.

16. On Monday, May 11, 2009, McGrath submitted the Earnings Release to PR Newswire for issuance, and it was released at 1:16 p.m. The material information contained in the Earnings Release had been nonpublic until this issuance.

17. By market-close on May 11, 2009, the stock price dropped 36 cents (or 12 percent) to $2.55. The next day, May 12, 2009, the stock price dropped another 29 cents (or a total of 22 percent over one-and-a-half days), to close at $2.26. Daily trading volume in Misonix rose from approximately 13,300 on May 8, 2009, (the date of McGrath's sale) to approximately 58,900 on May 11, 2009. By selling his shares on May 8, 2009, McGrath avoided losses of $5,400.

18. McGrath was a temporary insider at Misonix because Cameron had entered into a relationship with Misonix through which Cameron gained access to confidential information about Misonix for the purposes of providing investor relations services. As a temporary insider, McGrath had a duty of trust and confidence to Misonix and its shareholders. McGrath breached this duty by trading for his own benefit on the basis of material nonpublic information that he received in the course of his work for Misonix.

19. As a partner at Cameron, McGrath also owed a duty of trust and confidentiality to Cameron. He was obligated to keep his firm's client information confidential and not to misappropriate it for his own financial or personal benefit. He breached his duty to Cameron by

trading for his own benefit on the basis of material nonpublic information that he received from Cameron about Misonix.

20. McGrath knew that the confidentiality agreement that Cameron had entered into with Misonix required that Cameron and its employees keep confidential and not misuse confidential information it received from Misonix. He understood, more specifically, that he was prohibited from trading in the securities of a client if he possessed material nonpublic information. He also knew that the information in the Earnings Release was material as well as nonpublic until its issuance.

INSIDER TRADING IN THE SECURITIES OF CLEAN DIESEL

21. Cameron began providing investor relations services to Clean Diesel in January 2011. On December 30, 2010, McGrath, on behalf of Cameron, signed a retention agreement between Cameron and Clean Diesel that contained a confidentiality clause limiting Cameron's use of nonpublic information about Clean Diesel to providing investor relations services. McGrath regularly drafted and edited portions of Clean Diesel's press releases, and through this work, frequently received information from Clean Diesel that he knew was nonpublic.

22. In May 2011, McGrath was involved in drafting the May 25 Release, in which Clean Diesel announced that it had received a significant amount of orders in connection with a recently announced program by the State of California.

23. McGrath provided comments and revisions to the May 25 Release on several dates in May, including May 2 and May 19, 2011.

24. On Tuesday, May 24, 2011, at 1:58 p.m., a Clean Diesel employee emailed McGrath and others stating, "We intend to release the announcement on Wednesday, May 25, after the close of the market. . . As usual, please do not rely on this version as final and please do

not distribute." Fourteen minutes after receiving this email, at 2:12 p.m. on May 24, 2011, McGrath purchased 1,000 shares of Clean Diesel at $3.80 a share.

25. The next day, May 25, 2011, after the market-close, the May 25 Release was issued. The information announced in the May 25 Release had been nonpublic until the issuance of the release.

26. On May 26, 2011, the first trading day following the issuance of the May 25 Release, Clean Diesel's stock closed at $7.60, an increase of approximately 95 percent over the prior day. Also, approximately 4.5 million shares traded on that day, as compared to daily volume in the tens of thousands in the several days prior. On May 27, 2011, McGrath sold the 1,000 shares he had purchased three days earlier, realizing profits of $6,376.

27. McGrath was a temporary insider, and therefore owed a duty to Clean Diesel and Clean Diesel shareholders by virtue of his relationship with Clean Diesel: through Cameron, he obtained access to confidential information from Clean Diesel in the scope of providing investor relations services to Clean Diesel. McGrath breached his duty to Clean Diesel and its shareholders by trading in Clean Diesel securities for his own benefit on the basis of material nonpublic information that he received through his consulting work for Clean Diesel.

28. McGrath breached the duty that he owed to Cameron to not misuse information Cameron received from its clients. McGrath breached this duty by trading for his own benefit on information that he received from Cameron about Clean Diesel.

29. McGrath knew that he was prohibited from misusing confidential information he or his firm received from Clean Diesel. On behalf of Cameron, he had signed a retention agreement with Clean Diesel that contained a confidentiality clause through which Cameron agreed both to keep confidential, and refrain from using, nonpublic information about Clean Diesel obtained from

Clean Diesel in the scope providing investor relations services. Furthermore, McGrath knew he was prohibited from trading based on nonpublic information that he received from Clean Diesel, and he knew that the information in the May 25 Release was material and nonpublic.

CLAIMS FOR RELIEF

CLAIM I
Violation of Section 17(a) of the Securities Act

30. The Commission realleges and incorporates by reference paragraphs 1 through 29, as though fully set forth herein.

31. By virtue of the foregoing, McGrath, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted 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; and/or (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

32. By virtue of the conduct described above, McGrath, directly or indirectly, violated, and, unless enjoined, will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

CLAIM II
Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

33. The Commission realleges and incorporates by reference paragraphs 1 through 32, as though fully set forth herein.

34. By virtue of the foregoing, McGrath, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or

a facility of a national securities exchange, directly or indirectly: (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 the 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 have operated as a fraud or deceit upon persons.

35. By virtue of the foregoing, McGrath, directly or indirectly, violated, and, unless enjoined, will again violate, 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].

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining defendant McGrath from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

II.

Permanently restraining and enjoining defendant McGrath from violating 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];

III.

Permanently restraining and enjoining defendant McGrath from, directly or indirectly, trading in any security of any issuer for whom he, or any firm with which he is associated has, within one year prior to the trade date, performed any investor relations services; provided, however, this injunction shall not prohibit Defendant's firm from (1) receiving shares of such issuers as compensation for services performed, or (2) disposing of shares received as

compensation more than one year after the receipt of such shares so long as Defendant's firm provides written notice to the issuer of its intent to dispose of such shares (including the quantity of shares to be sold and the date of the proposed transaction) and, prior to the sale of such shares, receives written authorization of the sale from the management of the issuer;

IV.

Ordering defendant McGrath to disgorge, with prejudgment interest, all ill-gotten gains received as a result of the conduct alleged in this Complaint;

V.

Ordering defendant McGrath to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

VI.

Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 22, 2014

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