

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,
450 Fifth Street, N.W.
Washington, D.C. 20549

Plaintiff,

v.

JOSEPH X. CRIVELLI,
15 Laura Court
Sinking Spring, PA 19608

Defendant.

Civil Action No.
1:04CV01247(RMC)

COMPLAINT FOR CIVIL PENALTY

Plaintiff, United States Securities and Exchange Commission (“Commission”), for its
Complaint alleges as follows:

SUMMARY

1. This action arises from a violation of Rule 105 of Regulation M under the Securities Exchange Act of 1934 (“Exchange Act”) [17 C.F.R. § 242.105(a)(1)] by Defendant Joseph X. Crivelli (“Crivelli”). Rule 105 of Regulation M under the Exchange Act prohibits covering a short sale with securities obtained in a public offering if the short sale occurred within five business days before the pricing of the offering. The Commission adopted Rule 105 of Regulation M (and its predecessor Rule 10b-21) in an effort to prevent manipulative short selling prior to a public offering by short sellers who cover their short position by purchasing securities in the offering, thus largely avoiding exposure to market risk. Anti-manipulation Rules Concerning Securities Offerings, Release Nos. 33-7375, 34-38067 (Dec. 20, 1996). “The Rule is prophylactic, and prohibits the conduct irrespective of the short seller’s intent in effecting the

short sale.” Proposed Rule: Short Sales, Release No. 34-48709, File No. S7-23-03 (October 29, 2003).

2. Crivelli is the President and sole employee of JC Management, Inc. (“JC Management”), an investment manager of a private investment fund, through which Crivelli sold short 10,000 shares of Monarch Casino & Resorts, Inc. (“MCRI”) within five business days prior to the pricing of a secondary offering by MCRI. JC Management subsequently obtained an allocation of 10,000 shares of MCRI in the secondary offering and Crivelli used the allocated shares to cover JC Management’s outstanding short position in the stock. JC Management realized profits of \$25,788 from the transaction.

3. By engaging in the conduct described above, Crivelli violated Rule 105 of Regulation M under the Exchange Act [17 C.F.R. § 242.105(a)(1)].

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d)(3)(A) of the Exchange Act [15 U.S.C. § 78u(d)(3)(A)] to obtain a civil money penalty from Defendant Crivelli.

5. This Court has jurisdiction over this action pursuant to Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

6. Defendant, directly and indirectly, has made use of the means or instruments of transportation or communication in interstate commerce, or of the mails in connection with the acts, practices and transactions alleged herein.

THE DEFENDANT

7. Crivelli is the President and sole employee of JC Management, a Pennsylvania corporation that is the investment manager of J.A.G. Funds, a Pennsylvania limited partnership. J.A.G. Funds is a private investment fund and the sole client of JC Management. Crivelli makes all investment decisions for the J.A.G. Funds. Crivelli holds no professional licenses and has not been affiliated with any registered investment adviser or broker dealer since he established J.A.G. Funds in April 2000, with investments of approximately \$12 million from eight limited partners.

FACTS

MCRI's Secondary Offering

8. On June 3, 2002, MCRI, a NASDAQ stock, announced that it filed a registration statement with the Commission for a secondary public offering of 2,000,000 shares of common stock offered by selling shareholders. MCRI, through a wholly owned subsidiary, owns and operates the Atlantis Casino Resort in Reno, Nevada. Two underwriters acted as co-managers of the secondary offering, and priced the shares after the market closed on July 1, 2002. Accordingly, the Rule 105 five business day pricing period was June 25, 2002, through July 1, 2002.

The Violative Trade

9. Crivelli began monitoring MCRI after the company announced the secondary offering on June 3, 2002. On the day of the announcement, MCRI shares were trading between \$14.46 and \$15.35 per share, and closed at \$14.99 per share. On June 5, 2002, MCRI issued a negative announcement that its quarterly earnings were lower than anticipated. Thereafter, the price of MCRI declined slightly for a few days, but then began to rise steadily and reached a June high of \$15.85 on June 28, 2002. After watching the price of MCRI increase in a relatively

short period of time, Crivelli determined that MCRI was “overbought” and believed that if the company was to go ahead with the secondary offering, the offering price likely would be lower than the current market price.

10. On Tuesday, June 25, 2002, JC Management, through Crivelli, placed an order to sell short 10,000 shares of MCRI at a value weighted average price of \$15.0788 per share in one of J.A.G. Funds’ brokerage accounts. Subsequent to placing the short sale, Crivelli gave one of the co-managing underwriters an “indication of interest” that J.A.G. Funds would participate in MCRI’s secondary offering.

11. MCRI’s secondary offering of 2,000,000 shares was priced at \$12.50 per share after the close of the market on Monday, July 1, 2002. The following day, on July 2, 2002, J.A.G. Funds accepted an allocation of 10,000 shares of MCRI in the secondary offering at a price of \$12.50 per share. Trading records confirm that JC Management/J.A.G. Funds used the allocated shares to cover its outstanding short position in MCRI and realized profits of \$25,788.

CLAIM

Crivelli violated Rule 105 of Regulation M under the Exchange Act

12. Paragraphs 1 through 11 are realleged and incorporated herein by reference.

13. Rule 105 of Regulation M under the Exchange Act makes it “unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the ... period beginning five business days before the pricing of the offered securities and ending with the pricing.” [17 C.F.R. § 242.105(a)(1)].

14. As set forth above, at Crivelli’s direction, JC Management, Inc. sold short 10,000 shares of MCRI within five business days prior to the pricing of a secondary offering by MCRI.

JC Management subsequently obtained an allocation of 10,000 shares of MCRI in the secondary offering and Crivelli used the allocated shares to cover JC Management's outstanding short position in the stock. As a result of this conduct, Crivelli violated Rule 105 of Regulation M under the Exchange Act [17 C.F.R. § 242.105(a)(1)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Enter an order requiring defendant Crivelli to pay a \$25,000 civil money penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

II.

Grant such other relief as the Court deems just and appropriate.

Respectfully submitted,

Dated: _____

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