

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RICHARD KARP,

Defendant.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges:

I. INTRODUCTION

1. The Commission brings this action against Richard Karp for violating the anti-fraud and anti-manipulation provisions of the federal securities laws in offering and selling the stock of WCI Communities, Inc., a Southwest Florida homebuilder.

2. Throughout late 2007 and early 2008, Karp actively traded WCI stock. WCI's share price declined markedly and Karp incurred substantial trading losses. Nonetheless, in the hope that a major WCI shareholder would buy the company and cause the stock price to rise, Karp continued to buy and sell WCI stock.

3. On July 2, 2008, Karp bought 42,000 WCI shares for approximately \$54,700, representing his entire stock portfolio. Just twelve days later, however, Karp's hopes for a buyout were dashed when WCI announced it was no longer engaged in discussions with affiliates regarding alternative restructuring proposals. WCI was in a severe cash crisis and facing potential bankruptcy.

4. To salvage his investment, Karp attempted to drive up WCI's share price by creating and faxing a bogus press release announcing a buyout offer for the company. Over about three hours on Saturday evening, July 19, 2008, Karp faxed the press release to local and national media outlets.

5. At least three Fort Myers television stations and a newspaper ran the story or posted it on a website. The news caused WCI's share price to rise dramatically the following Monday morning, July 21. Karp sold his shares in pre-market trading on July 21, generating approximately \$29,000 in profits, before WCI issued a press release announcing the buyout news was false.

6. By engaging in the conduct described above, and described more fully below, Karp violated, and unless enjoined, is reasonably likely to continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q; and Sections 9(a)(4) and 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78i and 78j, and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

II. DEFENDANT

7. Karp, 65, resides in Fort Myers, Florida. He is a marketing executive for a small Southwest Florida restaurant chain, and teaches marketing classes.

III. JURISDICTION AND VENUE

8. 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.

9. Personal jurisdiction exists and venue is proper in the Middle District of Florida because the acts, transactions, practices, and courses of business constituting the violations

alleged in this complaint occurred in the Middle District of Florida. Specifically, Karp resides in and faxed the sham press release from his residence in Fort Myers, and WCI is located in Bonita Springs.

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

IV. FACTS

A. Karp's Trading In WCI Securities

11. WCI, a luxury homebuilder, is a Delaware corporation with its headquarters in Bonita Springs, Florida. During the time period alleged in this complaint, the company's shares were quoted on the New York Stock Exchange. It is currently quoted on the "Pink Sheets" service operated by Pink OTC Markets, Inc.

12. In May 2007, a well-known financier who was also a WCI board member and substantial shareholder, launched a \$22 per share tender offer for WCI. This tender offer was unsuccessful.

13. However, in the wake of that offer, and based on his belief that the financier would ultimately succeed in his efforts to take over WCI, Karp began buying and selling large amounts of WCI common stock. From July 30, 2007 through February 8, 2008, Karp entered more than 400 purchase and sale orders, of which 204 were executed.

14. Karp routinely used all the cash in his brokerage account to purchase WCI shares and typically held them for a very short time, from five to eighteen days. Furthermore, he closely followed WCI's corporate developments and stock price on a daily basis. Over the

twelve months from July 2007 to July 2008, Karp's WCI transactions comprised approximately 90 percent of his trading activity.

15. As a result of the decline in the housing market and its debt load, WCI's stock dropped from a high of approximately \$10 per share in July 2007 to a low of approximately \$1.25 per share by July 21, 2008.

16. Nonetheless, buyout rumors about WCI continued to be reported. On June 13, 2008, WCI issued a press release announcing that it formed a committee to evaluate "alternative restructuring proposals."

17. On July 2, 2008 Karp bought 42,000 shares of WCI at an average price of \$1.30, for a total of approximately \$54,700. These purchases represented 100 percent of his portfolio value.

B. Karp's Trading Strategy Collapses

18. On July 14, twelve days after Karp's large purchases of WCI, the company issued a press release announcing that it had dissolved the committee and was no longer in restructuring discussions with any party.

19. Aware of this news, Karp entered an order that same day to sell his 42,000 shares at \$1.65 per share. The order was not filled. Two days later, he made another attempt to sell his WCI shares, this time for \$2 per share. That order also was not filled.

20. The same day as the second order, July 16, 2008, a local newspaper reported that WCI had \$125 million in convertible notes payable maturing on August 5, and that analysts had raised concerns about WCI's liquidity.

C. Karp Attempts To Salvage His Investment

21. In the wake of this news, Karp made a desperate attempt to reverse the slide in the company's stock. Between 5:00 p.m. and 8:14 p.m. on Saturday, July 19, 2008, he faxed a bogus press release to two local newspapers and local ABC, NBC and CBS television affiliates in Fort Myers. The press release claimed that WCI's board of directors had received a buyout offer from an unnamed entity at \$5.25 per share – potentially worth \$220 million. The press release contained WCI's contact information and was formatted similarly to other WCI press releases. The press release announced that WCI's board of directors would hold a special meeting to evaluate the proposed offer. The story was false.

22. The first of the media outlets received the facsimile between 5:30 and 6:00 p.m. The others received it a short time later. By 8:15 p.m., the three television stations and a Fort Myers newspaper had reported the story on their respective websites and the television stations had broadcast it on local evening news shows.

23. At about the same time, Karp sent approximately 35 facsimiles to other local, state, and national media outlets, including ABC, NBC, CBS, CNN, The New York Times, Fox News, CNBC, MSNBC, NPR, US News and World Report, ABC Evening News and GlobeNews Wire, an entity owned by NASDAQ that disseminates corporate press releases for its subscribers.

24. The press release had a dramatic effect on WCI's stock price when the markets reopened for trading on Monday, July 21. The company's stock closed at \$1.37 per share on Friday, but in pre-market trading on Monday the stock price soared as much as 93 percent, to \$2.65 per share.

25. At 10:39 a.m. on July 21, WCI issued a press release stating it did not disseminate the weekend press release and that the information was false. This corrective statement quickly drove down the stock price. It closed Monday at \$1.39 per share, just two cents above its Friday closing price. However, the Monday trading volume was more than three million shares, which was more than five times the volume of Friday's trading and nearly seven times WCI's average daily trading volume for the period from July 1 to 18, 2008.

26. Karp did not wait until Monday to begin trying to capitalize on his scheme. Even as he was faxing the bogus press release, he began entering WCI sell orders to take advantage of the expected inflation of the stock price.

27. At 7:01 p.m. on July 19, Karp entered his first order to sell 42,000 shares of WCI at \$4.75 per share – 50 cents below the fictitious \$5.25 per share buyout offer but \$3.38 above the July 18 closing price. A short time later, Karp cancelled that order and placed a new WCI sell order at \$1.75 per share. On Sunday morning, July 20, Karp cancelled that order and placed a third WCI sell order at \$4.75 per share. Later that morning Karp cancelled the sell order.

28. On Monday, July 21, once pre-market trading opened, Karp entered a series of orders to determine the highest price at which he could sell his WCI shares. At 8:35 a.m., he placed an order to sell all of his WCI shares at \$3.00 per share, only to cancel that order one minute later. Karp then re-submitted his \$3.00 per share order at 8:36 a.m., cancelling that order eight minutes later.

29. At 8:47 a.m., Karp placed an order to sell 1,500 WCI shares at \$1.50 per share. When that order was immediately filled, Karp again resumed his probing orders, offering his remaining 40,500 WCI shares at \$2.50 per share at 8:49 a.m. When that order was not filled, Karp immediately cancelled the order.

30. Finally, at 9:05 a.m., Karp placed a sell order for his remaining WCI shares at \$2.00. This order was filled. In total, Karp's WCI sales that day netted him a profit of approximately \$29,000.

V. CLAIMS FOR RELIEF

COUNT I

FRAUD IN VIOLATION OF SECTION 17(a)(1) OF THE SECURITIES ACT

31. The Commission repeats and realleges paragraphs 1 through 30 of this Complaint.

32. From July 19, 2008 through July 21, 2008, Karp, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this Complaint, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

33. By reason of the foregoing, Karp directly and indirectly violated, and unless enjoined, will continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT II

FRAUD IN VIOLATION OF SECTIONS 17(a)(2) and (3) OF THE SECURITIES ACT

34. The Commission repeats and realleges paragraphs 1 through 30 of this Complaint.

35. From July 19, 2008 through July 21, 2008, Karp directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (b) engaged in transactions, practices and courses of business which operated and would operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

36. By reason of the foregoing, Karp directly and indirectly violated and, unless enjoined, will continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3).

COUNT III

FRAUD IN VIOLATION OF SECTION 9(a)(4) OF THE EXCHANGE ACT

37. The Commission repeats and realleges paragraphs 1 through 30 of this Complaint.

38. From July 19, 2008 through July 21, 2008, Karp directly or indirectly by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, as a person selling or offering for sale or purchasing or offering to purchase the security with respect to such security, made, regarding a security registered on a national securities exchange, with respect to such security, for the purpose of inducing the purchase or sale of such security, a statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

39. By reason of the foregoing, Karp directly and indirectly violated and, unless enjoined, will continue to violate, Section 9(a)(4) of the Exchange Act, 15 U.S.C. §§ 78i(a)(4).

COUNT IV

FRAUD IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER

40. The Commission repeats and realleges paragraphs 1 through 30 of this Complaint.

41. From July 19, 2008 through July 21, 2008, Karp directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of the securities, as described in this Complaint, knowingly, willfully or recklessly; 1) employed devices, schemes or artifices to defraud; 2) made untrue statements of

material facts and 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 3) engaged in acts, practices and courses of business which have operated as a fraud upon the purchasers of such securities and would operate as a fraud upon the purchasers of such securities.

42. By reason of the foregoing, Karp directly or indirectly 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.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine and find that Karp committed the violations of the federal securities laws alleged herein.

II.

Permanent Injunction

Issue a Permanent Injunction restraining and enjoining Karp from violating Section 17(a) of the Securities Act and Sections 9(a)(4) and 10(b) of the Exchange Act and Rule 10b-5 thereunder.

III.

Disgorgement

Issue an Order directing Karp to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

IV.

Penalties

Issue an Order directing Karp to pay a civil money penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

V.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

VI.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application of motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

May 20, 2009

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