

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ANTHONY J. SCOLARO, JR.

Defendant,

and

DIAMONDBACK CAPITAL MANAGEMENT, LLC,

Relief Defendant.



COMPLAINT

Civil Action No.

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

SUMMARY

1. This case involves insider trading by Anthony J. Scolaro, Jr. ("Scolaro" or "Defendant"), a former portfolio manager at Diamondback Capital Management, LLC ("Diamondback" or "Relief Defendant"), a registered hedge fund investment adviser. In 2007, Scolaro, on behalf of a Diamondback hedge fund, traded ahead of the announced corporate acquisition of Axcan Pharma Inc. ("Axcan") using inside information misappropriated by two attorneys at the international law firm of Ropes & Gray LLP ("Ropes & Gray").

2. In this scheme, Arthur J. Cutillo ("Cutillo") and Brien P. Santarlas ("Santarlas"), former lawyers in the New York office of Ropes & Gray, misappropriated from their law firm, in exchange for kickbacks, material, nonpublic information

concerning corporate acquisitions or bids involving Ropes & Gray clients, including the November 2007 announced acquisition of Axcan. Using Cutillo's friend and fellow attorney Jason Goldfarb as a conduit, Cutillo and Santarlas tipped inside information concerning the Axcan acquisition to Zvi Goffer ("Zvi"), a former proprietary trader at the broker-dealer Schottenfeld Group LLC ("Schottenfeld"). Zvi then tipped this Axcan acquisition information to, among others, Franz Tudor ("Tudor"), a fellow Schottenfeld proprietary trader. Tudor then tipped the information to Scolaro, who at the time was a portfolio manager at Diamondback. Based on this inside information, Scolaro traded in the securities of Axcan on behalf of a Diamondback hedge fund, resulting in illicit profits of approximately \$1.1 million.

3. By virtue of the conduct alleged herein, Defendant violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Unless enjoined, he is likely to commit such violations again in the future.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to Exchange Act Sections 21(d)(1), 21(e), 21A, and 27 [15 U.S.C. §§ 78u(d)(1), (e), 78u-1, and 78aa]. Defendant, directly or indirectly, made use of the means or instrumentalities of interstate commerce or the mails in connection with the conduct alleged herein.

5. Venue is proper because certain acts or transactions constituting the violations occurred within this judicial district.

DEFENDANT

6. **Anthony J. Scolaro, Jr.**, age 50, is a resident of Darien, Connecticut.

During the relevant time period, Scolaro was a portfolio manager at Diamondback Capital Management, LLC, and had authority to trade securities on behalf of a Diamondback hedge fund.

RELIEF DEFENDANT

7. **Diamondback Capital Management, LLC** is a Delaware Limited Liability Company located in Stamford, Connecticut. Diamondback is a registered hedge fund investment adviser.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

8. **Arthur J. Cutillo**, age 34, is a resident of Toms River, New Jersey.

During the relevant time period, Cutillo was an attorney in the New York office of Ropes & Gray LLP.

9. **Brien P. Santarlas**, age 34, is a resident of Hoboken, New Jersey. During the relevant time period, Santarlas was an attorney in the New York office of Ropes & Gray LLP.

10. **Jason C. Goldfarb**, age 33, is a resident of New York, New York. During the relevant time period, Goldfarb was an attorney in private practice in Brooklyn, New York.

11. **Zvi Goffer**, age 34, is a resident of New York, New York. During the relevant time period, Zvi Goffer was a registered representative and proprietary trader at Schottenfeld Group LLC, a registered broker-dealer.

12. **Franz Tudor**, age 38, is a resident of Nashville, Tennessee. During the relevant time period, Tudor was a registered representative and proprietary trader at Schottenfeld.

13. **Schottenfeld Group LLC** is a limited liability company located in New York, New York. Schottenfeld is a registered broker-dealer.

14. **Ropes & Gray LLP** is a limited liability partnership and international law firm with offices in Boston, New York, Palo Alto, San Francisco, Tokyo, and Washington, DC.

FACTS

The Insider Trading Scheme

15. In 2007, Cutillo and Santarlas were attorneys at the international law firm of Ropes & Gray. They each worked in the firm's New York office. While employed at Ropes & Gray, Cutillo and Santarlas had access to, and learned of, material nonpublic information concerning corporate acquisitions in which Ropes & Gray represented acquirers or bidders in proposed acquisitions. Cutillo and Santarlas owed a fiduciary or other duty of trust and confidence to Ropes & Gray and its clients to keep this information confidential and not to disclose or personally use this information.

16. Information concerning an upcoming acquisition of a public company is valuable and material information. Normally, when a public company is acquired, the acquisition price is greater than the pre-announcement market price of the stock of the company being acquired. Thus, news of an actual or potential acquisition of a public company often results in an increase in the market price of the company's stock. A reasonable investor would consider information concerning an upcoming corporate

acquisition important to his or her investment decision, and a significant alteration of the total mix of information available to the public concerning the company that is the subject of the acquisition.

17. In 2007, Cutillo and Santarlas, together with Cutillo's friend Jason Goldfarb, a lawyer in private practice in New York, entered into a scheme with Zvi, a proprietary trader at Schottenfeld, to trade on material, nonpublic information concerning upcoming corporate acquisitions involving Ropes & Gray's clients. As part of this scheme, and in breach of their duties to Ropes & Gray and its clients, Cutillo and Santarlas misappropriated from their law firm material, nonpublic information concerning upcoming acquisitions involving the firm's clients, including the November 29, 2007 announced corporate acquisition of Axcan by TPG LLP. Cutillo and Santarlas, through Goldfarb, tipped this inside information to Zvi in exchange for kickbacks.

18. Zvi tipped the inside information concerning the Axcan acquisition to, among others, Tudor. Tudor then tipped this inside information to Scolaro. Based on the information, Scolaro traded in the securities of Axcan on behalf of a Diamondback hedge fund, resulting in illicit profits of approximately \$1.1 million.

The Axcan Acquisition Announcement

19. In early 2007, Axcan's board of directors began to pursue the possibility of selling the company. After an August 9, 2007 board meeting, Axcan established a data room and made senior management available for potential purchasers to conduct due diligence. Axcan's financial adviser, Merrill Lynch, requested that potential purchasers submit indications of interest, including purchase price ranges, by October 26, 2007.

TPG Capital, a private equity firm, was one of the bidders for Axcan. Ropes & Gray represented TPG Capital in connection with the transaction.

20. By virtue of their employment at Ropes & Gray, Cutillo and Santarlas had access to, and learned of, material nonpublic information concerning the acquisition of Axcan. Cutillo and Santarlas tipped Goldfarb material, nonpublic information concerning the acquisition of Axcan, which they misappropriated from Ropes & Gray.

21. On October 25, 2007, Cutillo called Goldfarb four times between 7:11 p.m. and 7:55 p.m. Cutillo tipped Goldfarb material, nonpublic information that Axcan was going to be acquired.

22. That same night at 8:51 p.m, Goldfarb called Zvi. Goldfarb tipped Zvi the material, nonpublic information concerning the upcoming acquisition of Axcan that Cutillo misappropriated from his firm.

23. Zvi then tipped the material, nonpublic information concerning the Axcan acquisition to various tippees, including Tudor. Tudor tipped the information to Scolaro.

24. From October 2007 through November 2007, based on the inside information misappropriated by Cutillo and Santarlas, and tipped to Scolaro through Zvi and Tudor, Scolaro purchased 300,000 shares of Axcan on behalf of a Diamondback hedge fund. Scolaro knew, or should have known, that this material, nonpublic information was obtained in breach of a fiduciary or other duty of trust and confidence owed to the source of the information.

25. On November 29, 2007, Axcan announced that TPG Capital would acquire Axcan at a price of \$23.35 per share, which represented a premium of about 28% over the previous day's closing price.

26. At the time the Axcan acquisition was announced on November 29, 2007, the Diamondback hedge fund held 319,876 shares of Axcan stock as a result of Scolaro's trades and other trades in the fund that automatically tracked Scolaro's trades. Following the announcement, Scolaro and Diamondback sold shares of Axcan resulting in illicit profits of approximately \$1.1 million.

CLAIMS FOR RELIEF

FIRST CLAIM

Insider Trading in Connection with the Purchase or Sale of Securities

(Violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 Thereunder [17 C.F.R. § 240.10b-5])

27. Paragraphs 1 through 26 are realleged and incorporated by reference.

28. As described above, Defendant engaged in illegal insider trading in which he used material, nonpublic information concerning an upcoming corporate acquisition to purchase securities.

29. By reason of the conduct described above, Defendant, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any 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 light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any persons, including purchasers or sellers of the securities.

30. By reason of the conduct described above, Defendant violated Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM

(Relief Defendant Diamondback Capital Management, LLC)

31. Paragraphs 1 through 30 are realleged and incorporated by reference.

32. In the manner described above, Diamondback was unjustly enriched as a result of Scolaro's conduct in that such conduct caused Diamondback to receive ill-gotten gains to which it has no legitimate claim.

PRAYER FOR RELIEF

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

A. permanently enjoining Defendant from violating Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

B. ordering Defendant and Relief Defendant to disgorge, with prejudgment interest, all illicit trading profits or other ill-gotten gains resulting from the conduct alleged in this Complaint;

C. ordering Defendant to pay civil monetary penalties pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1]; and

D. granting such other and further relief as the Court deems just and appropriate.

Respectfully submitted,



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Dated: August 31, 2011