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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

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SECURITIES AND EXCHANGE COMMISSION))
))
Plaintiff,))
))
v.))
))
JEROME J. NELL and JACQUELINE M. NELL))
))
Defendants.))
_____)

Case No. **FILED**
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Hood/Repe

**COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES
AND OTHER EQUITABLE RELIEF**

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

- 1. Defendants Jerome J. Nell ("Nell") and Jacqueline M. Nell ("J. M. Nell"), directly and indirectly, have engaged and, unless enjoined, will continue to engage in acts, practices, and courses of business which constitute and will constitute violations of 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] promulgated thereunder.
- 2. The Commission brings this action to enjoin such acts, practices, and courses of business, and for other equitable relief, pursuant to Sections 21(d), 21(e) and 21A of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), and 78u-1(a)].

JURISDICTION AND VENUE

- 3. The Court has jurisdiction of this action pursuant to Sections 21 and 27 of the Exchange Act [15 U.S.C. §§78u and 78aa].

4. Defendants will, directly and indirectly, unless enjoined, have the opportunity to engage in the acts, practices, and courses of business set forth in this Complaint and in acts, practices, and courses of business of similar purport and object.

5. The acts, practices, and courses of business constituting the violations herein have occurred within the jurisdiction of the United States District Court for the Eastern District of Michigan and elsewhere.

6. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged herein within the jurisdiction of the Eastern District of Michigan and elsewhere.

THE DEFENDANTS

7. Nell, age 36, lives in Walled Lake, Michigan. At all relevant times, Nell was employed as a consultant for a firm that specializes in construction and installation of fiber glass insulation. Nell is J. M. Nell's brother.

8. J. M. Nell, age 35, lives in Walled Lake, Michigan. At all relevant times, she was employed as an account services manager at Lason Inc. ("Lason"), a printing company that, among other things, does financial printing and mass mailings. J.M. Nell is Nell's sister.

ENTITIES INVOLVED

9. In or about October 1999 ("relevant time period"), MCN Energy Group Inc. ("MCN") was a Michigan corporation with its principal offices located in Detroit, Michigan. MCN was a publicly-held company, whose common stock was registered pursuant to Section

12(b) of the Exchange Act [15 U.S.C. §781(b)]. MCN's stock was listed on the New York Stock Exchange. During the relevant time period, MCN was a diversified energy holding company with markets throughout North America.

10. At all relevant times, Detroit Edison Company ("Detroit Edison") was a Michigan corporation with its principal offices located in Detroit, Michigan. Detroit Edison is the principal operating subsidiary of DTE Energy Co. ("DTE"). DTE is a publicly-held company, whose common stock is registered pursuant to Section 12(b) of the Exchange Act [15 U.S.C. §781(b)]. DTE stock is listed on the New York Stock Exchange.

THE DEFENDANTS' INSIDER TRADING

11. At all relevant times, Lason had an employment agreement governing employee conduct and requiring employees to maintain the confidentiality of Lason's and its client's information.

12. In or about early October 1999, MCN and DTE prepared to announce that DTE had agreed to acquire MCN. In connection with the acquisition, MCN retained the services of J. M. Nell's employer, Lason, a firm specializing in mass mailings. MCN entrusted Lason and its employees with non-public information relating to the impending acquisition. This information included the proposed purchase price for MCN common stock.

13. During the relevant time period, J. M. Nell was the account services manager at Lason responsible for the MCN account. In connection with this position, J. M. Nell was privy to material non-public information relating to the MCN acquisition, including the proposed purchase price for MCN stock.

14. On or about October 4, 1999, J. M. Nell had a telephone call with her brother, Nell and informed him of the impending acquisition and the proposed purchase price for MCN stock. Defendants Nell and J. M. Nell knew that the information regarding the impending acquisition of MCN by DTE was confidential and non-public.

15. On or about October 4, 1999, Nell purchased 12,000 shares of MCN common stock for \$17.75 per share. When purchasing these shares, Nell did not disclose to the sellers of the MCN stock or to the public any information about the impending acquisition.

16. On or about October 4, 1999, the last trading day prior to the public announcement of the impending acquisition, MCN stock closed at \$17.69 per share. On October 5, 1999, MCN publicly announced that it had agreed to sell to DTE for \$4.6 billion in cash, stock and assumed debt. On October 5, 1999, MCN stock closed at \$23.56 per share, an increase of \$5.88 per share from the previous day's closing price.

17. As a result of his purchases of MCN stock, Nell received realized and unrealized gains of \$76,500.

**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] promulgated thereunder**

18. Paragraphs 1 through 17 are realleged and incorporated by reference herein.

19. In or about October 1999, Nell and J. M. Nell, in connection with the purchase and sale of securities, namely the common stock of MCN, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly, employed devices, schemes, and artifices to defraud, 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 engaged in acts, practices and courses of business which operated as a fraud and deceit upon the sellers of the securities.

20. As part of the conduct described in paragraphs 18 and 19 above, J. M. Nell, in breach of her fiduciary and similar duty to her employer arising from her position of trust and confidence, provided material, non-public information regarding the impending acquisition of MCN by DTE to Nell who purchased MCN stock after this communication, as described above.

21. As part of the conduct described in paragraphs 18 through 20 above, Nell purchased shares of MCN stock while in possession of material, non-public information regarding the impending acquisition of MCN by DTE, when he knew that the information was obtained as a result of breach of fiduciary and similar duties owed to J. M. Nell's employer.

22. Defendants knew or were reckless in not knowing the facts and circumstances described in Paragraphs 18 through 21 above.

23. As a result of the activities described in Paragraphs 18 through 22 above, Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

THEREFORE, the Commission respectfully requests that this Court:

I.

Find that the Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

II.

Grant a Final Judgment and Order of Permanent Injunction, Civil Penalties, and Other Equitable Relief ("Final Judgment"), in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining Defendants, their officers, agents, servants, employees, assigns, attorneys, and those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, from, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, engaging in the unlawful acts, practices, and courses of business described above, or any conduct of similar purport or object, in connection with the transactions in the securities described in this complaint or any other security, including 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] promulgated thereunder.

III.

Grant an Order requiring Nell to pay to the registry of this Court disgorgement of his ill-gotten gains plus prejudgment interest from October 1999. Specifically, grant an order requiring that Nell pay disgorgement in the amount of \$76,500 representing the realized and unrealized gains from the conduct alleged herein, plus prejudgment interest of \$3,018, for a total of \$79,518.

IV.

Grant an Order requiring Nell to pay to the Commission a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. §78u-1]. Specifically, grant an order requiring that Nell pay a civil money penalty in the amount of \$76,500.

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant an Order for such further relief as the Court may deem appropriate.



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