UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FILED

MAY - 3 2001

SECURITIES AND EXCHANGE COMMISSION,
450 Fifth St. NW
Washington, DC 20549-0703

Plaintiff,

v.

ROBERT J. MONSKI,

Defendant.

___ Civ. _____

COMPLAINT

CASE NUMBER 1:01CV00943

JUDGE: Colleen Kollar-Kotelly

DECK TYPE: General Civil

DATE STAMP: 05/03/2001

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

SUMMARY

1. During October and November 1997, defendant Robert J. Monski placed numerous phantom one-hundred share limit orders meant to affect the National Best Bid or Offer ("NBBO") for certain thinly traded securities. Monski's conduct, known in the industry as "spoofing", was intended to allow him to obtain otherwise unobtainable execution prices for much larger orders on the other side of the market. In so doing, Monski violated the antifraud provisions of the federal securities laws.

JURISDICTION

2. This Court has jurisdiction pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

3. The Commission brings this action seeking a civil penalty of $10,000 pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Sections 21(d)(3) [15 U.S.C. §§ 78u(d)].

4. Defendant Robert J. Monski, directly or indirectly, used the means and instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, practices, and courses of business described herein.

THE DEFENDANT

5. Defendant Robert J. Monski, age 38, is a self-employed investor living in Birmingham, Alabama.

FACTS

The Limit Order Display Rule

6. The Limit Order Display Rule, Rule 11Ac-4 under the Exchange Act ("Display Rule"), requires a NASDAQ market maker, subject to certain specified exceptions, to display in the market maker's public quote a customer limit order that (1) is priced better than the market maker's quote, or (2) represents more than a *de minimis* increase to the size of the market maker's quote, if the market maker's quote is at the NBBO at the time the customer's limit order is received. One of the specified exceptions, Rule 11Ac-4(c)(7), provides that market makers are not required to display "all or none" customer limit orders.

7. The Display Rule provides greater transparency by allowing the market to see improving customer limit orders, and, consequently, enhances liquidity and execution opportunities for customer orders.

Defendant's Conduct

8. Between early October and mid-November 1997, Monski placed hundreds of small-size buy and sell limit orders (typically the hundred-share minimum necessary to trigger the display requirement) to affect the NBBO of thinly traded stocks. Monski used the change in the NBBO that resulted from his limit order to trigger execution of pre-existing, significantly larger "all or none" limit orders he had placed on the other side of the market.

9. Monski's objective was to use small limit orders to move the NBBO quote to meet the execution price of larger "all or none" limit orders which were purposefully placed with one of the many brokers that guarantee execution of customer orders of 1000 to 3000 shares at the NBBO regardless of the size of the NBBO quote.

10. After moving the bid or offer quote to the desired price, Monski immediately attempted to cancel the hundred-share order. In this manner, Monski manipulated the public quote to obtain better execution prices for hundreds of orders.

CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)],
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]

11. Paragraphs 1 through 10 are re-alleged and incorporated herein by reference.

12. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit the use of "any manipulative or deceptive device or contrivance in connection with the purchase or sale of any security." Section 17(a) of the Securities Act prohibits such conduct in the offer or sale of any security. Taken together the antifraud provisions prohibit trading designed to artificially affect the market price of a security. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 198 (1976). "In

essence, a manipulation is the intentional interference with the free forces of supply and demand." In the Matter of Pagel, Inc., 48 S.E.C. 223, S.E.C. Rel. No. 34-22280 (Aug. 1, 1985); United States v. Stein, 456 F.2d 844, 850 (2d Cir. 1972).

13. Monski repeatedly engaged in a precise pattern of conduct meant to affect the NBBO and permit execution of orders at prices that would not otherwise have been available in the market. Monski's actions interfered with the free forces of supply and demand and undermined the integrity of the NBBO.

14. By reason of the foregoing, the defendant violated Securities Act Section 17(a) [15 U.S.C. § 77q(a)], Exchange Act Section 10(b) [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

15. The Commission respectfully requests that this Court (a) enter judgment against defendant Monski ordering him to pay a civil penalty of $10,000 pursuant to Section 20(d) of the Securities Act and Sections 21(d)(3) of the Exchange Act, and (b) grant such other relief as this Court deems just and proper.

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