

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.**

SECURITIES AND EXCHANGE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 SCOTT O. HIRSCH and)
 KENNETH L. FRIEDMAN,)
)
 Defendants.)
 _____)

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges as follows:

INTRODUCTION

1. This case involves insider trading by Defendants Scott O. Hirsch and Kenneth L. Friedman. Hirsch and Friedman were each tipped material, nonpublic information about PetMed Express, Inc.’s (“PetMed” or the “Company”) fiscal 2017 fourth quarter and year-end financial results by a former senior manager of PetMed.

2. From January 1, 2017 through May 8, 2017 (the “Relevant Period”), the senior manager had access to PetMed’s quarterly earnings, business operations, and financial performance through his position and being a member of PetMed’s management committee. The senior manager tipped material, nonpublic information about PetMed’s fiscal 2017 fourth quarter and year-end financial results to Hirsch and Friedman before the Company issued its May 8, 2017 earnings announcement.

3. Hirsch and Friedman traded on the basis of the material, nonpublic information and made profits of \$74,536 and \$501,697, respectively, from their trading. Hirsch further tipped his relatives who made profits of \$20,936 from their trading.

4. By engaging in the conduct alleged in this Complaint, Hirsch and Friedman violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c). Unless enjoined, Hirsch and Friedman are reasonably likely to continue to violate the federal securities laws. The Commission also seeks disgorgement of their ill-gotten gains with prejudgment interest and civil money penalties.

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act, 15 U.S.C. § 78u(d) and 78u-1. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa.

6. This Court has personal jurisdiction over Hirsch and Friedman and venue is proper in the Southern District of Florida. PetMed is headquartered in the Southern District of Florida and Hirsch and Friedman reside in this District.

7. In connection with the conduct alleged in this Complaint, Hirsch and Friedman, directly and indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, and of the mails.

DEFENDANTS

8. **Hirsch**, 53, is a resident of Delray Beach, Florida. Hirsch is an advertising executive with extensive experience in media marketing. In the 1990s, Hirsch worked at the same company as the senior manager, and they have remained friends since that time.

9. **Friedman**, 69, is a resident of Delray Beach, Florida. He is the president of Kenneth L. Friedman, Inc., a New York-based insurance company that sells and administers individual and group insurance plans. Friedman met the senior manager in October 2016 at a South Florida casino, and they played in high-stakes poker games on a number of occasions at the casino from October 2016 through the spring of 2018.

RELATED ENTITY AND INDIVIDUAL

10. **PetMed**, a Florida corporation headquartered in Delray Beach, Florida, is an online pet pharmacy that sells medications and other health products for dogs and cats. PetMed's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ under the ticker "PETS."

11. **The senior manager** is a resident of South Florida. During his time at PetMed, the manager held a senior position with the Company and was a member of its management committee.

FACTUAL ALLEGATIONS

I. The Senior Manager Had Access To Material, Nonpublic Information Concerning PetMed's Business Operations, Financial Performance, And Quarterly Earnings

12. The management committee generally met on a weekly basis to discuss, among other things, financial data and metrics PetMed used to assess its financial condition and business operations. PetMed's CEO and CFO typically led the weekly meetings.

13. At the meetings, an Excel spreadsheet would be projected on a screen with multiple tabs containing various charts, graphs, and spreadsheets. It was generated from PetMed's proprietary software system that tracks and compiles all financial data from PetMed's other systems into one central location. The management committee used this information to analyze the financial condition and operations of PetMed on a weekly basis.

14. PetMed's CEO and CFO would review these metrics, along with other financial data, with members of the management committee, to understand how PetMed was performing and to ascertain what actions, if any, the Company needed to implement to improve its financial performance. Based on the review of these financial metrics, during the Relevant Period the senior manager had a detailed understanding of PetMed's financial condition.

15. The senior manager was responsible for overseeing and maintaining the proprietary system. His duties included, among other things, updating software and running tests on the system and generating reports and data for PetMed personnel and its outside auditors. He was routinely required to run reports and pull data for PetMed's management, accountants and auditors in connection with monthly, quarterly, and annual financial results and announcements.

16. During the Relevant Period, only PetMed's CEO, CFO, and the senior manager had access at all times to the proprietary system and its data. None of the information presented and discussed at the weekly management committee meetings was made public prior to PetMed issuing its quarterly earnings announcements and related filings with the Commission.

II. The Senior Manager Was Aware Of PetMed's Prohibitions Against Insider Trading

17. During the Relevant Period, PetMed's Insider Trading Policy prohibited trading in PetMed securities while an employee was in possession of material, nonpublic information concerning the Company. PetMed's Insider Trading Policy also prohibited employees from passing or tipping others outside of the Company material, nonpublic information concerning PetMed.

18. The Insider Trading Policy listed common examples of material, nonpublic information, including unannounced results of operations and projections of future earnings or losses.

19. PetMed's Insider Trading Policy further prohibited any employee from trading in the Company's securities during certain blackout periods surrounding quarterly earnings announcements and completely forbade any employee from buying or selling call or put options involving PetMed securities at any time.

20. In connection with PetMed's Insider Trading Policy, PetMed's General Counsel would send all employees, including the senior manager, an email each quarter setting forth that quarter's blackout period in "which there may be no trading of the Company's stock in any manner."

21. Each year, PetMed employees were required to sign an "Acknowledgment of Reminder Memo concerning the PetMed Express, Inc. Corporate Code of Business Conduct and Ethics, and Insider Trading Policy AND Whistleblower Policy." During the Relevant Period, on January 10, 2017, the senior manager signed this memo acknowledging his responsibility to read and abide by the Insider Trading Policy.

III. The Senior Manager Tipped Hirsch Material, Nonpublic Information Concerning PetMed's Fiscal 2017 Fourth Quarter And Year-End Financial Results

22. The senior manager and Hirsch have been friends for approximately 20 years, having met in the 1990s when they worked together at the same company. They have also conducted business together in recent years.

23. From April 3 through April 17, 2017, PetMed compiled its preliminary fiscal 2017 fourth quarter and year-end financial results, which the Company's auditors then reviewed. The senior manager generated reports and data analytics to prepare and finalize these financial results. Subsequently, between April 24 and 26, 2017, the senior manager and Hirsch had four telephone calls. The timing and frequency of the calls were unusual given that they only had eight phone calls in all of 2017, with the next calls held on July 28 and 29, 2017.

24. On May 1 and 5, 2017, Hirsch purchased 22,307 shares of PetMed common stock. Hirsch had never traded in PetMed securities prior to May 2017. On May 1, 2017 – the same day Hirsch made his first purchase – he deposited \$300,000 in his brokerage account, which, along with a margin loan, he used to purchase all 22,307 shares of PetMed common stock. Hirsch’s May 2017 purchases of PetMed common stock represented 100% of the total portfolio value in his brokerage account, and was the only asset in that account. Hirsch did not purchase or sell any other securities in the brokerage account in 2017.

25. PetMed issued its earnings announcement at 8:00 a.m. on May 8, 2017, prior to the market opening. The announcement caused the price of PetMed common stock to increase by 25.43% from the previous day’s closing price, from \$24.22 per share to \$30.38 per share at closing. Hirsch sold all 22,307 shares of PetMed common stock on May 8, 2017, after the earnings announcement was disseminated to the market, and realized profits of \$74,536.

IV. The Senior Manager Tipped Friedman Material, Nonpublic Information Concerning PetMed’s Fiscal 2017 Fourth Quarter And Year-End Financial Results

26. The senior manager met Friedman in October 2016 at a South Florida casino. They played in high-stakes poker games on a number of occasions at the casino from October 2016 through the spring of 2018. Friedman and the other players who routinely played in these poker games knew the senior manager held a senior position at PetMed.

27. Sometime between January and March 2017, during one of the poker games, the senior manager said PetMed was “doing great” and recommended buying the Company’s stock to Friedman and others at the table. Friedman stated he was “flabbergasted” by the comment, and told another poker player that “you can’t do that if you’re working for a public company, if you have information.”

28. In approximately March or April 2017, at another poker game, the senior manager and Friedman had a brief conversation. The senior manager told Friedman that he should buy PetMed stock, that the Company's earnings "are going to be great," and they would be coming out in the near future. He also provided Friedman with a specific earnings number. The senior manager also said he knew Friedman was "well connected," and the senior manager was interested in meeting with him to discuss an investment idea. This was the first time Friedman and the senior manager ever spoke alone.

29. At a subsequent poker game in April 2017, the senior manager informed Friedman that he was purchasing a large amount of PetMed options and stock ahead of the earnings announcement and asked Friedman if he had purchased any PetMed stock.

30. Between April 24 and May 3, 2017, Friedman purchased 81,179 shares of PetMed common stock in three accounts in his name, one account in his mother's name, and one account in his sister's name. During the Relevant Period, Friedman had complete control and trading authority over his mother's and sister's accounts and his sister did not know which securities he bought or sold in her account. On May 8, 2017, after the Earnings Announcement was released, Friedman sold all 81,179 shares and realized profits of \$501,697. Friedman had never traded in PetMed securities prior to the foregoing transactions.

CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) Thereunder

31. The Commission repeats and realleges Paragraphs 1 through 30 of this Complaint as if fully set forth herein.

32. The senior manager knew or was severely reckless in not knowing that the information he possessed concerning PetMed's quarterly and annual earnings during the Relevant

Period was material, non-public information. The senior manager also knew or was severely reckless in not knowing that he owed a fiduciary or other duty of trust and confidence to PetMed to keep the information confidential.

33. The senior manager breached his duty of trust and confidence when he tipped Hirsch and Friedman material, nonpublic information concerning PetMed's fiscal 2017 fourth quarter and annual financial results prior to the Company's May 8, 2017 earnings announcement.

34. Hirsch and Friedman knew or were severely reckless in not knowing that the information they learned from the senior manager concerning PetMed's fourth quarter and annual financial results was material, nonpublic information.

35. Hirsch and Friedman knew or were severely reckless in not knowing the senior manager owed a fiduciary or other duty of trust and confidence to PetMed to keep the information confidential and to refrain from tipping others about it.

36. The senior manager tipped Hirsch and Friedman a gift of confidential information with the expectation that they would trade on it.

37. Hirsch and Friedman traded in PetMed common stock on the basis of the material, nonpublic information they received from the senior manager.

38. By virtue of the foregoing, Hirsch and Friedman, 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 a facility of a national securities exchange, directly or indirectly employed devices, schemes, or artifices to defraud and/or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

39. By engaging in the foregoing conduct, Hirsch and Friedman violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court find that Hirsch and Friedman committed the violations alleged, and:

A.

Permanent Injunctive Relief

Issue Permanent Injunctions enjoining Hirsch and Friedman, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, from violating Section 10(b) the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).

B.

Disgorgement and Prejudgment Interest

Issue an Order directing Hirsch and Friedman to disgorge all ill-gotten gains or proceeds received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest thereon.

C.

Civil Money Penalties

Issue an Order directing Hirsch and Friedman each to pay a civil money penalty pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

D.

Retention of Jurisdiction

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 it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

E.

Further Relief

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: March 17, 2020

Respectfully submitted,

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