

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION
450 Fifth Street, N.W.
Washington, DC 20549-0708,

Plaintiff,

v.

DANIEL R. DUGAN,

Defendant.

CASE NUMBER 1:01CV00940
JUDGE: Emmet G. Sullivan
DECK TYPE: General Civil
DATE STAMP: 05/02/2001

COMPLAINT

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

NATURE OF THE ACTION

1. This case involves trading in the common stock of Acuson Corporation ("Acuson") by the former president of the company, Daniel R. Dugan. On September 26, 2000, Defendant purchased 88,800 shares of Acuson common stock while in possession of material, nonpublic information concerning the forthcoming Acuson acquisition by Siemens Medical Engineering Group ("Siemens Medical"). On September 27, 2000, Acuson and Siemens Medical jointly announced that they had reached an agreement providing for the acquisition of Acuson by Siemens Medical. The transaction was structured as a cash tender offer for all of the outstanding shares of Acuson at \$23.00 per share. After the September 27, 2000 announcement, Defendant sold all of his Acuson shares, obtaining profits of \$648,101.60.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(e), 21A and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1 and 78aa].

3. Defendant, directly or indirectly, has made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

4. Defendant may, unless restrained and enjoined, continue to engage in the acts, practices and courses of business alleged herein, or in transactions, acts, practices and courses of business of similar purport and object. The SEC seeks a judgment permanently enjoining Defendant from future violations and directing disgorgement of illegal profits, together with prejudgment interest thereon, pursuant to Sections 21(d)(1) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d)(1) and (e)]. The SEC also brings this action for an award of civil penalties, pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

THE DEFENDANT AND RELEVANT ENTITIES

5. Defendant is a resident of San Carlos, California. He was the president of Acuson from November 1997 through February 2000.

6. Acuson is a Delaware corporation headquartered in Mountain View, California. Acuson is involved in the health care industry, specializing in ultrasound diagnostic systems. Acuson's common stock was, at all relevant times, registered pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange.

7. Siemens Medical is a subsidiary of Siemens AG, a German corporation with its headquarters in Munich, Germany. Siemens Medical is one of the largest suppliers of healthcare products and services in the world.

COUNT I

Violation of Exchange Act Section 10(b) and Rule 10b-5 Promulgated Thereunder

8. Paragraphs 1 through 7 are realleged and incorporated herein by reference.

9. On September 27, 2000, before the market opened, Acuson and Siemens Medical announced that Siemens Medical would make a tender offer for all of Acuson's outstanding common stock at \$23.00 per share. Prior to the public announcement, Acuson and Siemens Medical undertook efforts to maintain the confidentiality of information relating to the proposed tender offer.

10. On September 27, 2000, following the public announcement, Acuson shares closed at \$22.55, up forty-three percent (43%) from the previous trading day.

11. Prior to the public announcement of the tender offer, Defendant learned that Acuson would be acquired by Siemens Medical. Defendant knew, or should have known, or acted in reckless disregard of the fact that the nonpublic information he learned was nonpublic, and that he had obtained the information in breach of a fiduciary duty or similar relationship of trust and confidence. Accordingly, Defendant inherited a duty not to trade on that information.

12. On September 26, 2000, while in possession of material, nonpublic information about the forthcoming acquisition of Acuson by Siemens Medical, Defendant placed buy orders for a total of 88,800 shares of Acuson common stock for himself and for one other person, which were executed at prices ranging from \$14.875 to \$15.75 per share. Defendant's buy orders were

submitted to his electronic brokerage account between 2:37 p.m. and 3:28 p.m. (all times are Eastern Standard Time).

13. Defendant's first buy order, for 19,000 shares of Acuson, was executed in full at 2:42 p.m. Defendant then placed two more buy orders – one for 30,000 shares at 2:39 p.m., and the other for 10,000 shares at 3:07 p.m. Prior to either order being executed, Defendant attempted to cancel his orders for all 40,000 of these shares. Defendant's cancellation attempts were not successful, however, and the orders were executed between 3:44 p.m. and 3:46 p.m. Between 3:14 p.m. and 3:28 p.m., Defendant placed orders to buy an additional 29,500 shares of Acuson, each of which was successfully executed. On the same day, Defendant placed a buy order for 300 shares for another person, which was successfully executed.

14. On September 27, 2000, Defendant sold all of the 88,800 shares of Acuson that he had purchased the day before, obtaining profits of \$648,101.60.

15. By reason of the foregoing, Defendant violated 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] and is likely to commit such violations in the future unless enjoined from doing so.

COUNT II

Violation of Exchange Act Section 14(e) and Rule 14e-3 Promulgated Thereunder

16. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

17. By September 26, 2000, Siemens Medical had taken a substantial step or steps to commence its tender offer for the outstanding shares of Acuson common stock. All such steps were taken in confidence.

18. On September 26, 2000, after Siemens Medical had taken a substantial step or steps to commence a tender offer for the common stock of Acuson, Defendant, directly or

indirectly, engaged in fraudulent, deceptive or manipulative acts or practices in connection with a tender offer by Siemens Medical for the common stock of Acuson, by purchasing or causing to be purchased the securities of Acuson, while in possession of material information relating to the tender offer, which information he knew or had reason to know was nonpublic and which information he knew or had reason to know was obtained, directly or indirectly, from Siemens Medical or Acuson, or a person acting on behalf of either Siemens Medical or Acuson.

19. By reason of the foregoing, Defendant violated Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3] and is likely to commit such violations in the future unless enjoined from doing so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SEC respectfully requests that this Court enter a judgment:

(i) permanently enjoining defendant Daniel R. Dugan and his agents, servants, employees, and attorneys-in-fact, and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. § 78j(b) and §78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. § 240.10b-5 and § 240.14e-3];

(ii) ordering defendant Daniel R. Dugan to disgorge all profits from the trading alleged herein, with prejudgment interest;

(iii) ordering defendant Daniel R. Dugan to pay a civil penalty under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

(iv) granting such other relief as this Court may deem just and appropriate.

Dated: May 2, 2001
Washington, D.C.

Respectfully submitted,



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