

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

2003 APR 11 AM 9:49

JAMES R. HANSPEAKER
CLERK

Civil Action No. 03-0636

BY _____ DEP. CLK

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
C. JONES & COMPANY,)
CARTER ALLEN JONES,)
TIMOTHY J. MILES,)
GAYLEN P. JOHNSON, and)
JONATHAN CURSHEN,)
)
Defendants.)
_____)

03-wm-0636 (PAC)

COMPLAINT

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

I. INTRODUCTION

1. The Commission brings this action to enjoin the Defendants from continuing to violate the antifraud provisions of the federal securities laws. The case involves a pump-and-dump scheme to artificially inflate the stock price of Freedom Golf Corporation ("Freedom Golf" or the "Company") for the benefit of certain insiders, who reaped huge profits from selling their stock after driving up the price by making numerous material false statements about the Company.

2. From late January through early March 2000, Timothy J. Miles ("Miles") paid two promoters, Carter Allen Jones ("Jones") and Jonathan Curshen ("Curshen"), to hype Freedom Golf via the Internet, telephone, and mail. As part of the scheme, Jones arranged for the dissemination of between 25 and 35 million unsolicited e-mails touting Freedom Golf in February 2000. These e-

mails contained materially false and misleading information concerning Freedom Golf, as well as baseless price projections for the Company's stock. During the same period, Freedom Golf president Gaylen Johnson ("Johnson") created baseless profit, revenue, and expense projections for Freedom Golf that Jones published on his company's Internet website, and that Curshen publicized.

3. Jones and Curshen failed to disclose the full amount that Miles was paying them to tout Freedom Golf stock, in violation of the securities laws. Meanwhile, at the same time they were pitching the virtues of Freedom Golf stock to anyone who would listen, Miles, Jones and Curshen were selling their stock for more than half a million dollars in profits.

II. DEFENDANTS AND RELATED PARTY

4. Defendant Johnson, 51, resides in Englewood, Colorado. Johnson has been the president and chief executive officer of Freedom Golf since its incorporation in 1996.

5. Defendant Miles, 54, resides in Klamath Falls, Oregon. At all relevant times, Miles owned at least 10% of Freedom Golf's outstanding securities.

6. Defendant Jones, 36, resides in Highlands Ranch, Colorado and is president of C. Jones & Company.

7. Defendant C. Jones & Company ("Jones Company") is a Nevada corporation incorporated in 1995, with its principal place of business in Highlands Ranch, Colorado.

8. Defendant Curshen, 37, resides in Sarasota, Florida. At all relevant times, Curshen was a stock promoter who assisted small and micro-cap companies in raising capital.

9. Freedom Golf is a Nevada Corporation incorporated in 1996, with its principal office in Englewood, Colorado. Freedom Golf's common stock has been quoted on the Over-the-Counter Bulletin Board ("OTCBB") since December 1999, after it merged with Auric Enterprises, Inc. ("Auric"), a shell corporation that also was listed on the OTCBB.

III. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a); and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

11. This Court has personal jurisdiction over the Defendants and venue is proper in the District of Colorado because many of the Defendants’ acts and transactions constituting violations of the Securities Act and the Exchange Act occurred in the District of Colorado. In addition, Johnson and Jones reside, and Jones Company is located, in the District of Colorado. Defendants Miles and Curshen either conducted business with Freedom Golf directly or undertook nationwide marketing activities on behalf of the Company. Finally, a number of investors residing in Colorado purchased shares of Freedom Golf during the relevant time period as a result of the Defendants’ activities.

12. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

IV. THE FRAUDULENT “PUMP-AND-DUMP” SCHEME

A. Defendant Miles Makes Material Misrepresentations In Connection With Auric Becoming Publicly Traded

13. In December 1998, Miles had Auric incorporated in Nevada, and named his two daughters and a friend as its officers and directors. Shortly afterwards, Miles offered for sale Auric units, made up of common stock and stock purchase warrants (warrants gave the owner an

option to purchase shares of Auric stock for a specific price within a specific period of time) to friends and relatives. Miles had Auric issue him more than 50% of its stock and warrants.

14. In April 1999, Miles had Auric file a Form 10-SB with the Commission in order to register its common stock.

15. In the fall of 1999, Miles asked a registered broker-dealer to file a Form 211 with the National Association of Securities Dealers ("NASD") so that the broker-dealer could enter quotes for Auric's common stock on the OTCBB. Miles provided the broker-dealer with documents to submit to the NASD that contained numerous false statements, including, among other things, misstatements regarding Miles' relationships and affiliations with other Auric shareholders, his involvement in the solicitation of the shareholders, and their financial status.

16. For example, Miles gave investors Johnny Wong, Dean Cummings, Paul Speigler and Fred Quadros, and possibly others, false addresses to put on their subscription agreements for Auric stock units. This was so Miles and Auric could avoid registration requirements in California, Ohio, and other states where these investors resided. Miles gave this information to the broker-dealer to submit to the NASD.

17. In addition, Miles told at least one investor, Speigler, to state on his subscription agreement that Speigler was accredited, when Miles knew he was not. Again, this was among the information Miles gave to the broker-dealer to give to the NASD.

18. Miles also created false information for submission to the NASD showing some investors had invested in Auric because they knew its president, Robert Hinchey. In reality, Hinchey had never met those investors. The investors had bought Auric stock units because of their connection to Miles. Miles directed this activity and had the false information included on the information he provided to the broker-dealer for submission to the NASD so he could hide

his complete control over Auric, its shareholders, and its securities. Without concealing this information, Miles would never have been able to persuade the NASD to allow Auric to be quoted on the OTCBB.

19. Relying on the false information contained in the Form 211, the NASD approved the broker-dealer entering quotes for Auric on December 14, 1999. The broker-dealer began making a market in Auric's common stock on December 15, 1999, when it entered bid at \$1.00 and an ask at \$1.375. But for the false information Miles was responsible for submitting to the NASD, Auric would never have been quoted on a public exchange.

B. Auric Merges With Freedom Golf

20. In October 1999, Miles met with Johnson to discuss merging Auric and Freedom Golf. At the time, Freedom Golf was a privately held and financially distressed company that manufactured custom-made golf clubs and equipment. Miles told Johnson a merger with Auric, which had no business operations and would soon be listed on the OTCBB, would infuse Freedom Golf with much needed capital, as long as Freedom Golf's stock price increased and warrants were exercised.

21. During the October 1999 meeting, Miles assured Johnson he would retain promoters who would stimulate interest in Freedom Golf among the financial community and investors. In December 1999, based on Miles' representations, Freedom Golf merged with Auric. The surviving entity changed its name to Freedom Golf. Miles then arranged for the same attorney, stock transfer agent, and accountant who provided professional services to Auric to provide such services to Freedom Golf.

22. In January 2000, Miles hired Jones and Curshen to promote Freedom Golf. Miles told the two promoters his goal was to increase the company's stock price to \$2.00 per share.

Jones and Curshen then launched a widespread Internet promotional scheme to drive up Freedom Golf's stock price. As described in more detail below, they posted an "investor report" about Freedom Golf on the Internet that contained astronomical profit and revenue projections, as well as patently false expense projections. Jones also had disseminated millions of e-mails concerning Freedom Golf that were replete with lies.

**C. Johnson, Jones, and Jones Company Make Material Misrepresentations
And Omissions Concerning Freedom Golf**

23. In mid-January 2000, Miles paid Jones and his stock promotion company to hype Freedom Golf. Within weeks, Jones Company's website featured a Freedom Golf "investor report" that Johnson had created and provided to Jones. The report was fraught with material false statements and omissions about Freedom Golf's revenues, profits, and expenses.

24. For example, Johnson forecast in the investor report that Freedom Golf's revenues would skyrocket by an incredible **24,500%** in just three years – from \$88,763 in 1999 to \$21,900,000 by 2002. He predicted the Company's profits would jump in similar gargantuan proportions – from a loss of \$6,101 in 1999 to a gain of \$13,500,000 in 2002.

25. Johnson, who had no background in financial analysis, based these projections on the premise that Freedom Golf would air "infomercials." However, that assumption was without any basis in fact, since, as described in more detail below, Johnson knew Freedom Golf had no money to pay for infomercials and no concrete plans to air them.

26. Johnson also claims he based the projections on information he allegedly received from advertising companies about the effects of infomercials – information the companies deny having ever provided to Johnson or anyone. Finally, Johnson claims to have shown his projections to Freedom Golf's chief financial officer – a claim the financial officer denies. Thus,

Johnson made these projections without any factual basis whatsoever. He knew or was reckless in not knowing that they were baseless.

27. In addition to the astronomical profit and revenue forecasts, Johnson's investor report grossly understated Freedom Golf's expenses. The report said they would total \$311,760 for calendar year 2000. In reality, Freedom Golf's expenses had already exceeded \$900,000 when Johnson wrote the report. As the Company's chief executive, Johnson either knew this fact or was reckless in not knowing it.

28. The investor report also omitted the important facts, which Johnson knew as Freedom Golf's chief executive, that the Company was financially distressed, had little money, and was in arrears in payments to many of its suppliers. For example, the Company had a negative balance in its checking account on many occasions throughout the spring of 2000. At the same time, it owed suppliers such as Office Depot, Paragon Sports, True Temper Sports and others, tens of thousands of dollars. Finally, the only cash of any significance the Company had access to was through Jones' exercise of his warrants.

29. Jones knew the true state of Freedom Golf's finances through his constant contact with Johnson and Miles. Despite this knowledge, he did nothing to verify the accuracy of Johnson's facts or the reasonableness of his incredible projections. Furthermore, the Jones Company website failed to disclose that Johnson, who lacked any financial expertise, created the projections. Jones was reckless in not knowing that many of the projections in the investor report were false or lacked any basis in fact. He nonetheless published the investor report.

30. Miles paid Jones 300,000 warrants and 80,000 shares of Freedom Golf common stock for Jones' efforts in promoting the company. Jones lied about the full extent of his compensation on the Jones Company website, however. He represented that he had only

received 200,000 warrants. Jones also failed to disclose that he exercised most of the warrants and dumped Freedom Golf stock during the entire period he was promoting the company and recommending its stock to hundreds of retail brokers and the public. Jones earned approximately \$204,610 from his sale of Freedom Golf stock during the relevant time period.

31. Similarly, Miles dumped his Freedom Golf shares into the market he paid others to inflate, and earned at least \$184,646 during the relevant time period.

**D. Jones Arranges For Dissemination Of E-mails Containing
Materially False And Misleading Information**

32. In late January 2000, Jones helped arrange for a bulk e-mailer to send out approximately 30 unsolicited million e-mails recommending Freedom Golf's stock to America-On-Line subscribers. Jones informed stockbrokers ahead of the e-mail dissemination in an effort to create even more demand for Freedom Golf's stock.

33. Between February 28 and March 13, 2000, the e-mailer Jones hired sent between 25 and 35 million e-mails touting Freedom Golf. These e-mails rated Freedom Golf as a "strong buy" and contained a short-term price projection of \$4.00 and long-term price projections of between \$8.00 and \$10.00 per share.

34. In addition, the e-mails contained false statements concerning distributorship contracts Freedom Golf purportedly had with Golf USA and PGAgolf.com to sell its golf clubs. The e-mails also falsely stated that Freedom Golf was going to sponsor a national amateur golf tournament and that it would soon be airing infomercials on, among other channels, ESPN and The Golf Channel. The e-mails also failed to disclose the company's grim financial condition.

35. As previously discussed, Jones knew through his contact with Johnson that Freedom Golf had no money to pay for infomercials and that there were no contracts or even

plans to air infomercials. Furthermore, Jones either knew through his contact with Johnson or was reckless in not knowing because of his detailed knowledge of Freedom Golf's dire financial straits that there were no distributorship agreements. Yet he still arranged for the emails to be sent to millions of people.

E. Curshen's Material Misrepresentations And Omissions Concerning Freedom Golf

36. In January 2000, Miles engaged Curshen to promote Freedom Golf. Curshen, using several aliases, including Savior 1999, Savior 2000 and Bid Up, posted dozens of messages touting Freedom Golf on internet message boards such as Raging Bull and Yahoo! Finance. Curshen's messages, most of which were posted in February and March 2000, praised Freedom Golf and recommended that others purchase the stock quickly.

37. On March 22, 2000, Curshen posted a message on the Internet directing its readers to the false and misleading research report about Freedom Golf on Jones Company's website that Johnson had created. Curshen was in constant contact with Miles, Jones and Johnson about Freedom Golf, and knew about the company's financial problems. He did nothing to verify any of the information in the research report before directing the general public to it. He either knew the information in the report was false, or was reckless in not knowing it by virtue of his knowledge of the company's finances.

38. Miles transferred 125,000 shares of Freedom Golf stock to Curshen as payment for Curshen's promotion of Freedom Golf. Curshen's numerous messages and postings failed to disclose both that Miles was paying him to promote Freedom Golf and that he was selling Freedom Golf stock at the same time he was recommending that others buy it. Curshen made approximately \$126,873 from his sale of Freedom Golf stock during the relevant time period.

F. Freedom Golf's Price And Volume Movement Following The Promotional Campaign

39. Freedom Golf's stock price and trading volume increased significantly as a result of the touting scheme. For example, in the first few days following the e-mail dissemination, Freedom Golf's stock price was quoted as high as \$2.00 per share, while its volume averaged approximately 400,000 shares per day. In January 2000, the month before the promotional campaign began, Freedom Golf's average price per share was 74 cents, while its average daily trading volume was less than 20,000 shares per day.

G. Johnson Causes Freedom Golf To Fail To Make Required Filings With The Commission

40. In his role as Freedom Golf's chief executive, Johnson caused the Company to fail to file a required Form 10-KSB for its fiscal year ending September 30, 2002. Johnson also caused the Company to fail to file a required Form 10-Q for the quarter ending December 31, 2002. Freedom Golf was supposed to file these reports on December 31, 2002 and March 31, 2003, respectively.

COUNT I

FRAUD IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER
(Against All Defendants)

41. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint as if fully set forth herein.

42. From at least late 1999 through the spring of 2000, the Defendants, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) 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/or (c) engaged in acts, practices and courses of business which operated as a fraud upon the purchasers of such securities.

43. By reason of the foregoing, the Defendants, directly or indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

COUNT II

FRAUD IN VIOLATION OF SECTION 17(a)(1) OF THE SECURITIES ACT (Against Miles, Jones, Jones Company And Curshen)

44. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint as if fully set forth herein.

45. From at least late 1999 through the spring of 2000, Defendants Miles, Jones, Jones Company and Curshen, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

46. By reason of the foregoing, Defendants Miles, Jones, Jones Company and Curshen, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT III

**FRAUD IN VIOLATION OF
SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT
(Against Miles, Jones, Jones Company and Curshen)**

47. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint as if fully set forth herein.

48. From at least late 1999 through the spring of 2000, Defendants Miles, Jones, Jones Company and Curshen, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (b) engaged in transactions, practices and courses of business which operated as a fraud or deceit upon purchasers and prospective purchasers of such securities.

49. By reason of the foregoing, Defendants Miles, Jones, Jones Company and Curshen, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

COUNT IV

**UNDISCLOSED COMPENSATION FOR STOCK PROMOTION IN VIOLATION
OF SECTION 17(b) OF THE SECURITIES ACT
(Against Jones, Jones Company and Curshen)**

50. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint as if fully set forth herein.

51. From at least February 2000 through March 2000, Defendants Jones, Jones Company and Curshen, through the use of the means or instruments of transportation or

communication in interstate commerce or by use of the mails, published and circulated articles and communications that, though not purporting to offer securities for sale, described certain securities.

52. Defendants Jones, Jones Company and Curshen received and were to receive consideration for such activities from or on behalf of the issuer of these securities and did not fully disclose the past or future receipt of such consideration and the amounts.

53. By reason of the foregoing, Defendants Jones, Jones Company and Curshen have violated, and unless enjoined, will continue to violate Section 17(b) of the Securities Act, 15 U.S.C. §§ 77(q)(b).

COUNT V

FAILURE TO FILE ANNUAL OR QUARTERLY REPORTS IN VIOLATION OF SECTION 13(a) OF THE EXCHANGE ACT AND RULES 13a-1 AND 13a-13 **(Against Johnson)**

54. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint as if fully set forth herein.

55. Since September 30, 2002, Freedom Golf has failed to file such annual and quarterly reports as the Commission requires pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. §§ 78(m)(a), and Rules 13a-1 and 13a-13, 17 C.F.R. § 240.13a-1 and § 240.13a-13.

56. Defendant Johnson, Freedom Golf's president caused Freedom Golf to fail to file the required reports in violation of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13.

57. By reason of the foregoing, Defendant Johnson aided and abetted Freedom Golf's violations of Section 13(a) of the Exchange Act, 15 U.S.C. §§ 78(m)(a), and Rules 13a-1 and 13a-13, 17 C.F.R. § 240.13a-1 and § 240.13a-13.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I. Declaratory Relief

Declare, determine and find that each of the Defendants committed the violations of the federal securities laws alleged in this Complaint.

II. Permanent Injunctive Relief

Issue a Permanent Injunction, restraining and enjoining each of the Defendants and all of their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating the provisions of the securities laws each is alleged to have violated in this Complaint.

III. Disgorgement

Issue an Order requiring Defendants Miles, Jones, Jones Company and Curshen to disgorge all ill-gotten profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

IV. Penalties

Issue an Order directing each of the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d); and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

V. Penny Stock Bar

Issue an Order pursuant to: Section 603 of the Sarbanes-Oxley Act of 2002 [Public Law No. 107 - 204, 116 Stat. 745 (July 30, 2002)]; Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6); Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g); and the Court's equitable

powers, permanently barring each of the Defendants from participating in an offering of penny stock.

VI. Further Relief

Grant such other and further relief as may be necessary and appropriate.

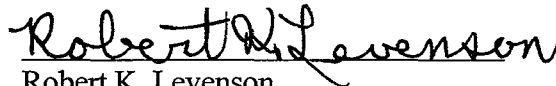
VII. Retention of Jurisdiction

Further, 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.

Respectfully submitted,

April 10, 2003

By:



Robert K. Levenson
Senior Trial Counsel
Colorado Bar No. 028441
Direct Dial: (305) 982-6341

Ivan P. Harris
Assistant Regional Director
Florida Bar No. 957666
Direct Dial: (305) 982-6342

James D. Sallah
Senior Counsel
Colorado Bar No. 028254
Direct Dial: (305) 982-6354

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154