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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KENNETH S. MARTIN,

Defendant

04 Civ. 938 (MBM)

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the “Commission”), as and for its Complaint against Kenneth S. Martin (“Martin” or “Defendant”), alleges:

SUMMARY

1. Martin engaged in unlawful insider trading on two occasions, first in March 1999, and then in October 2003. On both occasions, Martin purchased securities while in possession of material, non-public information concerning the issuers of the securities, which he obtained through his employment with a consulting firm that had

been retained in connection with mergers involving the issuers. In the first instance, Martin purchased 1,000 shares of BankBoston Corp. (“BankBoston”) while in possession of information that its rival, Fleet Financial Group was planning to acquire BankBoston. In the second instance, Martin purchased 6,200 shares of FleetBoston Corp. common stock in October 2003, while in possession of information that Bank of America and FleetBoston Corp. were having discussions concerning a major transaction. In total, Martin had imputed profits from his insider trading of \$47,266.

JURISDICTION

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

3. Venue is proper in this district, pursuant to Section 27 of the Exchange Act [18 U.S.C. §§ 78aa], because substantial events or omissions giving rise to the Commission's claim occurred in this district.

4. The Defendant used the means or instruments of interstate commerce or the mails in connection with the acts described herein.

DEFENDANT

5. Martin, age 40, is a resident of New York, New York. During the relevant period, Martin was employed at a consulting firm (“Consulting Firm”) in New York City that, among other things, provides advice on employee benefits to companies.

FACTUAL ALLEGATIONS

6. On or about March 10, 1999, Martin came into possession of information that BankBoston was a merger candidate, in the course of his employment at the Consulting Firm. Among other things, he was assigned by the Consulting Firm to analyze the employee compensation programs at BankBoston, which had retained the Consulting Firm in connection with pending negotiations for its merger with Fleet Financial Group (“Fleet Financial”).

7. The Consulting Firm has a policy of protecting client’s confidential information, and Martin was aware of that policy.

8. While in possession of this information, Martin bought 1,000 shares of Bank Boston common stock, at \$43.88 per share.

9. On March 14, 1999, the boards of Fleet Financial and BankBoston announced a \$16 billion deal. The new bank, the country’s eighth largest, was to be called FleetBoston Corp. (“FleetBoston”) following a merger of BankBoston with Fleet Financial. Confidential negotiations between the two banks began in November 1998. Under the terms of the announced deal, Fleet Financial made an all-stock offer for BankBoston’s assets.

10. Following the announcement, the price of BankBoston stock rose, closing at \$47.12 on March 14th, and increasing the value of Martin’s investment in BankBoston stock value by \$3,182.

11. In the fall of 2003, the surviving entity, FleetBoston, retained the Consulting Firm in connection with negotiations involving its acquisition by the Bank of

America. On or about October 23, 2003, Martin came into possession of confidential information that FleetBoston and Bank of America were having discussions concerning a major transaction, in the course of his employment at the Consulting Firm. Among other things, Martin became aware that employees at the Consulting Firm were reviewing change-of-control provisions regarding compensation for one or more senior officers of FleetBoston, and learned from his supervisor that something was going on between FleetBoston and Bank of America. He asked Martin to pull up the Form 10-K for Bank of America to look at its financial statements to find out as much information as possible about their employee benefit programs and the financial status of the benefit programs.

12. After receiving this assignment, Martin ordered the purchase of 6,200 shares of FleetBoston common stocks in two accounts brokerage accounts. In one account he bought 1,000 shares at \$32.09, and in his IRA account he bought 5,200 shares at \$32.08. His total outlay for the purchase was \$198,956.

13. On October 27, 2003, Bank of America announced its intention to purchase FleetBoston, paying a premium over FleetBoston's current share price. In a deal valued at \$48 billion, Bank of America was prepared to pay FleetBoston shareholders over \$45 per share, 42% more than the \$31.80 that Fleet sold at the day before the announcement. The price of FleetBoston common stock closed at \$39.20, increasing the value of Martin's investment in FleetBoston stock by \$44,084.

CLAIM

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

14. Plaintiff repeats and realleges paragraphs 1 through 13 above.

15. Defendant Martin, in connection with the purchase or sale of securities, has (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 light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud or deceit upon purchasers, prospective purchasers, and other persons.

16. Martin purchased securities of BankBoston and FleetBoston while in possession of material, non-public information, in breach of a duty to keep such information confidential and not to use such information for personal profit.

17. Defendant Martin knowingly or recklessly engaged in the conduct described in this claim.

18. By reason of the foregoing, Defendant Martin 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court issue:

I.

An Order permanently enjoining Martin, and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice by personal service or otherwise, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder.

II.

A Final Judgment imposing against Martin penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. §78u-1)], enacted as part of the Insider Trading and Securities Fraud Enforcement Act of 1988.

III.

A Final Judgment requiring Martin to disgorge the amount of his ill-gotten gains, plus prejudgment interest, or such other and further amount as the Court may find appropriate.

IV.

An Order or Final Judgment granting such other relief as this Court may deem just or appropriate.

Dated: February 4, 2004

EHN (s/s)

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