

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO. 8:04cv1858-T23MSS

SECURITIES AND EXCHANGE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 GEORGE CARAPELLA and ALAN S.)
 LIPSTEIN,)
)
 Defendants.)
)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMMY L. LUCAS

04 AUG 12 AM 10:54

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission") alleges and states as follows:

I. INTRODUCTION

1. The Commission brings this action to enjoin George Carapella and Alan S. Lipstein, two recidivist securities law violators, from continuing to defy the federal securities laws and participate illegally in penny stock offerings. Only two years ago, this Court enjoined Carapella and Lipstein from violating the antifraud provisions of the federal securities laws and ordered them to pay almost \$2 million in disgorgement and civil penalties based on their pump-and-dump scheme involving the stock of a public company they controlled. As a result of this same scheme, the Commission administratively barred Carapella and Lipstein from participating in penny stock offerings. Utterly ignoring those orders, Carapella and Lipstein have again violated the securities laws and unless again restrained and enjoined will continue to violate them.

2

2. From approximately August 2003 until February 2004, Carapella and Lipstein participated in a penny stock offering by attempting to merge another Florida company they control with a private cellular telephone retailer. Carapella and Lipstein planned to take the newly-created company public through a reverse merger or an initial public offering (“IPO”).

3. The Defendants and their agents had multiple meetings and telephone conversations, and sent at least one e-mail message to the telephone retailer’s owner to try to persuade him to merge his company with theirs. Carapella and Lipstein fraudulently represented themselves as experienced consultants who had successfully taken companies public. They also concealed their history of criminal convictions, securities law violations, and enforcement actions against them. Carapella and Lipstein told the retailer’s owner they were preparing a business plan and scheduling meetings with investment bankers for the proposed IPO.

4. Carapella and Lipstein also control a Nevada shell company and are ignoring the Court’s and the Commission’s orders by seeking a company to merge into that shell. Unless immediately enjoined, Carapella and Lipstein will continue to thumb their noses at this Court’s and the Commission’s orders by defrauding the investing public and illegally participating in penny stock offerings.

II. DEFENDANTS

5. Defendant George Carapella, 53, resides in Brandon, Florida and has represented himself as one of the owners of Bay Area Travel Holding Company, Inc. (“Bay Area Travel”), a company the Defendants are seeking to merge with another company in a penny stock transaction.

6. Defendant Alan Lipstein, 56, resides in Tampa, Florida and has also represented himself as one of the owners of Bay Area Travel.

III. JURISDICTION AND VENUE

7. 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.

8. This Court has personal jurisdiction over the Defendants, and venue is proper in the Middle District of Florida. Many of the Defendants’ acts and transactions constituting violations of the Securities Act and the Exchange Act have occurred within the Middle District of Florida. In addition, Carapella and Lipstein reside and transact business within the Middle District of Florida.

9. Carapella and Lipstein, 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 described here.

IV. DEFENDANTS’ REGULATORY BACKGROUNDS

10. Carapella and Lipstein have an extensive history of violating the securities laws. On January 22, 2002, the Commission sued them and others in the United States District Court for the Middle District of Florida in an action entitled *Securities and Exchange Commission v. Tel-One, Inc., et al.*, Case No. 8:02-CV-120-T-30-TGW. The Commission obtained a temporary restraining order against Carapella and Lipstein, among others, for orchestrating a pump-and-dump fraud involving the common stock of Tel-One, a Tampa, Florida company. The Commission’s complaint alleged that Carapella and Lipstein paid for and used fraudulent research reports that made baseless predictions about Tel-One’s future stock price to encourage

investors to buy Tel-One stock while they dumped hundreds of thousands of their own Tel-One shares on the market.

11. On July 12, 2002, Carapella and Lipstein, without admitting or denying the allegations in the Commission's complaint, consented to the entry of final judgments against them in the *Tel-One* case. The judgments permanently enjoined Carapella and Lipstein from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5. The judgments also ordered Carapella and Lipstein each to pay disgorgement and civil money penalties totaling almost \$1 million.

12. Based on these injunctions, and with the Defendants' consent, the Commission issued administrative orders on July 22, 2002 barring Carapella and Lipstein from participating in offerings of penny stocks. The orders barred either Defendant from acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock. *See In the Matter of George Carapella*, A. P. File No. 3-10840, 2002 SEC LEXIS 1860 (July 22, 2002); *In the Matter of Alan S. Lipstein*, A. P. File No. 3-10841, 2002 SEC LEXIS 1861 (July 22, 2002), attached as Exhibits 1 and 2, respectively.

13. The Defendants also have criminal convictions. Carapella was convicted in 1979 of mail fraud for his involvement in selling fake diet products. In 2000, Lipstein pled guilty in the Eastern District of New York to federal charges of conspiracy to commit securities fraud and structuring of financial transactions to avoid currency reporting requirements and pled guilty in the Middle District of Florida to federal charges of engaging in monetary transactions with the proceeds of criminal activity. In January 2004, Lipstein was sentenced to probation for a term of

three years on those charges. As a condition of his probation, Lipstein is currently living in a halfway house.

V. DEFENDANTS' LATEST SCHEME

A. Defendants' Attempts to Induce a Penny Stock Transaction

14. Starting in or around August 2003, Carapella and Lipstein approached Ronald J. Pownall, the owner of a group of affiliated pager and cell phone retail companies that all operate under some variation of the name "Beepers 'N Phones" (hereinafter collectively "Beepers 'N Phones"). Carapella and Lipstein offered to merge Beepers 'N Phones with an unspecified entity they later identified as Bay Area Travel, a company they claimed to own.

15. Beepers 'N Phones' stock constitutes a penny stock as defined by 17 CFR § 240.3a51-1. For example, Beepers 'N Phones' stock is not currently approved for quotation or trading on any quotation medium or stock exchange. It is not a reported security as defined in 17 CFR § 240.11Aa3-1(b). Additionally, all of the Beepers 'N Phones entities' stock has always sold for less than five dollars a share.

16. After the August 2003 meeting, Carapella and Lipstein told Pownall they would pay \$15 million for Beepers 'N Phones' stock. Defendants claimed they would conduct either an IPO or a reverse merger involving Beepers 'N Phones to take the company public.

17. Carapella and Lipstein pursued this penny stock deal through Bay Area Travel by having Pownall execute an "Agreement and Plan of Merger," and later asking him to sign an "Asset Purchase Agreement." Defendants never provided Pownall with an executed copy of the Agreement and Plan of Merger he signed.

18. In Article 2 of the Agreement and Plan of Merger, Defendants offered Pownall and other Beepers 'N Phones shareholders cash in exchange for their Beepers 'N Phones stock,

using a formula involving the stockholders' ownership percentage of Beepers 'N Phones, the company's 2002 net income, and the company's inventory value. As additional consideration, Defendants also offered Pownall an employment contract under which Pownall would work at least twenty hours each week as President of Bay Area Travel. In return, he would receive \$100,000 annual salary, benefits, and stock options in Bay Area Travel.

19. Carapella and Lipstein also provided Pownall a non circumvention-confidentiality agreement, an employment agreement, and a non-competition agreement. Defendants told Pownall these documents were necessary to execute the penny stock deal with Beepers 'N Phones. In the Asset Purchase Agreement, Defendants, through Bay Area Travel, offered to purchase all of Beepers 'N Phones' assets for \$5 million.

20. Carapella and Lipstein also told Pownall and Beepers 'N Phones they had taken necessary steps towards an IPO. They provided Pownall with a document entitled "Schedules for Ronald J. Pownall & The Beepers 'N Phones of America, Inc." Through this document the Defendants explained what Pownall had to do with Beepers 'N Phones to raise money for a public offering or reverse merger. These steps included paying for a business plan, obtaining legal counsel, and retaining an accountant. Defendants had Kevin Puma, the president of Bay Area Travel acting as Defendants' agent, e-mail Pownall a January 21, 2004 letter telling Pownall they had initiated a financial audit of Beepers 'N Phones and had a timeline for completion of the necessary business plan, private placement memorandum, and meetings in New York with investment bankers.

21. Carapella and Lipstein were trying to get Pownall to accept their merger offer until at least late February 2004. Neither Carapella nor Lipstein has obtained the consent of the

Commission to participate in any of the activities related to Beepers 'N Phones, as required by Section 15(b)(6)(B)(i) of the Exchange Act.

B. Defendants' Fraudulent Misrepresentations and Omissions in Attempting to Induce a Penny Stock Transaction

22. Carapella and Lipstein met and communicated with Pownall several times between August 2003 and this year to consummate the Bay Area Travel and Beepers 'N Phones penny stock transaction, intending ultimately to create a publicly-traded company. The Defendants claimed to have scheduled meetings with investment bankers for a proposed IPO. They fraudulently represented themselves as experienced consultants or experts in the IPO process who have had success with mergers and public offerings. Carapella and Lipstein have even cited Tel-One as an example of their prior "success" in taking companies public, while failing to disclose the Tel-One deal led to enforcement actions, permanent injunctions, and penny stock bars against each defendant.

23. During these discussions, Carapella and Lipstein failed to disclose their respective criminal convictions or the civil injunctions and penny stock bars entered against them. They acted knowingly, or at least severely recklessly, in making or disseminating false and baseless claims about their backgrounds and abilities to oversee a merger and public offering. These misrepresentations and the information Carapella and Lipstein failed to disclose would have been material to a reasonable investor or shareholder negotiating the sale and merger of stock in his companies.

24. Throughout the negotiations with Pownall, the Defendants never disclosed that, contrary to what they represented to Pownall and Beepers 'N Phones, Bay Area Travel did not even exist as a company until November 2003. This was months after Defendants first

approached the Beepers 'N Phones owner with the merger offer and weeks after they had him sign a merger agreement with Bay Area Travel.

C. Defendants' Other Developing Scheme

25. In addition to the Beepers 'N Phones transaction, Carapella and Lipstein appear to be planning at least one additional penny stock transaction in violation of this Court's orders and the Commission's bars. Carapella and Lipstein have stated they control a Nevada shell company that they purchased for \$150,000. They have discussed the possibility of merging the Nevada shell company with at least one private company.

26. According to the Defendants, stock in the Nevada shell company they own or control is not listed or quoted on NASDAQ or any other stock exchange, and does not have a share price of \$5.00 or more. Defendants' purported purchase price of \$150,000 indicates the Nevada shell does not have net tangible assets of at least \$2 million. The Defendants' Nevada shell therefore constitutes a "penny stock" under Exchange Act Rule 3a51-1, 17 C.F.R. §240.3a51-1.

VI. CLAIMS FOR RELIEF

COUNT I

Fraud in Violation of Section 17(a)(1) of the Securities Act

27. The Commission realleges and repeats the allegations of Paragraphs 1-26 of this Complaint as if fully restated herein.

28. Since at least August 2003, Carapella and Lipstein, 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, as described herein, have been, knowingly, willfully or recklessly employing devices, schemes or artifices to defraud.

29. By reason of the foregoing, Carapella and Lipstein, directly and indirectly, have violated and, unless immediately restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT II

Fraud in Violation of Section 17(a)(3) of the Securities Act

30. The Commission realleges and repeats the allegations of Paragraphs 1-26 of this Complaint as if fully restated herein.

31. Since at least August 2003, Carapella and Lipstein, 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, as described herein, have been engaging in transactions, practices and courses of business have been operating as a fraud or deceit upon purchasers and prospective purchasers of such securities.

32. By reason of the foregoing, Carapella and Lipstein, directly and indirectly, have violated and, unless immediately restrained and enjoined, will continue to violate Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77(q)(a)(3).

COUNT III

Violation of Section 15(b)(6)(B)(i) of the Exchange Act

33. The Commission realleges and repeats the allegations of Paragraphs 1-26 of this Complaint as if fully restated herein.

34. Since at least August 2003, Carapella and Lipstein, directly and indirectly, have willfully or recklessly violated the penny stock bars the Commission entered against them in 2002, by acting as promoters, finders, consultants, agents, or other persons who engage in

activities with a broker, dealer, or issuer for purposes of the issuance or trading in a penny stock or inducing or attempting to induce the purchase or sale of a penny stock.

35. By engaging in the conduct described above, Carapella and Lipstein, directly or indirectly, have violated and, unless immediately restrained and enjoined, will continue to violate, Section 15(b)(6)(B)(i) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B)(i).

VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I. Declaratory Relief

Declare, determine and find that Carapella and Lipstein committed the violations of the federal securities laws alleged herein.

II. Preliminary and Permanent Injunctive Relief

Issue Preliminary and Permanent Injunctions, enjoining Carapella and Lipstein, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (i) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1); (ii) Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77(q)(a)(3); and (iii) Section 15(b)(6)(B)(i) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(B)(i).

III. Penalties

Issue an Order directing Carapella and Lipstein to pay civil fines and/or 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. § 78u(d).

IV. Penny Stock Bars

Issue an Order barring Carapella and Lipstein from participating in any offering of a penny stock pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), as amended by the Sarbanes-Oxley Act of 2002.

V. Personal Trading Bans

Issue an Order, pursuant to Section 21(d)(5) of the Exchange Act, 15 U.S.C. § 78u(d)(5), as amended by the Sarbanes-Oxley Act of 2002, barring Carapella and Lipstein from trading stocks registered pursuant to Section 12 of the Exchange Act.

VI. Bans from Participating in Offerings of Unregistered Securities

Issue an Order pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), as amended by the Sarbanes-Oxley Act of 2002, barring Carapella and Lipstein from participating in any offering of unregistered securities.

VII. Records Preservation and Expedited Discovery

Issue an Order requiring Defendants to preserve any records related to the subject matter of this lawsuit that are in their custody, possession or subject to their control, and to respond to discovery on an expedited basis.

VIII. Further Relief

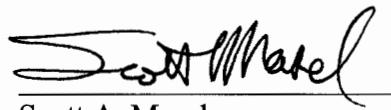
Grant such other and further relief as may be necessary and appropriate.

IX. 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 may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

Dated: August 11, 2004



Scott A. Masel
Senior Trial Counsel
Florida Bar No. 0007110
Direct Dial No.: (305) 982-6398
E-mail: masels@sec.gov
(Designated Trial Counsel under Local Rule 1.05(c))

Ivan P. Harris
Assistant Regional Director
Florida Bar No. 0085405
Direct Dial No.: (305) 982-6342

Thierry Olivier Desmet
Senior Counsel
Florida Bar No. 0143863
Direct Dial No.: (305) 982-6374

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