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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

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CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

SECURITIES AND EXCHANGE  
COMMISSION, Washington, DC

Plaintiff,

v.

HENRY T. BLACKSTOCK,

Defendant.

Case No. 3:00-cv-472-J-210

COMPLAINT  
FOR VIOLATION OF  
1) Section 10(b) of the  
Securities Exchange Act  
of 1934 and Rule 10b-5  
2) Section 17(a) of the  
Securities Act

Injunctive Relief Sought

Plaintiff the United States Securities and Exchange Commission ("Commission")

alleges as follows:

**NATURE OF THE ACTION**

1. This is an insider trading case involving the sale of securities of American HomePatient, Inc. ("AHOM") by Henry T. Blackstock, who is a member of the board of directors and of the audit committee of AHOM. The trades occurred just before AHOM issued a press release announcing its financial problems. Between Friday, September 25, 1998 and Monday, September 28, 1998, Blackstock, while in possession of material, nonpublic information concerning the impending negative announcement, sold 4,000

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shares of AHOM in an account over which Blackstock had trading authority, and which belonged to one of his friends.

2. Specifically, on Wednesday, September 23, 1998, Blackstock was informed of AHOM's deteriorating financial condition by the company's CEO because Blackstock was a member of the audit committee. On Friday, September 25, Blackstock sold 2,000 shares of AHOM in his friend's account at the price of \$8.75 per share and 2,000 additional AHOM shares in his friend's account on September 28 at the price of \$7.00 per share. Two days later, on September 30, 1998, AHOM issued a press release announcing that its annual financial results would be significantly lower than expected, and that it planned to establish a significant accounts receivable charge. The announcement was made early on September 30, 1998, and by that afternoon, the price of AHOM stock had fallen dramatically to a price of \$1.625 per share. As a result of Blackstock's sale of his friend's shares of AHOM, Blackstock caused his friend to avoid losses of approximately \$25,000.

3. In doing so, Blackstock engaged in acts, practices and courses of conduct that constituted violations of the federal securities laws. Blackstock violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. Accordingly, the Commission seeks an order permanently restraining and enjoining Blackstock from violating the antifraud provisions of the federal securities laws, imposing disgorgement of

the avoided losses, as well as prejudgment interest, and imposing civil penalties against Blackstock.

### **JURISDICTION**

4. This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d)(1) and 77v(a)] and Sections 21(d) and (e), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and (e), 78u-1 and 78aa]. Venue lies in this Court pursuant to 22(a) of the Securities Act [15 U.S.C. §§ 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §§ 78aa] because during the relevant time period, both Blackstock and his friend, Zdravko Mincek, resided in Ponte Vedra Beach -- a suburb of Jacksonville, Florida -- and the stock transactions occurred in Florida.

5. Defendant, directly or indirectly, 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.

6. Blackstock is still a director or AHOM, and will, 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 DEFENDANT AND RELEVANT ENTITIES**

7. Henry T. Blackstock is an individual who currently resides in the State of Alabama. During the relevant time period, Blackstock was a resident of Ponte Vedra Beach in the State of Florida. During the years 1969-1988, Blackstock was registered as

a broker and investment advisor with the Commission. During the relevant time period, Blackstock was a member of the Board of Directors of AHOM and one of the three members of the audit committee of AHOM.

8. Zdravko Mincek is an individual who is a resident of Ponte Vedra Beach in the State of Florida.

9. American HomePatient, Inc. is a Delaware corporation headquartered in Brentwood, Tennessee. AHOM is a home health care provider, operating approximately 330 health care centers in 38 states. AHOM's common stock is traded on the NASDAQ.

#### **FIRST CAUSE OF ACTION**

##### **Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 Promulgated Thereunder**

10. Paragraphs 1 through 9 are hereby realleged and incorporated herein by reference.

11. Blackstock and Mincek became friends during the 1970s when Mincek was providing tennis lessons at a country club, the Ponte Vedra Inn Club, of which Blackstock was a member. Mincek provided tennis lessons to Blackstock. At that time, Blackstock worked as a stockbroker. After a time, Mincek hired Blackstock to manage a profit-sharing plan for Mincek and his employees at the pro shop in the Ponte Vedra Inn Club. Blackstock has managed a personal investment account for Mincek since that time.

12. During the early 1980s, while Blackstock had his own brokerage firm, Blackstock & Co., Inc., Blackstock became a member of the board of directors of

AHOM. Thereafter, Blackstock became one of the three members of the audit committee for AHOM. In the early 1990s, AHOM became a public company.

13. During the 1980s, Mincek maintained a brokerage account with Tri-Com Investments, over which Blackstock had trading authority. In the mid-1990s, Blackstock arranged for Mincek to transfer that account to Your Discount Brokers, Inc. ("YDB"). Both Blackstock and Mincek continued to have trading authority in Mincek's YDB account.

14. In 1997, Blackstock purchased 2,000 shares of AHOM at the price of \$22 per share on behalf of Mincek through the YDB account. Until 1998, AHOM was a profitable company. However, as a result of significant reductions in Medicare oxygen reimbursements, as well as other Medicaid cutbacks, flowing from the balanced budget act of 1997, AHOM began to experience financial problems. AHOM sought to merge with other companies, but was unsuccessful.

15. In August 1998, AHOM's long-time CEO, Ed Wissing, retired and AHOM brought in a new CEO, Malcolm MacKenzie. MacKenzie promptly informed Blackstock and other members of the board of directors that AHOM had suffered losses during the month of July 1998, and that AHOM might need to increase the bad debt reserve.

16. Blackstock disagreed with MacKenzie's opinion, and on September 1, 1998, purchased an additional 2,000 shares of AHOM on behalf of Mincek in the YDB account at the price of \$7.00 per share.

17. On September 17, 1998, an internal profit and loss statement for August 1998 was completed and indicated that AHOM's August results were unfavorable.

18. On or about September 23, 1998, MacKenzie telephoned members of the audit committee, including Blackstock, to explain AHOM's financial situation and discuss a plan of action. MacKenzie informed the audit committee, including Blackstock, that: (i) the company had sustained losses during the month of August as well as July, (ii) the month of September "looked bad," (iii) the company needed to establish certain accounting charges, including a higher accounts receivable reserve, and (iv) the board of directors would need to vote on establishing certain accounting charges during the board of directors meeting which was scheduled to take place on Tuesday, September 29, 1998. Blackstock believed that the proposed increase in the company's bad debt reserve would cause AHOM's stock price to decline to a mid single-digit number.

19. Following MacKenzie's telephone call, Blackstock attempted to contact his friend, Mincek, at his home in Ponte Vedra Beach, Florida. However, Mincek was on vacation in Canada and, therefore, Blackstock was unable to reach him. Blackstock attempted to contact Mincek in Canada shortly thereafter on Thursday, September 24, 1998 at 4:24 p.m., but Blackstock again was unable to reach him.

20. The following day, Friday, September 25, 1998 (four days before the AHOM board meeting), Blackstock sold 2,000 shares of AHOM in Mincek's YDB account at the price of \$8.75 per share. On Monday, September 28, 1998 (the day before the AHOM board meeting), Blackstock sold the remaining 2,000 shares in Mincek's

YDB account at the price of \$7.00 per share. Since Blackstock had discretionary trading authority in Mincek's YDB account, he was able to execute trades on behalf of Mincek without Mincek's approval and/or knowledge.

21. On Tuesday, September 29, 1998, during the board of directors meeting, the board discussed preliminary financial results for the third and fourth quarters and management's proposals concerning significant accounting charges. The board voted to establish non-recurring third quarter charges of \$3 million as well as other accounting charges and issue a press release to that effect. The press release was drafted and finalized after midnight on September 29, 1998.

22. On September 30, 1998, before the market opened, AHOM issued a press release announcing that its financial results for the third and fourth quarters would break even or constitute a modest loss and that its annual financial results would be significantly lower than expected.

23. On September 30, 1998, following the public announcement, the price of AHOM stock dropped to \$1.625 per share.

24. As a result of Blackstock's trades in Mincek's account prior to the public announcement on September 30, 1998, Blackstock caused Mincek to avoid losses of approximately \$25,000.

25. At all relevant times, Blackstock, knew or was reckless in not knowing that the information he learned, both as a member of AHOM's board of directors and as a member of the audit committee, concerning AHOM's increase in bad debt reserves and

deteriorating financial condition were material and non-public and that trading, or causing trading, in AHOM securities while in possession of that information violated the federal securities laws.

26. Blackstock's acts, omissions, practices and courses of conduct 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]. Blackstock is likely to commit such violations in the future unless enjoined from doing so.

### **SECOND CAUSE OF ACTION**

#### **Violation of Section 17(a) of the Securities Act of 1933**

27. Paragraphs 1 through 26 are hereby realleged and incorporated herein by reference.

28. Blackstock, in the offer or sale of securities, by the use of means or instruments of communication or transportation in interstate commerce, or by the use of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omission of material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon any purchasers of securities in violation of Section 17(a) of the Securities Act [15 U.S.C. §§ 77q(a)].

29. By reason of the foregoing, Blackstock violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Commission respectfully requests that this Court:

**1. On the First Cause of Action:**

Issue an Order:

- (i) permanently enjoining defendant Blackstock from violating, directly or indirectly, 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];
- (ii) requiring Blackstock to disgorge the avoided losses, and pay prejudgment interest on that amount; and
- (iii) requiring Blackstock to pay a civil penalty under Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

**2. On the Second Cause of Action:**

Issue an Order:

- (i) permanently enjoining defendant Blackstock from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];
- (ii) requiring Blackstock to disgorge the avoided losses, and pay prejudgment interest on that amount; and
- (iii) requiring Blackstock to pay a civil penalty under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)];

**3. On All Causes of Action:**

(i) Grant such other and further relief as this Court may deem just and proper.

Dated: May 3, 2000

Respectfully submitted,



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