

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SECURITIES AND EXCHANGE COMMISSION,)
)
) Civil Action No. **97-74524**
) Plaintiff,)
))
) v.) **PATRICK DUGAN**
) **COMPLAINT**
)
)
) MARK K. CURRY and JOSEPH H. CURRY,)
))
))
) Defendants.)
) **MAGISTRATE JUDGE SCHEER**

Plaintiff, Securities and Exchange Commission ("Plaintiff" or the "Commission") for its Complaint alleges as follows:

SUMMARY OF ALLEGATIONS

1. This case involves the theft by Mark K. Curry ("M. Curry") and Joseph H. Curry ("J. Curry") (collectively, the "Defendants") of corporate assets belonging to Caraco Pharmaceutical Laboratories, Ltd. ("Caraco"). During 1993 and 1994, M. Curry, then Caraco's controller, and his brother, J. Curry, stole at least \$889,000 of Caraco's corporate funds. They accomplished the thefts in two ways. First, the Defendants forged checks drawn on Caraco bank accounts and against Caraco credit accounts that were made payable to them or for their benefit. Second, they stole checks that had been remitted as payments to Caraco by its customers and converted the funds to their benefit. As part of their elaborate effort to conceal their thefts, the Defendants falsified Caraco's books and records and M. Curry made materially false and misleading statements to Caraco's auditors. In furtherance of the effort to conceal the Defendants' theft of Caraco funds, M. Curry also prepared false and misleading financial statements that materially understated revenues and overstated

inventory and/or cost of sales. Caraco included those materially false and misleading financial statements in a registration statement on Form SB-2, filed with the Commission on February 7, 1994, as well as in its annual report on Form 10-KSB for the year ended December 31, 1993, and its quarterly reports on Forms 10-QSB for the periods ended March 31 and June 30, 1994, which reports also were filed with the Commission.

2. By his conduct, described herein, M. Curry violated the antifraud and corporate recordkeeping provisions of the federal securities laws. Specifically, M. Curry, directly and indirectly, engaged in acts, practices, and courses of business that violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2].

3. By his conduct, described herein, J. Curry aided and abetted M. Curry's violations of the antifraud provisions of the federal securities laws and violated the corporate recordkeeping provisions of those same laws. Specifically, J. Curry, directly and indirectly, knowingly provided substantial assistance to M. Curry in his violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and 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]. In addition, J. Curry, directly and indirectly, engaged in acts, practices, and courses of business that violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

4. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] for an order permanently restraining and enjoining Defendants and granting other equitable relief.

5. The Defendants, unless restrained and enjoined, will continue to engage in transactions, acts, practices, and courses of business as set forth in this Complaint, or in transactions, acts, practices, and courses of business of similar purport and object.

JURISDICTION

6. This Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77u(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. Venue lies in this Court pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act.

7. In connection with the transactions, acts, practices, and courses of business described in this Complaint, each of the Defendants, directly and indirectly, has made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

DEFENDANTS

8. Mark K. Curry, age 43, is the son of Dr. C. Arnold Curry, the founder, chairman of the board of directors, and chief executive officer of Caraco. M. Curry served as the corporate Controller of Caraco from 1986 to June 15, 1994. From approximately January 1994 through April 1995, M. Curry also co-owned and operated, with J. Curry, a retail clothing business known as The Curry Collection.

9. Joseph H. Curry, age 27, is M. Curry's brother. J. Curry never was employed by Caraco. During the relevant period, he co-owned The Curry Collection and operated a company called CCI Entertainment.

RELEVANT ENTITY

10. Caraco Pharmaceutical Laboratories, Ltd. is a Michigan corporation, with its principal office in Detroit, that develops, manufactures, and markets generic drugs for the prescription and over-the-counter drug markets. Caraco was founded in 1984 and an initial public offering of its common stock was completed in February 1994. Since then, Caraco's common stock has been registered with the Commission pursuant to Section 12(g) of the Exchange Act and quoted on the NASDAQ Small Cap Market under the trading symbol CARA. Caraco's fiscal year ends December 31. For the fiscal year ended December 31, 1994, Caraco reported total assets of \$10,737,000 and a net loss of \$3,630,000.

FACTS

The Defendants Stole Caraco Corporate Assets

11. Beginning by at least January 1993 and continuing through June 1994, the Defendants engaged in a scheme to steal Caraco corporate assets and conceal their thefts. By the time the scheme ended in June 1994, the Defendants had misappropriated at least \$889,000 by stealing funds directly from Caraco and by diverting to themselves funds remitted to Caraco by its customers.

Defendants Forged Checks to Loot Caraco's Bank Account

12. During the entire period of the fraud alleged herein, M. Curry had access to blank checks for Caraco's corporate bank accounts in the ordinary course of his duties as the

company's Controller. From January 1993 through May 1994, M. Curry and/or J. Curry forged hundreds of thousands of dollars worth of checks on those corporate bank accounts, which they made payable to themselves or to a third party to satisfy M. Curry's personal obligations. Because neither M. Curry nor J. Curry were authorized to sign Caraco corporate checks, they forged the signatures of persons who were authorized to sign Caraco checks.

13. In 1993, the Defendants forged twenty-two checks, totalling \$221,209, which were issued against Caraco's bank accounts. Thirteen of those checks, totalling \$104,103, were deposited into a joint bank account that M. Curry holds with his wife. The other nine checks, totalling \$117,106, were deposited into J. Curry's personal bank account.

14. The Defendants' thefts from Caraco's bank accounts accelerated after the company received the proceeds of its initial public offering of common stock in February, 1994. In slightly more than three months, from February 15, 1994 through May 23, 1994, the Defendants forged twelve additional checks, totalling \$248,950. Four checks, totalling \$111,946, were made payable to J. Curry and deposited into J. Curry's personal bank account. Five checks, totalling \$123,290, were made payable to The Curry Collection, M. Curry's and J. Curry's jointly-owned clothing business, and deposited into its bank account. Three checks, totalling \$13,714, were issued to the American Express Company to pay M. Curry's and his wife's personal expenses.

The Defendants Stole Payments Remitted to Caraco by its Customers

15. Both M. Curry and J. Curry had access to the postal box through which Caraco received checks from its customers in payment for sales of Caraco's products. From

at least January 1993 through June 1994, the Defendants regularly intercepted such checks, forged endorsements on the checks, and deposited the checks into their personal bank accounts.

16. In 1993, M. Curry stole thirty-four checks issued to Caraco by its customers, totalling \$90,586. He deposited these checks into a bank account he maintained jointly with his wife.

17. The Defendants' thefts of checks issued by Caraco's customers also accelerated in 1994. During the first five and one-half months of the year, the Defendants stole 113 such checks, totaling \$328,414. Seven of the stolen checks, totalling \$47,848, were endorsed by J. Curry and deposited into his personal bank account. The remaining 106 stolen checks, totalling \$280,566, bore a fraudulent Caraco endorsement stamp and a forged endorsement and were deposited into M. Curry and his wife's joint bank account.

18. In 1993, M. Curry received a total of \$194,689 from forged Caraco checks and stolen checks from Caraco's customers. In 1993, J. Curry received a total of \$117,106 from forged Caraco checks.

19. In 1994, M. Curry received a total of \$294,280 from forged Caraco checks and stolen checks from Caraco's customers. In 1994, J. Curry received a total of \$159,794 from forged Caraco checks and stolen checks from Caraco's customers. Also in 1994, The Curry Collection received a total of \$123,290 from forged Caraco checks.

The Fraudulent Concealment

20. In order to conceal their thefts, M. Curry and/or J. Curry falsified Caraco's book and records, and M. Curry prepared materially false and misleading financial

statements for the company that were included in Caraco's Form SB-2, Caraco's 1993 Form 10-KSB, and Caraco's Form 10-QSB for the first quarter of 1994. These financial statements, as well as the financial statements contained in Caraco's Form 10-QSB for the second quarter of 1994, were materially false and misleading because they failed to accurately reflect the theft of material amounts of corporate cash or to disclose the circumstances of the diversions.

Falsified Books and Records

21. For the period covering Caraco's fiscal year 1993 and until his resignation on June 15, 1994, M. Curry was primarily responsible for making accounting entries in Caraco's general ledger and other accounting books and records.

22. M. Curry concealed his thefts of Caraco funds through forged checks by falsely recording on Caraco's books and records that the funds had been spent by Caraco in the ordinary course of its business. M. Curry recorded most of the forged check transactions in Caraco's general ledger as expenditures by Caraco to purchase inventory. In several instances, forged check transactions were recorded by M. Curry as purchases of equipment or as operating expenses.

23. In order to create false evidence that would appear to support the fraudulent entries in Caraco's general ledger, the Defendants falsified the carbon copies of the forged checks by substituting one of Caraco's regular suppliers as the payee on the carbons, thereby making it appear that the checks had, in fact, been issued for the false purpose described in the general ledger.

24. M. Curry also falsified Caraco's books and records to conceal his and his brother's thefts of checks remitted to Caraco by its customers. M. Curry was aware that, absent an adjustment, Caraco's books and records would continue to reflect an account receivable from the customers whose checks the Defendants stole and that, as a result, there was a risk that Caraco personnel would discover the thefts in attempting to collect the outstanding amounts. To eliminate that risk, M. Curry recorded offsetting credits for the amounts of the stolen checks in Caraco's general ledger, falsely attributing the credits to product returns or sales discounts.

25. Caraco's falsified general ledger was provided to and relied on by Caraco's auditors during their 1993 audit.

Materially False and Misleading Financial Statements

26. M. Curry prepared the materially false and misleading financial statements contained in Caraco's Form SB-2, Caraco's 1993 Form 10-KSB, and Caraco's Form 10-QSB for the first quarter of 1994.

27. These financial statements, as well as the financial statements contained in Caraco's Form 10-QSB for the second quarter of 1994, were materially false and misleading because they failed to properly reflect or to disclose the theft of material amounts of corporate cash. The amount of cash stolen by the defendants was at least \$312,000 in 1993 and \$577,000 in 1994. Because M. Curry falsified Caraco's books and records to conceal the thefts as described above, Caraco's revenue was materially understated and its inventory and/or cost of sales were overstated in each of these filings.

28. M. Curry left Caraco in June 1994 and, consequently, did not prepare the financial statements contained in the Form 10-QSB for the second quarter of 1994. He was, however, responsible for false entries made in the books and records, which were relied upon by Caraco and its auditors in preparing corporate financial statements and resulted in the material misstatements of revenue, inventory, and/or cost of sales that were reflected in the Form 10-QSB for the second quarter of 1994.

29. M. Curry knew or was reckless in not knowing that his and his brother's theft of Caraco assets, and his and his brother's falsification of Caraco's books and records, would result in the issuance and filing with the Commission of materially false and misleading financial statements.

30. J. Curry, by stealing Caraco's assets and falsifying its books and records, as described above, knowingly and substantially assisted in M. Curry's falsification of Caraco's books and records and financial statements.

Discovery of the Defendants' Thefts

31. M. Curry resigned as Caraco's controller on June 15, 1994. In July 1994, as part of a general effort to improve its financial management, Caraco hired a new chief financial officer ("CFO"). During a review of a Caraco bank account, the CFO discovered that several checks had not been recorded in the check register and, upon further review, determined that forged checks had been issued to The Curry Collection and to J. Curry. Further investigation by the CFO and other Caraco personnel uncovered other such forgeries. In August, in the course of attempting to collect a small receivable for which M. Curry had neglected to record an offsetting credit, as described in paragraph 24, above, Caraco

personnel discovered that a check from a customer to Caraco had been diverted. Further investigation revealed other diversions.

32. After an internal investigation, on October 17, 1994, Caraco issued a press release, and on October 18, 1994, filed with the Commission a Current Report on Form 8-K disclosing that (1) management had discovered the theft of approximately \$528,000 of Caraco funds by M. Curry and J. Curry during the period February through June 1994, and (2) their father, Dr. C. Arnold Curry, the chairman of Caraco's board of directors and its chief executive officer, had agreed to reimburse Caraco for the total amount of the loss.

33. On November 9, 1994, Caraco amended its Forms 10-QSB for the periods ended March 31 and June 30, 1994. The amended Forms 10-QSB recorded the amount of the forged checks and stolen customer checks for the respective periods under "Loss from defalcation," which was classified on the Statements of Operations under "Other income and deductions." The amended Forms 10-QSB also disclosed the thefts in the Notes to Financial Statements.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] by M. Curry

34. By his conduct, described above, M. Curry, in the offer or sale of securities, by the use of means or instruments of transportation or communication 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 facts or omissions 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; or (c)

engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon purchasers of securities.

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

SECOND CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] by J. Curry

36. By his conduct, described above, J. Curry knowingly provided substantial assistance to M. Curry in his violations of Section 17(a) of the Securities Act and, thereby, aided and abetted M. Curry's violations of Section 17(a) of the Securities Act.

THIRD CLAIM FOR RELIEF

Violations of 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] by M. Curry

37. By his conduct, described above, M. Curry, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material facts or 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; or (c) engaged in acts, practices, or courses of business which operated as a fraud or deceit upon other persons, including purchasers and sellers of such securities.

38. By reason of the foregoing, M. Curry 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].

FOURTH CLAIM FOR RELIEF

Aiding and Abetting Violations of 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] by J. Curry

39. By his conduct, described above, J. Curry knowingly provided substantial assistance to M. Curry in his violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and, thereby, aided and abetted M. Curry's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FIFTH CLAIM FOR RELIEF

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by M. Curry and J. Curry

40. By willfully forging Caraco company checks and altering the carbon copies, as well as by stealing Caraco customer checks and falsely endorsing them for deposit into their own accounts, as described above, M. Curry and J. Curry each falsified records that were subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]. In addition, M. Curry willfully falsified Caraco's general ledger to conceal the theft of Caraco assets.

41. By reason of the foregoing, M. Curry and J. Curry each violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1] .

SIXTH CLAIM FOR RELIEF

Violations of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] by M. Curry

42. By providing a falsified general ledger, and failing to disclose the theft of Caraco's funds, to Caraco's auditors, as described above, M. Curry, as an officer of Caraco, directly or indirectly, made or caused to be made materially false or misleading statements or

omissions to Caraco's auditors in connection with their audit of Caraco's financial statements for 1993, which were contained in Caraco's public filings with the Commission in its annual report on Form 10-KSB for the year ended December 31, 1993.

43. By reason of the foregoing, M. Curry violated Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] .

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

I.

Enter a Final Judgment of Permanent Injunction and Other Relief ("Final Judgment")

that:

A. Permanently restrains and enjoins M. Curry, his agents, servants, employees, and attorneys, and those persons in active concert or participation with him, and each of them, from violating, directly or indirectly, Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1, and 13b2-2 thereunder;

B. Permanently restrains and enjoins J. Curry, his agents, servants, employees, and attorneys, and those persons in active concert or participation with him, and each of them, from aiding or abetting, directly or indirectly, any violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

C. Permanently restrains and enjoins J. Curry, his agents, servants, employees, and attorneys, and those persons in active concert or participation with him, and each of them, from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder;

D. Orders M. Curry to disgorge \$488,969, the amount stolen by him from Caraco, together with prejudgment interest on that amount;

E. Orders J. Curry to disgorge \$276,900, the amount stolen by him from Caraco, together with prejudgment interest on that amount;

F. Orders M. Curry and J. Curry to disgorge, jointly and severally, \$123,290, the amount diverted by them from Caraco to The Curry Collection, together with prejudgment interest on that amount;

G. Orders M. Curry and J. Curry to pay civil penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act; and

H. Permanently prohibits M. Curry and J. Curry from acting as officers or directors of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

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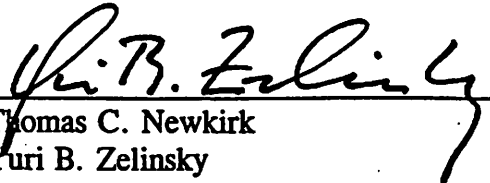
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II.

Grant such other and additional relief as this Court may deem just and proper.

Dated: September 4, 1997

Respectfully submitted,


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