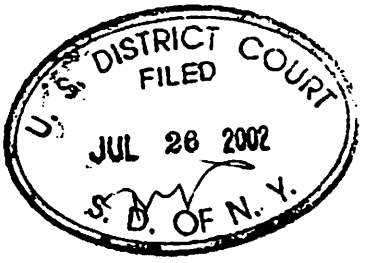
#123



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-v.-

ARJUN SEKHRI, *et al.*

Defendants,

98 Civ. 2320 (RPP)

02,1383

FINDINGS, ORDER AND FINAL JUDGMENT OF PERMANENT INJUNCTION AGAINST DEFENDANT ARJUN SEKHRI

It appearing to this Court that Plaintiff Securities and Exchange Commission ("SEC"), having commenced this action by filing its Complaint, Amended Complaint, and Second Amended Complaint for Permanent Injunction and Other Equitable Relief (the "Complaint"), defendant Arjun Sekhri ("Sekhri") having filed his answer to the Complaint; the SEC having moved this Court for an Order granting summary judgment and a permanent injunction against defendant Sekhri; the Court having jurisdiction over the parties and the subject matter of this action, the Court being fully advised in the premises, and there being no just reason for delay, THE COURT HEREBY FINDS AS FOLLOWS:

(1)

FACTS ESTABLISHING LIABILITY

1. After receiving an MBA in finance from the Stern School of Business of New York University in May 1996, Arjun Sekhri joined Salomon Brothers ("Salomon") as an associate in the investment banking generalist group. Salomon later transferred him to the mergers and acquisitions group. At the time of the filing of the complaint in this action, Sekhri was 32 years old, a resident of New Jersey, and a citizen of India. (Davison 3/31/98 Decl. ¶ 4 and Ex. 2).

2. Salomon is a global, full-service securities and investment banking firm. Salomon's principal executive offices are located in New York City. (Davison 3/31/98 Decl. ¶ 12).

3. On May 24, 1996, Sekhri executed Salomon's notice regarding confidential information, in which Sekhri acknowledged that, in the course of his employment with Salomon, he might "receive, or have knowledge of or access to, information that is confidential." He also acknowledged that he understood that he had an obligation to maintain the confidentiality of all confidential information. (Davison 3/31/98 Decl. ¶¶13-14 and Ex. 20).

4. Among other things, Sekhri specifically agreed to maintain the confidentiality of non-public information concerning any "potential or pending tender offer, merger, acquisition ... or similar transaction." Sekhri also agreed not to use confidential information in trading for his "own (or affiliated) accounts or in advising relatives, friends or other persons with respect to trading." (Davison 3/31/98 Decl. ¶ 14 and Ex. 20).

5. Sekhri was directly involved in Salomon's work for at least one of the two merger announcements between WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI"), as described below. In addition, Sekhri, as a trusted Salomon employee, had access to other Salomon employees' work areas, had access to the Salomon computer system, and was privy to normal information flow among the professional staff of Salomon. (Davison 3/31/98 Decl. ¶ 5). As a

member of the mergers and acquisitions group, Sekhri had access to confidential information in Salomon's possession concerning at least six of the corporate transactions described below. (Davison 3/31/98 Decl. ¶¶ 18, 20, 27, 32, 37, 42). Indeed, Sekhri confirmed in his allocution that, as an associate at Salomon, he had access to confidential market-sensitive inside information about pending business transactions, including mergers. (Gumagay Decl. ¶ 3 and Ex. B, p. 20).

6. Sekhri disclosed confidential market-sensitive inside information about pending business transactions, including mergers and acquisitions, to Fuad Dow, Sharad Kapoor, Martin Thifault and others, with the understanding that they would purchase the securities before the information became public and thereby profit from the confidential information. He knew that his actions were unlawful. (Gumagay Decl. ¶ 3 and Ex. B, pp. 20-25).

7. On or about January 21, 1998, Sekhri resigned from Salomon to accept a position with Credit Suisse First Boston Corp. ("CSFB") as an associate in the equity capital markets department. (Davison 3/31/98 Decl. ¶ 6 and Ex. 3). However, upon learning of the SEC's investigation, Sekhri abruptly left his position at CSFB on January 30, 1998, and traveled to India. (Davison 3/31/98 Decl. ¶ 6 and Ex. 4; Gumagay Decl. ¶ 2 and Ex. A, ¶¶ 64, 65).

8. On May 30, 1999, Sekhri was arrested in Australia on a warrant issued pursuant to a criminal complaint filed in the Southern District of New York charging him with violations of the federal securities laws. (Gumagay Decl. ¶ 2 and Ex. A, ¶ 65).

9. On or about October 9, 1999, Sekhri was extradited from Australia to the United States based upon the charges in the criminal complaint. (Gumagay Decl. ¶ 2 and Ex. A, ¶ 65).

10. On March 14, 2000, Sekhri entered a plea of guilty to a three-count indictment that, inter alia, charged him with violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5 and 14e-3. (Gumagay Decl. ¶ 2 and Ex. A, ¶¶ 71, 73;

Gumagay Decl. ¶ 3 and Ex. B, pp. 20-21, 22-23). The violations to which he pled guilty are the same as those that are the subject matter of this litigation. (Gumagay Decl. ¶ 2 and Ex. A, ¶¶ 71, 73; Compl. ¶¶ 40-44, 45-50).

11. Sekhri was found guilty by this Court of the criminal charge that, between September 1997 and February 1998, in the Southern District of New York and elsewhere, Sekhri unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances in connection with purchases and sales of securities in or issued by MCI, Carson Pirie Scott & Co., Southern New England Telecommunications, and Central & South West Corporation, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 (Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5). (Gumagay Decl. ¶ 3 and Ex. B, pp. 16, 22-25; Gumagay Decl. ¶2 and Ex. A, ¶ 71).

12. Sekhri was also found guilty by this Court of the criminal charge that, from in or about September 1997 up to and including February 1998, in the Southern District of New York and elsewhere, Sekhri unlawfully, willfully, and knowingly did engage in fraudulent, deceptive, and manipulative acts and practices in connection with a tender offer in that, after the offering entity, WorldCom, had taken substantial steps to commence a tender offer for the common stock of MCI, Sekhri and others, while in possession of confidential, material and nonpublic information relating to such tender offer, which information Sekhri knew and had reason to know was confidential, material and nonpublic, and which had been acquired directly and indirectly from WorldCom and from persons acting on behalf of WorldCom, purchased and sold, and caused others to purchase and sell the securities and options to obtain the securities that were to be sought by WorldCom without first

publicly disclosing such information and its source, all in violation of Section 14(e) of the Exchange Act and Rule 14e-3 (Title 15, United States Code, Sections 78n(e) and 78ff, and Title 17, Code of Federal Regulations, Section 240.14e-3(a). (Gumagay Decl. ¶ 3 and Ex. B, pp. 17, 21-22, 25; Gumagay Decl. ¶2 and Ex. A, ¶ 73).

13. Sekhri was deposed on February 21, 2001, but he refused to testify and invoked his Fifth Amendment privilege against self-incrimination to all substantive questions relating to the matters that are the subject of this litigation. (Gumagay Decl. ¶4 and Ex. C).

FACTS AS TO REMEDIES

14. Arjun Sekhri, in violation of his fiduciary and other duties to Salomon and Salomon's clients and their shareholders, directly or indirectly tipped material nonpublic information to Fuad Dow, Gordon Cochrane, Martin Thifault, Amolak Sehgal, Sharad Kapoor, Rohina Sharma Kapoor, and Pratima Rajan before the October 1, 1997 announcements that WorldCom would acquire MCI and that WorldCom would merge with Brooks Fiber Properties, Inc. ("BFP"). Sekhri's tips resulted in illegal profits of at least $482,427.59. (Davison 3/31/98 Decl. ¶¶ 17-25; 2d Davison 4/14/98 Decl. ¶ 12-13; Davison 5/19/98 Decl. ¶ 16-21).

15. Arjun Sekhri, in violation of his fiduciary and other duties to Salomon and Salomon's clients and their shareholders, directly or indirectly tipped material nonpublic information to Fuad Dow, Gordon Cochrane, Martin Thifault, Amolak Sehgal, Rohina Sharma Kapoor, and Pratima Rajan before Profitt's, Inc. announcement on October 29, 1997 that it would acquire Carson Pirie Scott & Co. ("CPS"). Sekhri's tips resulted in illegal trading profits of at least $300,043.47. (Davison 3/31/98 Decl. ¶ 26-30; 2d Davison 4/14/98 Decl. ¶ 14-15; Davison 5/19/98 Decl. ¶ 22-26).

16. Arjun Sekhri, in violation of his fiduciary and other duties to Salomon and Salomon's clients and their shareholders, directly or indirectly tipped material nonpublic information to Fuad

Dow, Gordon Cochrane, Martin Thifault, Amolak Sehgal, Rohina Sharma Kapoor, and Pratima Rajan before MCI's November 10, 1997 announcement that it had accepted WorldCom's increased bid to acquire MCI at $37 billion. Sekhri's tips resulted in illegal trading profits of at least $670,520.19. (Davison 3/31/98 Decl. ¶ 31-35; 2d Davison 4/14/98 Decl. ¶ 16-17; Davison 5/19/98 Decl. ¶ 27-31).

17. Arjun Sekhri, in violation of his fiduciary and other duties to Salomon and Salomon's clients and their shareholders, directly or indirectly tipped material nonpublic information to Fuad Dow and Sharad Kapoor before American Electric Power Co. Inc.'s December 22, 1997 announcement that it would acquire Central & South West Corporation. Sekhri's tips resulted in illegal trading profits of at least $6,562.00. (Davison 3/31/98 Decl. ¶ 36-40; Davison 5/19/98 Decl. ¶ 32-36).

18. Arjun Sekhri, in violation of his fiduciary and other duties to Salomon and Salomon's clients and their shareholders, directly or indirectly tipped material nonpublic information to Fuad Dow, Gordon Cochrane, Martin Thifault, Amolak Sehgal, and Rohina Sharma Kapoor before SBC's January 5, 1998 announcement that it had agreed to merge with Southern New England Telecommunications ("SNET"). Sekhri's tips resulted in illegal trading profits of at least $632,980.64. (Davison 3/31/98 Decl. ¶ 41-45; 2d Davison 4/14/98 Decl. ¶ 18-19; Davison 5/19/98 Decl. ¶ 37-41).

19. Sekhri's father, Mahendar Sekhri, traded in the stock and stock options based on inside information obtained from his son through an account maintained for Mahendar Sekhri and his

wife, Sharda Sekhri, by a friend in Switzerland, Konrad Ebert, that generated illegal profits of approximately $483,388.65.[1] (Gumagay Decl. ¶ 5 and Ex. D, p.4).

20. The total amount of illegal profits made on the purchase and sale of securities to take advantage of the confidential information provided by Sekhri to those he tipped was $2,575,924.07, broken down as follows:

DEFENDANT	PROFITS
Dow, Fuad	$ 489,214.78
Cochrane, Gordon	734,201.84
Thifault, Martin	424,510.22
Sehgal, Amolak	91,867.03
Sharad Kapoor (clients)	208,793.54
Kapoor, Rohina S.	58,322.61
Rajan, Pratima	85,625.40
Sekhri,Mahendar and Sharda	483,388.65
TOTAL	**$2,575,924.07**

(Davison 3/31/98 Decl. ¶¶ 17-45; 2d Davison 4/14/98 Decl. ¶ 12-19; Davison 5/19/98 Decl. ¶ 16-41; Gumagay Decl. ¶ 5 and Ex. D, p.4). Of this amount the following individuals have entered into settlement agreements with the SEC, agreed to the entry of a final judgment, and paid disgorgement to the Court Registry in the following amounts:

DEFENDANT	DISGORGED
Dow, Fuad	$ 471,223.81
Cochrane, Gordon	685,739.51
Thifault, Martin	461,068.20
TOTAL	**$1,618,031.52**

[1] At a minimum, the trading profits traceable to Sekhri and his immediate family totaled $483,388.65. (Gumagay Decl. ¶ 5 and Ex. D). Of the trading profits traceable to Sekhri and his immediate family, Sekhri admitted that he received approximately $255,645.98. Id.

(Final Judgment of Permanent Injunction and Other Relief Against Defendant Fuad Dow, ¶¶ 3-4, dated Oct. 22, 1998; Final Judgment of Permanent Injunction and Other Relief Against Defendant Gordon W. Cochrane, ¶¶ 3-4, dated Oct. 14, 1998; Final Judgment of Permanent Injunction and Other Relief Against Defendant Martin L. Thifault, ¶¶ 3-4, dated July 7, 1999).

21. The illegal profits resulting from Sekhri's illegal disclosure of confidential information that has not been recovered in this action is at least $957,892.55.

22. Sekhri has deposited $237,205.26 with the registry of the Court. (Memo-Endorsement on letter addressed to Judge Patterson from the SEC, dated Aug. 2, 2000).

23. The assets of the following persons have been frozen pursuant to this Court's orders of April 1, 1998 and May 19, 1998:

DEFENDANT	AMOUNT FROZEN
Sehgal, Amolak	$ 76,223.00
Kapoor, Sharma	115,331.66
Kapoor, Sharad	9,233.87
TOTAL	**$124,565.53**

(Gumagay Decl. ¶¶ 6-8 and Ex. E, F, G).

23. The amount of disgorgement due from Sekhri is $957,892.55 plus prejudgment interest of approximately $376,879.66[2], and maximum civil penalties of approximately $7,727,772.21.[3]

---

[2] Prejudgment interest is calculated from February 1, 1998 (first day of the month following each such violation) to May 31, 2002 (the last day of the month preceding the month in which payment of disgorgement is made). 17 C.F.R. § 201.600(a). (Gumagay Decl. ¶ 10 and Ex. I).

[3] Three times the illegal profits of $2,575,924.07. (¶ 20).

CONCLUSIONS OF LAW

I. SUMMARY JUDGMENT STANDARD

Summary judgment shall be granted if the movant establishes that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P 56(c). The opposing party must set forth specific facts showing that there is a genuine issue for trial, and cannot rest on the mere allegations or denials of his pleadings. Fed. R. Civ. P. 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). Sekhri, although duly served by FedEx International on May 7, 2002, has not responded to this summary judgment motion. In view of Sekhri's guilty plea to the same allegations in the parallel criminal case and the overwhelming evidence, summary judgment is granted.

II. DEFENDANT SEKHRI IS COLLATERALLY ESTOPPED

The illegal conduct alleged in the SEC's Complaint in this action is identical to the allegations in the Information filed in the parallel criminal case in which Sekhri entered his guilty plea and offered his allocution. Sekhri's deceitful scheme involved the sharing of material nonpublic information with an insider trading ring that consists of his family members and close friends in violation of the federal securities laws.

The doctrine of collateral estoppel provides that a prior judgment "precludes relitigation [in a second suit] of issues [of fact or law] actually litigated and necessary to the outcome of the first action." Parklane Hosiery Co. v. Shore, 439 U.S. 322, 327 n.5 (1979); see also, Allen v. McCurry, 449 U.S. 90, 94 (1980); Beck v. Levering, 947 F.2d 639, 642 (2d Cir. 1991), cert. denied sub nom. Levy v. Martin, 504 U.S. 909 (1992).

It is well established that a party in a civil case can be estopped from relitigating issues

already resolved against him in a prior criminal proceeding. As the Court said in Gelb v. Royal Globe Ins. Co., 798 F.2d 38 (2d Cir. 1986), cert. denied 480 U.S. 948 (1987):

> The Government bears a higher burden of proof in the criminal than in the civil context and consequently may rely on the collateral estoppel effect of a criminal conviction in a subsequent civil case.

Id. at 43 (citing United States v. Podell, 572 F.2d 31, 35 (2d Cir. 1978)). This principle is equally true in SEC enforcement actions. E.g., SEC v. Westerfield, 1997 WL 282241, *2 (S.D.N.Y. May 27, 1997); SEC v. Grossman, 887 F. Supp. 649, 659 (S.D.N.Y. 1995) (Kram, J.), aff'd sub nom. SEC v. Estate of Hirshberg, 101 F.3d 109 (2d Cir. 1996); SEC v. Dimensional Entertainment Corp., 493 F. Supp. 1270, 1274-75 (S.D.N.Y. 1980).

The fact that Sekhri's conviction was obtained through a guilty plea as opposed to a jury verdict does not lessen the resulting collateral estoppel consequences. Whether established at plea allocution or at trial, all facts material to the conviction bind the criminal defendant in later civil litigation. Maietta v. Artuz, 84 F.3d 100, 102 n.1 (2d Cir. 1996).

Sekhri is thus collaterally estopped from relitigating in this case the facts and issues necessarily determined against him in the parallel criminal case. These same facts establish Sekhri's violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 alleged in the SEC's Complaint in this civil action and that Sekhri knew he was violating the laws of the United States by his actions.

II. INJUNCTIVE RELIEF

To obtain a permanent injunction against the statutory violations in the Complaint, the SEC must show that a violation has occurred and there is a "reasonable likelihood" that the defendant, if not enjoined, will engage in future violations. SEC v. Commonwealth Chem. Sec.,

Inc., 574 F.2d 90, 99-100 (2d Cir. 1978). In determining whether to grant an injunction, the factors that a court may consider are (1) the likelihood of future violations; (2) the degree of scienter involved; (3) the sincerity of defendant's assurances against future violations; (4) the isolated or recurrent nature of the infraction; (5) defendant's recognition of the wrongful conduct; and (6) the likelihood, because of defendant's professional occupation, that future violations might occur. SEC v. Universal Major Indus. Corp., 546 F.2d 1044, 1048 (2d Cir. 1976), cert. denied sub nom. Homans v. SEC, 434 U.S. 834 (1977); SEC v. Federated Alliance Group, Inc., 1997 WL 374207, at *2 (W.D.N.Y. 1997); see also, First Jersey, 101 F.3d at 1477 (an injunction is warranted particularly where a violation was founded on systematic wrongdoing, rather than an isolated occurrence, and the defendant's degree of culpability).

Analysis of these factors demonstrates that an injunction is warranted here. As shown in this case, Sekhri is a serial tipper who has admitted that he engaged in a deceitful criminal scheme to use confidential information to profit his family and friends. Sekhri's total disregard for the federal securities laws and his illegal actions involved the highest degree of scienter. This is clear from the duration of his scheme and the number of times he illegally disclosed inside information. In just over a year, from December 1996 through January 1998, Sekhri repeatedly disclosed confidential information regarding more than five major corporate transactions. These repeated disclosures resulted in the trading on the confidential information by the named defendants in this case that generated over two and a half million dollars in illegal profits.

The complexity of Sekhri's scheme also amply establishes that his illegal conduct was not an isolated occurrence, but rather was founded on systematic wrongdoing. Communications between the participants in the scheme were often conducted through cell phones, pagers, and home phones, ways that potentially could have avoided detection. Transactions were initiated

through multiple accounts, including accounts maintained by a foreign national in Switzerland who was trading on behalf of Sekhri's parents. When Sekhri learned of the SEC's investigation of his scheme, he quickly fled the United States to avoid prosecution. To avoid disgorging the ill-gotten gains that he stole from U.S. investors, he moved funds to the Bahamas and various other countries through a series of wire transfers. Likewise, Sekhri's parents moved illegal insider trading profits through wire transfers from Switzerland to India, where they currently reside after leaving the United States. (Gumagay Decl. ¶ 5 and Ex. D; Davison 3/31/98 Decl. ¶ 55).

Sekhri is devoid of remorse for his crimes. Although Sekhri has pleaded guilty in the parallel criminal case, he did not do so until after he had fled the United States for a year, and not until he arrested while traveling in Australia and extradited to the United States. Only then did Sekhri, faced with the overwhelming evidence presented against him, plead guilty to his crimes. When subpoenaed to testify in this SEC action, Sekhri refused to testify asserting his Fifth Amendment right against self-incrimination rather than taking responsibility for his past actions and cooperating with the SEC. He refused to provide information regarding individuals who had committed crimes related to his illegal insider trading scheme. Sekhri's long overdue guilty plea in the criminal case and his total lack of remorse suggest that future violations of the securities laws are not unlikely. (Gumagay Decl. ¶ 4 and Ex. C).

Moreover, based on the serious and systematic nature of the fraud perpetrated by Sekhri, as set forth in the Information, guilty plea and the allocution supporting his conviction, and the fact that he is a well-trained securities industry professional, it is reasonable to infer a likelihood of future violation. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1168 (D.C. Cir. 1978) (factors supporting injunction "obviously present" where past conduct, including securities fraud conviction, is "highly suggestive" of defendant's propensity to commit future violations); SEC v. Management

Dynamics, Inc., 515 F.2d 801, 807 (2d Cir. 1975) ("Certainly, the commission of past illegal conduct is highly suggestive of the likelihood of future violations."); Musella, 748 F. Supp. at 1042.

Sekhri was at the heart of the illegal scheme to profit from confidential inside information. He sought to personally benefit from his wrongdoing. When it looked like he had been caught, he fled the country and had to be forcibly extradited to the United States. (Gumagay Decl. ¶ 2 and Ex. A, ¶ 65). Finally, in an effort to protect his illegal profits, Sekhri and his parents engineered a series of funds transfers around the globe in an effort to keep these funds from this Court's jurisdiction. (Gumagay Decl. ¶ 5, and Ex. D, p.2). Accordingly, based on the evidentiary record in this case, permanent injunctive relief is appropriate against Sekhri.

III. DEFENDANT SEKHRI SHALL DISGORGE HIS AND HIS TIPPEES' ILLEGAL PROFITS AND PAY PREJUDGMENT INTEREST ON THE AMOUNT OWED

A. Disgorgement Is An Appropriate Remedy for Defendant Sekhri's Violations of the Securities Laws

The courts have long recognized that disgorgement of illegally obtained profits is an appropriate remedy for violations of the federal securities laws. See e.g., SEC v. Tome, 833 F.2d 1086, 1096 (2d Cir. 1987), cert. denied, 486 U.S. 1014 (1988) (quoting SEC v. Blavin,, 760 F.2d 706, 713 (6th Cir. 1985) ("Once the Commission has established that a defendant has violated the securities laws, the district court possesses the equitable power to grant disgorgement...' Whether or not any investors may be entitled to money damages is immaterial. The paramount purpose of enforcing the prohibition against insider trading by ordering disgorgement is to make sure that wrongdoers will not profit from their wrongdoing."); SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989) ("Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws.")

As the D.C. Circuit explained in First City, "disgorgement is rather routinely ordered for insider trading violations despite a lack of specific authorizations for that remedy under the securities law." 890 F.2d at 1230. "[I]f securities laws violators were not required to disgorge illicit profits, 'the deterrent effect of an SEC enforcement action would be greatly undermined.'" SEC v. Bilzerian, 814 F. Supp. 116, 121 (D.D.C. 1993) (quoting Manor Nursing Centers, 458 F.2d at 1104).

The amount due from Sekhri is $957,892.55, which represents the profits that he and his tippees made illegally that has not been recovered, plus prejudgment interest.

B. Defendant Sekhi Is Liable For The Profits Of His Tippees

In First City, the Court held that "the Court may exercise its equitable power only over property causally related to the wrongdoing." 890 F.2d at 1231; see Bilzerian, 814 F. Supp. at 121. The Commission is therefore entitled to disgorgement for the profits that were generated by the defendants who received illegal inside information from Sekhri, since the profits generated "proceed[ed] directly and proximately from the violation claimed." 814 F. Supp. at 121 (quoting Wellman v. Dickinson, 682 F.2d 355, 368 (2d Cir. 1982)).

Accordingly, the courts have uniformly held that "a person who is in possession of inside information and discloses that information to others can be held liable for violating Section 10(b) and Rule 10b-5 as a "tipper" even if he or she did not trade on the inside information. SEC v. Alexander, 160 F. Supp. 2d 642, 650 (S.D.N.Y. 2001) (citing Shapiro v. Merrill Lynch, Pierce, Fennner & Smith, Inc., 495 F.2d 228, 237 (2d Cir. 1974)); Elkind v. Liggett & Myers, Inc., 635 F.2d 156, 165 (2d Cir. 1980). "A tippee's gains are attributable to the tipper, regardless whether benefit accrues to the tipper," and the tipper may be held liable for the illegally obtained profits of his tippees. SEC v. Hirshberg, 173 F.3d 846, 1999 WL 163992, **4 (2d Cir. 1999) (unpublished opinion) (quoting SEC v. Warde, 151 F. 3d 42, 49 (2d Cir. 1998)). The rationale for this rule is an outgrowth of the basic

purpose of permitting an award of disgorgement for the tipper's own profits. Holding the tipper liable for the profits of his tippees is a necessary deterrent to the evasion of Rule 10b-5 liability by either enriching a friend or relative, or tipping others with the expectation of reciprocity. Texas Gulf Sulphur Co., 446 F. 2d at 1308; SEC v. Clark, 915 F.2d at 454. A tipper is jointly and severally liable for his tippees' profits. Tome, 638 F. Supp. at 617.

In this case, all of the profits from the trades made by those who were tipped by Sekhri of information in violation of his fiduciary duty to hold the information confidential were proximately caused by his wrongdoing. Sekhri provided the inside information knowing he had an obligation to keep the information confidential, and knowing that those he tipped would use the information to trade the targets' stocks and generate profits. As part of this scheme, he received some of the profits. Thus, Sekhri's actions directly and proximately generated the profits earned by those he tipped and he must be held liable for the profits of his tippees.

Sekhri's repeated tips of inside information to his tippees in connection with the purchase and sale of securities generated illegal profits of approximately $2,575,924.07. Of this amount, $1,618,031.52 has been disgorged by defendants Dow, Cochrane, and Thifault. However, the illegal profits resulting from Sekhri's illegal disclosure of confidential information that has not been recovered in this action is at least $957,892.55.

C. Defendant Sekhri Shall Pay Prejudgment Interest

The Court further awards prejudgment interest on Sekhri's disgorgement. An award of prejudgment interest, like an award of disgorgement, will deprive Sekhri of his ill-gotten gain and will prevent his unjust enrichment. See, e.g., SEC v. Stephenson, 732 F. Supp. 438, 439 (S.D.N.Y. 1990). In the context of Section 10(b) and Rule 10b-5 actions, proof of a defendant's scienter is sufficient to

justify an award of prejudgment interest. See Musella, 748 F. Supp. at 1043 (citing Rolf, 637 F.2d at 87). In this case, the evidence of Sekhri's scienter is substantial.

The interest will be calculated in accordance with its standard method of calculating prejudgment interest, using the rate used by the Internal Revenue Service for tax underpayments, compounded quarterly. It is appropriate to charge Sekhri with interest calculated using this method. Other government agencies use such rate schedules, and courts have approved their use as an appropriate method for calculating prejudgment interest amounts in order to approximate the time value of money. See E.E.O.C. v. Guardian Pools, Inc., 828 F.2d 1507, 1512 (11th Cir. 1987) (directing back pay in a Title VII case by applying the IRS interest rate schedule); United States v. Exxon Corp., 773 F.2d 1240, 1277, 1279 (Temp. Emer. Ct. App. 1985), cert. denied, 474 U.S. 1105 (1986) (affirming district court's decision to calculate prejudgment interest based on Department of Energy's interest rate schedule which had higher rates than the Internal Revenue Service schedule for the same period).

The amount of interest, calculated pursuant to this method, is $376,879.66.[4]

IV. SEKHRI SHALL PAY THE MAXIMUM CIVIL MONEY PENALTIES

Section 21A(a)(2) of the Exchange Act provides that the Court may levy a civil penalty for insider trading of up to three times the profits gained or losses avoided by unlawful trading. The legislative history of the Insider Trading Sanctions Act, the predecessor to the current statute, makes clear that Congress intended the penalty to serve as a deterrent mechanism because disgorgement alone "merely restores a defendant to his original position without extracting a real penalty for his illegal behavior." H.R. Rep. No. 98-355, 98th Cong., 2d Sess., 7-8 (1984), reprinted in 1984

---

[4] Prejudgment interest is calculated from February 1, 1998 (first day of the month following each such violation) to May 31, 2002 (the last day of the month preceding the month in which payment of disgorgement is made). 17 C.F.R. § 201.600(a). (Gumagay Decl. ¶ 10 and Ex. I).

U.S.C.C.A.N. 2274, 2280-81, as cited in SEC v. Shah, 1993 WL 288285 at *6, Fed. Sec. L. Rep. (CCH) ¶98,374 at 90,392 (S.D.N.Y. 1993).

Sekhri is clearly culpable. He held one of the highest positions of trust and confidence at a major investment banking firm, and he betrayed that trust on repeated occasions. (Statement of Material Facts ¶ 1). When he was about to be apprehended and be held accountable for his betrayal of that trust, Sekhri fled the United States. (Statement of Material Facts ¶¶ 7-8). Sekhri had to be forcibly returned to this country to account for his wrongdoing. Even after he had been convicted for the actions that formed the basis for this SEC action, Sekhri refused to testify about his activities. (Statement of Material Facts ¶ 13). The elements to consider in determining the penalty include the defendant's culpability, the amount of profits gained, the repetitive nature of the unlawful act and the deterrent effect of a penalty given the defendant's net worth. SEC v. Ferrero, 1993 WL 625964, at *18-19 (S.D. Ind. 1993), aff'd sub nom. SEC v. Maio, 51 F.3d 623 (7th Cir. 1995) (award of treble penalty). Sekhri meets all of the criteria for a substantial penalty. He repeatedly acted in violation of his fiduciary duty or similar duty of trust and confidence to his employer, Salomon, Salomon's clients, and these clients' shareholders. His breach resulted in the profiteering of over $2 million dollar profits over numerous instances of insider trading. Finally, the deterrent effect will only be felt, if at all, by a substantial penalty. Therefore, Sekhri deserves to receive the maximum penalty allowable, $7,727,772.21 in this case.

I. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the SEC's Motion for Summary Judgment and Permanent Injunction Against Defendant Sekhri is hereby granted, and,

II. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Sekhri and his agents, servants, successors, employees, attorneys, and all persons in active concert or participation with any of them, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of the securities of any issuer, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange: (i) employing any device, scheme or artifice to defraud; (ii) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (iii) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation 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].

III. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Sekhri and his agents, servants, successors, employees, attorneys, and all persons in active concert or participation with any of them, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, in connection with any tender offer or request or invitation for tenders, engaging in any fraudulent, deceptive, or manipulative act or practice by: (i) trading in the securities sought or to be sought in such tender offer while in possession of material, non-public information relating to said tender offer which they know or have reason to know is non-public and know or have reason to know was acquired directly or indirectly from the offering person, the issuer of the securities sought or to be sought by such tender offer, or any officer, director, partner, employee

or other person acting on behalf of the offering person or such issuer, without disclosing such information and its source a reasonable time prior to trading, in violation of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3]; or (ii) communicating material, non-public information relating to a tender offer, which information they know or have reason to know is non-public and know or have reason to know was acquired directly or indirectly from the offering person, the issuer of the securities sought or to be sought in the tender offer, or any person acting on behalf of the offering person or such issuer, to any other person under circumstances in which it is reasonably foreseeable that such communication is likely to result in violation of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

IV. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Sekhri pay disgorgement of profits gained and retained from the conduct alleged in the Complaint in the amount of $ 957,892.55, plus pre-judgment interest of $ 376,879.66.

V. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, in order to partially satisfy Defendant Sekhri's obligation to pay disgorgement and pre-judgment interest in this action, the Clerk, United States District Court for the Southern District of New York, shall make available all of the funds deposited by Defendant Sekhri into the Registry of the Court, plus interest earned on those funds, as further ordered by the Court.

VI. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Sekhri relinquishes all legal and equitable right, title, and interest in those funds, and no part of such funds shall be returned to Defendant Sekhri or his successors or assigns. The SEC will submit for the Court's consideration proposed orders for disposition of such funds.

VII. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sekhri shall pay a civil money penalty in the amount of $ 7,727,772.21.

VIII. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there being no just cause for delay, the Clerk of the Court is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment against Defendant Sekhri forthwith and without further notice.

SO ORDERED.

Dated: New York, New York
July 25 2002

Robert P. Patterson, Jr.
U.S.D.J.

Copies of this Order sent to:

Kenneth J. Guido
Paul A. Gumagay
Securities and Exchange Commission
450 5th Street, N.W.
Washington, DC 20549-0991
Tel: 202-942-7933; 202-942-4749
Fax: 202-628-1471

Mr. Arjun Sekhri
Sajakwani & Associates
c/o Ramesh Sahajwani
12 Ram Janki, 356 Linking Road
Khar, Mumbai 400052 India (IN)

Robert L. Corbin
Michael W. Fitzgerald
Corbin & Fitzgerald LLP
601 West Fifth Street, Suite 1150
Los Angeles, CA 90071-2024
Tel: 213-612-0001
Fax: 213-612-0061

CERTIFIED AS A TRUE COPY ON
THIS DATE 7/29/02
BY
( ) Clerk
(x) Deputy

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 7/30/02

Maranda E. Fritz, Esq.
Fritz & Miller
565 Fifth Ave., 9th Floor
New York, NY 10017
Tel: 212-983-0909
Fax: 212-983-1010

Patima Rajan
3692 Rocky Creek Court
San Jose, CA 95148

Bennett Capers, Esq.
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007
Tel: 212-637-2263
Fax: 718-422-1712