

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72023 / April 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15856

In the Matter of

Suken A. Shah,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Suken A. Shah (“Respondent” or “Suken”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purposes of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Exchange Act, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Summary

1. This matter involves insider trading by Suken Shah in the securities of GSI Commerce, Inc. ("GSI") and tipping by Suken of two other traders in advance of the March 28, 2011 announcement that eBay, Inc. ("EBAY") had agreed to acquire GSI.

2. On or about March 11, 2011, Suken learned material nonpublic information about the proposed acquisition of GSI from Christopher Saridakis, a senior executive at GSI. Suken knew that Saridakis had learned this information through his position as a senior executive at GSI. Suken knew or should have known that Saridakis had disclosed this information in breach of a fiduciary duty owed to GSI.

3. On March 14, 2011, and on March 21, 2011, Suken traded on the basis of the information he had received from Saridakis. As a result of his improper use of the insider information provided by Saridakis, Suken generated profits of \$9,838.

4. On or about March 21, 2011, Suken shared the material nonpublic information he had received with his brother, Shimul Shah with the expectation that Shimul would trade.

5. On or about March 23, 2011, Suken shared the material nonpublic information he had received with his friend and business associate, Individual X with the expectation that Individual X would trade.

6. On March 24, 2011, Individual X traded on the basis of the information he had received from Suken. As a result of his improper use of the insider information, Individual X generated profits of \$609.

7. On March 24, 2011, Individual X shared the material nonpublic information he had received from Suken with three other individuals, one of whom improperly used the insider information to generate profits.

8. On March 24, 2011, Shimul traded on the basis of the material nonpublic information he had received from Suken. As a result of his improper use of the insider information, Shimul generated profits of \$11,209.

9. On March 24, 2011, Shimul shared the material nonpublic information he had received from Suken with four individuals, including Individuals Y and Z.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

10. On March 25, 2011, Individuals Y and Z traded on the basis of the information they had received from Shimul. As a result of their improper use of the insider information provided by Shimul, Individuals Y and Z generated trading profits of \$31,777 and \$2,913, respectively.

11. By virtue of his trading in GSI securities and his communications with Shimul and Individual X, Suken violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent

12. *Suken Shah*, age 44, resides in Wilmington, DE. During the relevant time, Suken was employed as a surgeon in the State of Delaware.

C. Other Relevant Persons

13. *GSI Commerce, Inc.*, an e-commerce company, was during the relevant time period headquartered in King of Prussia, PA. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act until after it was acquired by EBAY. GSI's common stock traded on the NASDAQ (former ticker symbol GSIC) and options on GSI's stock traded on multiple U.S. options exchanges.

14. *Christopher Saridakis* resides in Greenville, DE. During the relevant time period, Saridakis was a senior executive at GSI and resided in Greenville, DE.

15. *Shimul Shah* resides in Cincinnati, OH. During the relevant time, Shimul was employed as a surgeon in the Commonwealth of Massachusetts.

16. *Individual X* resides in the State of Delaware. During the relevant time period, Individual X worked in Wilmington, DE as a sales representative for a medical device distributor.

17. *Individual Y* resides in the Commonwealth of Massachusetts. During the relevant time, Individual Y worked as a surgeon in the Commonwealth of Massachusetts.

18. *Individual Z* resides in Concord, MA. During the relevant time period, Individual Z worked as a surgeon in Cambridge, MA and resided in Concord, MA.

D. Facts

19. By January 30, 2011, representatives of GSI and EBAY began discussing a potential acquisition of GSI by EBAY. Discussions continued on January 31, 2011 and throughout February and March 2011. Negotiations culminated in the execution of a final agreement in the early morning of March 28, 2011.

20. Christopher Saridakis first learned of the proposed acquisition of GSI by EBAY in mid-February 2011.

Tip from Saridakis to Respondent

21. On or about March 11, 2011, Saridakis attended an all-day meeting with representatives of EBAY to discuss the proposed acquisition. That same evening, Saridakis had a conversation with Suken, and informed Suken of the proposed acquisition of GSI.

22. Saridakis knew that the information about the proposed acquisition of GSI by EBAY was material and nonpublic, and that he had an obligation to maintain the confidentiality of the information. Saridakis tipped that information to his friend Suken in breach of a fiduciary duty owed to GSI and its shareholders and obtained a personal benefit.

23. Suken knew at the time that Saridakis was a senior executive at GSI. Suken knew that Saridakis received the information he communicated about the proposed acquisition through his position as a senior executive at GSI. Suken knew that the information about the proposed acquisition was not public and knew or should have known that the information was disclosed by Saridakis in breach of a duty.

Trading by Respondent

24. Suken purchased shares of GSI for the first time on Monday, March 14, 2011, on the basis of the material nonpublic information about the proposed acquisition of GSI communicated to him by Saridakis. Suken purchased 500 GSI shares at a price of approximately \$18.66, for a total price of \$9,330.

25. Suken purchased an additional 500 shares of GSI on Monday, March 21, 2011, at a price of approximately \$19.71, for a total price of \$9,854. Suken's second purchase of GSI shares was also on the basis of the material nonpublic information about the proposed acquisition of GSI communicated to him by Saridakis.

Tip from Respondent to Shimul

26. On or around Monday, March 21, 2011, Suken spoke with Shimul by phone and conveyed the material nonpublic information regarding GSI that Saridakis had tipped to him. Suken told Shimul that Suken had spoken with someone at GSI who had told him that GSI was about to be acquired. Suken informed Shimul that he believed the acquisition could be announced the following Monday. Suken shared this information with Shimul with the expectation that Shimul might trade on it.

Trading by Shimul

27. On Wednesday, March 23, 2011, Shimul transferred \$20,000 by check from his checking account to his brokerage account.

28. On Thursday, March 24, 2011, Shimul purchased 1100 GSI shares at a price of approximately \$18.91 per share, for a total price of \$20,801. Shimul purchased

these shares based on the information that Suken had communicated to him. Prior to March 24, 2011, Shimul had never traded in GSI securities.

Tippling by Shimul and Additional Downstream Trading

29. On the evening of Thursday, March 24, 2011, Shimul attended a dinner with four friends, including Individuals Y and Z. During this dinner, Shimul shared with the attendees the material nonpublic information about GSI that Suken had shared with him earlier that week.

30. On Friday, March 25, 2011, Individual Y purchased 3,500 GSI April call options with a strike price of \$19. Individual Y purchased these options at \$0.90 per option, for a total purchase price of \$3,150. Individual Y purchased these options based on Shimul's tip of the material nonpublic information regarding the proposed acquisition of GSI. Prior to March 25, 2011, Individual Y had never purchased GSI shares or options.

31. On Friday, March 25, 2011, Individual Z purchased 300 GSI shares at a price of approximately \$19.33 per share, for a total price of \$5799. Individual Z purchased these shares based on Shimul's tip of the material nonpublic information regarding the proposed acquisition of GSI. Prior to March 25, 2011, Individual Z had never purchased GSI shares.

Tip from Respondent to Individual X

32. On or about Wednesday, March 23, 2011, Suken shared with Individual X, a friend and business associate, the nonpublic material information that Saridakis had shared with him about GSI. Suken told Individual X that he had a friend within GSI who had told Suken that GSI was about to be acquired. Suken told Individual X that he believed the acquisition could be announced the following Monday and that Suken had recently purchased GSI securities. Suken shared this information with Individual X with the expectation that Individual X might trade on it.

Trading by Individual X

33. On Thursday, March 24, 2011, Individual X purchased 30 shares of GSI at a price of approximately \$19.03 per share, and another 30 shares at approximately \$19.10 per share, for a total price of approximately \$1,144. Individual X purchased these shares based on the information that Suken had communicated to him on the prior day. Prior to March 24, 2011, Individual X had never purchased GSI shares.

34. On March 24, 2011, Individual X shared the material nonpublic information he had received from Suken with three other individuals, one of whom improperly used the insider information to generate profits.

Merger Announcement and Market Reaction

35. Early in the morning on Monday, March 28, 2011, GSI and EBAY executed the merger agreement. NASDAQ halted trading in GSI shares at 9:22 a.m. that morning based on pending news. At 10:05 a.m., GSI and EBAY announced that the companies had entered into a definitive agreement to merge, whereby EBAY would acquire GSI for \$29.25 per share, or a total consideration of approximately \$2.4 billion.

36. The market reacted significantly to the news. The closing last sale price of GSI on the day of the announcement was \$29.20, an increase of approximately 50.6% over the prior day's close. Trading volume on the day of the announcement was 42.6 million shares, compared to GSI's historical average daily volume of approximately 1.1 million shares.

Sales by Traders and Profits Generated

37. On March 28, 2011, Suken sold his GSI shares for \$29.02 per share, generating profits of approximately \$9,838.

38. On March 28, 2011, Shimul sold his GSI shares for \$29.10 per share, generating profits of approximately \$11,209.

39. On April 6, 2011, Individual X sold his GSI shares for \$29.22 per share, generating profits of approximately \$609.

40. On March 28, 2011, Individual Y sold his GSI call options for profits of approximately \$31,777.

41. On March 28, 2011, Individual Z sold his GSI shares for profits of approximately \$2,913.

Basis for Trading and Scienter

42. Suken's purchases of GSI shares on March 14 and March 21, 2011 were on the basis of material, nonpublic information about the proposed acquisition of GSI, communicated by Saridakis, who obtained a personal benefit. Suken knew or should have known that Saridakis received the information through his position as a senior executive at GSI, and breached his fiduciary duty when he shared that information with Suken.

43. Shimul's purchase of GSI shares on March 24, 2011 was on the basis of material, nonpublic information about the proposed acquisition of GSI communicated by Suken, who obtained a personal benefit.

44. Individual X's purchase of GSI shares on March 24, 2011 was on the basis of material, nonpublic information about the proposed acquisition of GSI communicated by Suken, who obtained a personal benefit.

E. Violations

45. As a result of his trading in GSI securities and his communications with Shimul and Individual X, Respondent violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

Undertakings

In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

In determining whether to accept the Offer, the Commission has considered the undertakings.

V.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall pay to the United States Securities and Exchange Commission disgorgement of \$10,446, prejudgment interest of \$1,007, and a civil money penalty of \$64,965, for a total of \$76,418. Payment shall be made within 10 days of the entry of this Order. Payment must be made in one of the following ways:

(1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Suken A. Shah as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

By the Commission.

Jill M. Peterson
Assistant Secretary