

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72024 / April 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15857

In the Matter of

Shimul 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 Shimul A. Shah (“Respondent” or “Shimul”).

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 purpose 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 Securities Exchange Act of 1934, 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:

Summary

1. This matter involves insider trading by Respondent in the securities of GSI Commerce, Inc. ("GSI") in advance of the March 28, 2011 announcement that eBay, Inc. ("EBAY") had agreed to acquire GSI.

2. On or about March 21, 2011, Respondent received material nonpublic information about the proposed acquisition of GSI from his brother, Suken Shah. Respondent knew or should have known that Suken had received the information as a result of a breach of fiduciary duty by an insider at GSI.

3. On or about March 24, 2011, Respondent traded on the basis of the information he had received. As a result of his improper use of the insider information, Respondent generated profits of approximately \$11,000.

4. On or about March 24, 2011, Respondent shared the material nonpublic information he had received with four other individuals (Individuals Y and Z, and Witnesses 1 and 2).

5. On or about March 25, 2011, Individuals Y and Z traded on the basis of the information they had received from Respondent. As a result of their improper use of the insider information provided by Respondent, Individuals Y and Z generated profits of approximately \$3,000 and \$32,000, respectively.

6. By virtue of his conduct, Respondent violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondent

7. *Shimul Shah*, age 40, resides in Cincinnati, OH. During the relevant time, Shimul was employed as a surgeon in Worcester, MA, and resided in Southborough, MA.

Other Relevant Persons

8. *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.

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.

9. *Suken Shah*, age 44, resides in Wilmington, DE. During the relevant time period, Suken worked and resided in Wilmington, DE. Shimul and Suken Shah are brothers.

10. *Christopher Saridakis*, age 45, resides in Greenville, DE. During the relevant time period, Saridakis was a senior executive at GSI, worked in King of Prussia, PA and lived in Greenville, DE. During the relevant time, Suken and Saridakis were friends whose children attended the same school in Wilmington, DE.

11. *Individual Y*, age 42, resides in Shrewsbury, MA. During the relevant time, Individual Y worked and resided in Worcester, MA. During the relevant time, Shimul and Individual Y were friends who had previously attended their medical residency program together.

12. *Individual Z*, age 42, resides in Concord, MA. During the relevant time period, Individual Z worked in Cambridge, MA and resided in Concord, MA. During the relevant time, Shimul and Individual Z were friends who had previously attended their medical residency program together.

13. *Witness 1*, age 41, resides in Mendon, MA. During the relevant time, Witness 1 worked and resided in Massachusetts. During the relevant time, Shimul and Witness 1 were friends who had previously attended their medical residency program together.

14. *Witness 2*, age 47, resides in Shrewsbury, MA. During the relevant time, Witness 2 worked and resided in Worcester, MA. During the relevant time, Shimul and Witness 2 were friends who had previously attended their medical residency program together.

Facts

15. 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.

16. Christopher Saridakis first learned of the possible acquisition of GSI by EBAY in mid-February 2011. Saridakis knew that the information about the possible acquisition of GSI by EBAY was material and nonpublic, and that he had an obligation to maintain the confidentiality of the information. Saridakis violated his fiduciary duty by disclosing this information to his friend, Suken.

17. Suken purchased shares of GSI for the first time on Monday, March 14, 2011, after learning of material nonpublic information about the proposed acquisition of GSI from Saridakis. Suken purchased additional shares of GSI on Monday, March 21, 2011.

18. On or around Monday, March 21, 2011, Suken spoke with Shimul by phone and conveyed material nonpublic information regarding GSI that he had learned from Saridakis, a friend and insider at GSI.

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

20. 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. Prior to March 24, 2011, Shimul had never traded in GSI securities.

21. On the evening of Thursday, March 24, 2011, Shimul attended a dinner with four friends with whom he had attended his residency years earlier. In addition to Shimul, Individuals Y and Z and Witnesses 1 and 2 attended the dinner. During this dinner, Shimul shared with Individuals Y and Z and Witnesses 1 and 2 the material nonpublic information about GSI that Suken had shared with him earlier that week. Shimul shared this information with the expectation that Individuals Y and Z and Witnesses 1 and 2 might trade based on the information he provided.

22. 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 the information that Respondent shared at the dinner regarding the proposed acquisition of GSI. Prior to March 25, 2011, Individual Y had never purchased GSI shares or options.

23. 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 the information that Respondent shared at the dinner regarding GSI. Prior to March 25, 2011, Individual Z had never purchased GSI shares.

24. 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. 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.

25. 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.

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

27. On March 28, 2011, Suken sold his GSI shares for profits of approximately \$9,838.

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

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

30. 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. Shimul knew or should have known that Suken had received the information as a result of a breach of fiduciary duty by an insider at GSI. Saridakis obtained a personal benefit from tipping his friend, Suken.

31. The purchases of GSI shares by Individuals Y and Z were also on the basis of material, nonpublic information about the proposed acquisition of GSI, communicated by Shimul. Shimul intentionally communicated that information to Individuals Y and Z with the expectation that they might trade.

32. As a result of the conduct described above, Shimul 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 undertaking.

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 \$11,209.22, prejudgment interest of \$1,022.12, and a civil money penalty of \$22,418.44, for a total of \$34,649.78. 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 Shimul 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