

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 96776 / January 30, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21290**

**In the Matter of**

**RANDY HERSCHAFT,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING 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 Randy Herschaft (“Herschaft” or “Respondent”).

**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, and except as provided herein in Section V, 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 A Cease-And-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds that:

1. This matter involves insider trading by Randy Herschaft in the securities of Asta Funding, Inc. (“Asta”) based on material nonpublic information that Herschaft misappropriated from his close friend, a senior executive at Asta (“Friend”). On April 8, 2020, after market close,

Asta announced that it had entered into a definitive agreement to be acquired by a group of investors operating through Asta Finance Acquisition Inc. for approximately \$11.47 per share (the “Announcement”). On the day after the Announcement, the price of Asta stock rose by 26%. Prior to the Announcement, on March 22, 2020, Friend disclosed to Herschaft information related to the proposed transaction in confidence. Herschaft and Friend had a close personal relationship and a history, pattern, and practice of sharing confidences. Unbeknownst to Friend, between March 23 and April 3, 2020, in breach of a duty of trust and confidence owed to Friend, Herschaft misappropriated the information he received from Friend and purchased Asta securities in advance of the Announcement. Herschaft obtained realized and unrealized profits of \$35,187.66. By engaging in this conduct, Herschaft violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

### **Respondent**

2. **Randy Herschaft**, age 62, resides in New Jersey, and works as a researcher. Herschaft has never held any securities license and has never been registered with the Commission.

### **Relevant Entities**

3. **Asta Funding, Inc.**, headquartered in Englewood Cliffs, New Jersey, is a financial services company. Prior to September 29, 2020, Asta’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on NASDAQ under the symbol “ASFI.”

4. **Asta Finance Acquisition Inc.**, headquartered in Paramus, New Jersey, is an acquisition vehicle formed by a private investor group for the purpose of acquiring Asta.

### **Background**

5. In November 2019, Asta began preliminary discussions concerning a potential strategic transaction to be acquired by a private investor group through a newly-formed acquisition vehicle. Asta disclosed the preliminary discussions in a Form 8-K filing dated November 1, 2019.

6. Friend participated in the preliminary discussions and, later, negotiations concerning the potential transaction.

7. On March 16, 2020, a special committee of Asta’s board of directors approved an offer from the private investor group to acquire Asta at an \$11.47 per share price.

8. On the evening of March 22, 2020, Friend had a telephone conversation with Herschaft. Friend and Herschaft had a close personal relationship. They routinely shared confidences with each other and kept each other’s confidences. During that call, Friend shared material nonpublic information with Herschaft. By virtue of their history, pattern, and practice of sharing confidences, Herschaft owed a duty of trust or confidence to Friend, and Friend expected that Herschaft would maintain the confidentiality of the material nonpublic information. By virtue of this relationship, and the duty owed to Friend, Herschaft knew, consciously avoided knowing, or

was reckless in not knowing that information disclosed was confidential and that he should not trade on the information.

9. Beginning the next day and continuing through April 3, 2020, Herschaft purchased 13,143 shares of Asta common stock in four brokerage accounts, at an average price of \$8.34 per share, for a total of \$109,654.84.

10. Herschaft knew, consciously avoided knowing, or was reckless in not knowing that his purchases of Asta common stock were in breach of the duty of trust or confidence that he owed to Friend.

11. On April 8, 2020, after market close, Asta announced that it had entered into a definitive agreement to be acquired by the investor group, through Asta Finance Acquisition, for \$11.47 per share.

12. The next day, Asta's stock closed at \$11.03 per share, an increase of approximately 26% over the prior day's closing price of \$8.73 per share. As a result, Herschaft obtained realized and unrealized gains on his purchases of Asta common stock of \$35,187.66.

13. Based on the foregoing, Herschaft violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### **Disgorgement**

14. The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles, does not exceed Respondent's net profits from his violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.B shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

#### **IV.**

On the basis of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Herschaft's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Herschaft cease and desist from committing or causing any violations and any future violations of Sections 10(b) and Rule 10b-5 thereunder.

B. Respondent Herschaft shall, within 10 days of the entry of this Order, pay disgorgement of \$35,187.66, prejudgment interest of \$3,429.72, and a civil money penalty of \$35,187.66 to the Securities and Exchange Commission for transfer to the general fund of the

United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

C. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) 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
- (3) 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 Randy Herschaft 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 Thompson, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other

amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman  
Secretary