

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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US DISTRICT COURT E.D.N.Y.

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BROOKLYN OFFICE

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

Civil Action No.

v.

CV 11 - 5731
ECF

MYRON WEINER,

Defendant.

IRIZARRY, J.

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("SEC" or "Commission"), alleges as follows:

SUMMARY

1. Defendant Myron Weiner ("Weiner") sold 8 million shares of Spongetech Delivery Systems, Inc. ("Spongetech") stock to the investing public in violation of the registration requirements of Section 5 of the Securities Act of 1933 ("Securities Act").

2. Weiner purchased the Spongetech shares from Spongetech affiliate RM Enterprises International, Ltd., a/k/a RM Enterprises International, Inc., ("RM Enterprises") on June 19, 2009 for \$400,000, a price of \$0.05 per share. Weiner signed a subscription agreement 3 days prior to his purchase, in which he acknowledged that his purchase of Spongetech stock was not covered by a registration statement and that a restrictive legend would therefore be placed on his share certificates. However, he requested "free-trading" shares that he would be able to immediately sell into the public market. RM Enterprises delivered the shares to Weiner

without restrictive legends. Weiner received the shares in two tranches – one on July 8, 2009 and one on July 15, 2009.

3. Weiner sold the shares to the investing public shortly after receiving them, at a price of \$0.20 per share. The transactions were not registered with the Commission, and the transactions did not satisfy any exemption from the registration requirements. Weiner's profits on these unregistered securities transactions were \$1,215,057.96.

4. By engaging in this conduct, Weiner violated Section 5 of the Securities Act [15 U.S.C. § 77e].

JURISDICTION & VENUE

5. The Commission brings this action pursuant to Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)].

6. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]. Weiner directly, or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

7. Venue is appropriate in the Eastern District of New York under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]. Certain of the acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within this district. Weiner communicated by e-mail with Spongetech's CFO, who resides in this district, about his sales of Spongetech stock.

DEFENDANT

8. Defendant Myron Weiner, age 69, is a resident of Hoboken, New Jersey. Since 1973, Weiner has owned and operated a restaurant in New York City.

9. Previously, Weiner was a registered representative from 1970 to 1975, and was an assistant syndicate manager at New York brokerage firm, Kenneth Bove & Co. (“Kenneth Bove”) from 1970 to 1972. In 1974, the SEC brought an administrative proceeding against Kenneth Bove, Weiner, and other employees, alleging they manipulated the price of certain stocks and violated or aided and abetted the registration, antifraud, and other securities provisions. *In the Matter of Kenneth Bove, Inc.*, Release No. 10885, Release No. 34-10885, 4 S.E.C. Docket 507, 1974 WL 163488 (Jun. 27, 1974). Weiner settled this matter and agreed to be barred from association with any broker, dealer, or investment company, with a right to apply to become associated with a broker or dealer after 18 months. *In the Matter of Timothy Murray et al.*, Release No. 11572, Admin. Proc. File No. 3-4509 (Aug. 5, 1975).

OTHER RELATED ENTITIES

10. Spongetech Delivery Systems, Inc. is a Delaware corporation with its principal place of business in New York, New York. During the relevant period, Spongetech was a publicly-traded corporation that purportedly sold soap-filled sponges. From 2006 until October 5, 2009, Spongetech’s common stock was quoted on the Over-the-Counter Bulletin Board as “SPNG” and then as “SPNGE.” On October 5, 2009, the SEC temporarily suspended Spongetech trading for 10 days, after which Spongetech’s stock continued to be traded on an unsolicited basis in the grey market. *In the Matter of Spongetech Delivery Systems, Inc.*, Release No. 60788, Admin. Proc. File No. 500-1 (Oct. 5, 2009).

11. RM Enterprises International, Ltd., a/k/a RM Enterprises International, Inc., is a Delaware corporation with its principal place of business in New York, New York. RM Enterprises was the majority shareholder of Spongetech and was controlled by Spongetech's CEO and CFO.

12. On May 5, 2010, the Commission filed a civil injunctive action against Spongetech, RM Enterprises, and others. *SEC v. Spongetech, et al.*, 10-CV-2031 (E.D.N.Y. 2010).

FACTS

13. Weiner first met Spongetech's CEO in 1970 while working at Kenneth Bove. From 1970 to 2009, Weiner maintained contact with Spongetech's CEO, and invested in several private placements through him. Weiner became a shareholder of RM Enterprises, Inc. ("RM Enterprises") when his real estate business partner gave him 13 shares as a gift in 2001. At the time, he was aware that Spongetech's CEO was involved with RM Enterprises.

14. On June 16, 2009, Weiner signed a subscription agreement with RM Enterprises for the purchase of 10 million restricted Spongetech shares for \$500,000, at a price of \$0.05 per share. The subscription agreement provided that the securities were not covered by a registration statement, that the securities were being purchased for investment purposes and not with a view to distribution or resale, and that a restrictive legend would be placed on the share certificates. Nevertheless, Weiner asked Spongetech's CEO for unrestricted shares.

15. Weiner purchased the shares at a discount to the current market price. On June 16, 2009, the closing market price of Spongetech stock was \$0.17, \$0.12 greater than the \$0.05 per share that Weiner paid. The subscription agreement additionally provided that RM

Enterprises would increase the number of Weiner's shares by one-third if Spongetech's stock price closed below \$0.09 on any given day.

16. On June 19, 2009, Weiner wired the purchase price of \$500,000 into RM Enterprises' account at TD Bank, N.A. The memo field notation on the wire reflected Weiner's desire for shares that he could easily and readily sell. The memo field notation reads, "re: myron Weiner ref purchase 10M shares of Spongetech @ 0.05 per share free and clear."

17. On July 8, 2009, Weiner received 5 million restricted Spongetech shares from RM Enterprises split between two share certificates. On July 15, 2009, Weiner received an additional 5 million restricted Spongetech shares from RM Enterprises in one share certificate. The restrictive legends had been removed from the share certificates, although the shares were, in fact, restricted.

18. On August 19, 2009, Weiner opened a brokerage account and deposited the 10 million Spongetech shares into that account on August 31, 2009.

19. On September 3, 2009, after holding the Spongetech shares for less than 2 months, Weiner sold 8 million of the shares on the Over-the-Counter Bulletin Board for gross proceeds of approximately \$1,615,057. Weiner's actual realized net profit on the sale was approximately \$1,215,057 after subtracting his initial payment of \$400,000 (8 million shares at a price of \$0.05 per share). Weiner's sales of Spongetech stock were not registered with the Commission, and no exemption from the registration requirements applied.

CLAIM FOR RELIEF

(Violations of Section 5 of the Securities Act)

20. Paragraphs 1 – 19 are hereby realleged and incorporated by reference.

21. As alleged above, Weiner has, by engaging in the conduct described above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or the mails, offered to sell or sold securities or carried or caused such securities to be carried through the mails or in interstate commerce, for the purpose of sale or delivery after sale.

22. No registration statements were filed with the Commission or were in effect in connection with sales of, and offers to sell, securities of Spongetech by Weiner, and no exemption from the registration requirements applied to Weiner's sales.

23. By reason of the foregoing, Weiner violated Section 5 of the Securities Act [15 U.S.C. § 77e].

PRAYER FOR RELIEF

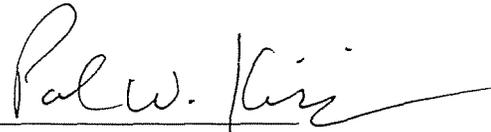
WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

- (a) permanently enjoining Weiner from violating Section 5 of the Securities Act [15 U.S.C. § 77e];
- (b) ordering Weiner to pay disgorgement of \$1,215,057, plus prejudgment interest of \$80,135, representing the benefit from the conduct alleged herein;
- (c) ordering Weiner to pay a civil money penalty of \$50,000, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)];
- (d) ordering, pursuant to Section 308 of the Sarbanes-Oxley Act of 2002, that the amount of civil penalties ordered against and paid by Weiner be added to and become part of a disgorgement fund for the benefit of the victims of the violations alleged herein;

- (e) barring Weiner from engaging in any offering of penny stock pursuant to Securities Act Section 20(g) [15 U.S.C. § 77t(g)] for a period of one year; and
- (f) granting such other and further relief as this Court deems just and appropriate.

Dated: November 17, 2011

Respectfully submitted,



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