

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:12-cv-07119
)	
ARTHUR H. REED, and)	
ALLAN F. DERUSHA,)	
)	
Defendants.)	

COMPLAINT

Plaintiff Securities and Exchange Commission (“the Commission”) alleges as follows:

Summary

1. This case involves insider trading in the securities of APP Pharmaceuticals, Inc. (“APP”).

2. During 2008, Defendant Arthur H. Reed (“Reed”) was employed by APP as its Director of Contract Marketing. On or before May 27, 2008, Reed learned that APP was in the process of being acquired by another company. The fact that the company was for sale constituted material nonpublic information.

3. Reed violated his obligation of confidentiality to APP by purchasing APP securities based on his knowledge of the pending acquisition and disclosing the pending acquisition to Defendant Allan F. Derusha (“Derusha”), his father-in-law.

4. Between May 28 and June 27, 2008, Reed purchased a total of \$438,504 of APP securities in his own brokerage accounts and in the brokerage accounts of his wife and his mother.

5. Between June 11 and June 27, 2008, Derusha purchased a total of \$257,374 of APP securities in his own brokerage account and in the brokerage account of his wife.

6. On July 7, 2008, prior to the opening of the NASDAQ Stock Market LLC, APP announced that it had entered into a definitive agreement to be acquired by Fresenius SE (“Fresenius”) for \$23 per share in cash plus a contingent value right that could deliver up to an additional \$6 per share if APP met certain future financial targets. APP stock closed at \$23.19 per share that day, a 23% increase from the closing price of \$17.82 per share the prior business day.

7. After APP’s acquisition was publicly announced, Reed and Derusha sold their APP stock, realizing \$272,958 and \$163,281 in profits respectively from their trading on material nonpublic information. These individuals exploited their personal and family relationships for monetary gain. Their misuse of confidential information gave them an illegal advantage over other traders in the market.

8. By engaging in this conduct, which is described more fully below, Defendants Arthur H. Reed and Allan F. Derusha violated Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §78j(b), and Rules 10b-5(a) and (c) thereunder, 17 C.F.R. §240.10b-5(a) and (c).

Jurisdiction and Venue

9. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78u-1.

10. The Court has subject matter jurisdiction over this action pursuant to Sections 21(e), 21A and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e), 78u-1 and 78aa.

11. This Court has personal jurisdiction over the Defendants, and venue is proper in

this District, because the Defendants reside in this District, and most of the acts, transactions and conduct which constitute the violations alleged in this Complaint occurred within this District.

Defendants

12. Arthur H. Reed (“Reed”) is 43 years-old and resides in Batavia, Illinois. During 2008, Reed was the Director of Contract Marketing for APP. The father of Reed’s wife is Allan F. Derusha.

13. Allan F. Derusha (“Derusha”) is 69 years-old and resides in Naperville, Illinois. Derusha’s daughter is married to Reed.

Other Relevant Entities

14. APP Pharmaceuticals, Inc. (“APP”), which is headquartered in Schaumburg, Illinois, develops, manufactures and markets injectable pharmaceutical products. During the period of time at issue in this matter, APP’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the NASDAQ Stock Market LLC. On July 7, 2008, APP announced that it had reached a definitive agreement to be acquired by Fresenius. The acquisition was completed on September 10, 2008.

15. Fresenius SE (“Fresenius”), which is headquartered in Bad Homburg, Germany, is a global health care group with products and services for dialysis, hospital and outpatient medical care. Fresenius stock is traded on the Frankfurt Stock Exchange.

Relevant Facts

A. APP Is Offered For Sale.

16. In February 2008, executives of two pharmaceutical companies expressed interest in purchasing APP to APP executives.

17. On April 2, 2008, APP’s Board of Directors met to discuss the unsolicited

expressions of interest. The Board of Directors authorized APP management to execute confidentiality agreements and subsequently share confidential information and undertake further discussions with potential acquirors. The Board of Directors also authorized APP management to engage financial advisors to assist APP with a potential acquisition and later approved of those advisors soliciting interest from other potential acquirors.

18. The fact that APP was being offered for sale was confidential. In that regard, each potential acquiror was required to execute a confidentiality agreement before APP management would provide confidential due diligence materials or discuss confidential information.

19. In April and May 2008, at least four potential acquirors, after executing confidentiality agreements, received a confidential information memorandum containing non-public information concerning APP's financial condition and were granted access to due diligence materials in APP's on-line data room. APP management also met with representatives of the potential acquirors.

20. During the week of May 5, 2008, APP's financial advisers sent letters to three of the potential acquirors ("the final three potential acquirors"), one of which was Fresenius, which provided instructions for delivering a non-binding acquisition proposal to APP. Each of them submitted such a proposal on or before May 23.

21. During the end of May and first few weeks of June 2008, APP continued negotiations with the final three potential acquirors, which included presentations by APP management and site visits.

22. On June 17, 2008, APP's financial advisers requested that the final three potential acquirors submit their final acquisition proposals by the end of the week of June 23. On June 30,

2008, APP entered into a two-week negotiation exclusivity agreement with Fresenius.

23. APP and Fresenius representatives finalized the acquisition documentation during the week of June 30, 2008. On July 6, 2008, APP's Board of Directors approved of an acquisition by Fresenius, and APP and Fresenius representatives executed the definitive documentation. Pursuant to that documentation, Fresenius would acquire APP in a potentially \$5.6 billion transaction for a payment of \$23 per share in cash plus a contingent value right that could deliver up to an additional \$6 per share if APP met certain future financial targets.

24. APP announced its acquisition by Fresenius on July 7, 2008, prior to the commencement of trading on the NASDAQ Stock Market LLC. APP's stock price closed at \$23.19 per share that day, which was a 23% increase from the previous closing price of \$17.82 per share.

B. Reed Was Employed By APP And Bound By Its Code Of Conduct.

25. During 2008, Reed was the Director of Contract Marketing for APP. As such, Reed was responsible for overseeing and managing APP's pharmaceutical pricing to hospital group purchasing organizations.

26. In connection with his employment, Reed was subject to APP's Code of Business Conduct ("Code"). Among other things, the Code provided that: (1) insider trading is prohibited by law and has serious legal consequences; (2) insider trading occurs when an individual with material nonpublic information trades securities or communicates such information to others who trade; (3) an individual who is aware of material nonpublic information must allow at least two full trading days following the public announcement of such information before trading in APP securities; and (4) material information can relate to virtually any aspect of APP's business and includes acquisitions.

27. In January 2008, Reed signed a document in which he acknowledged that he had received and would comply with APP's Code.

28. Accordingly, Reed understood that he was prohibited from trading in APP securities, or recommending that others purchase or sell APP securities, based on any material information about the company which had not been publicly disclosed.

C. Reed Learns About The Pending Acquisition Of APP And Purchases APP Securities.

29. On or before May 27, 2008, Reed learned through his employment at APP that APP was in the process of being acquired by another company.

30. In May and June 2008, Reed made several purchases of APP stock based on his knowledge of APP's pending acquisition. More specifically, on May 28, Reed purchased 1,600 shares of APP stock in one of his mother's brokerage accounts for \$19,872. On May 30, Reed purchased 4,700 shares of APP stock in one of his brokerage accounts for \$62,363 and 480 shares of APP stock in one of his wife's brokerage accounts for \$6,326. On June 10, 2008, Reed purchased 7,000 shares of APP stock in one of his brokerage accounts for \$97,116. On June 16, Reed purchased 3,400 shares of APP stock in one of his brokerage accounts for \$49,436. On June 17, Reed purchased 7,500 shares of APP stock in one of his mother's brokerage accounts for \$111,078. On June 27, Reed purchased 5,700 shares of APP stock in one of his brokerage accounts for \$92,314.

31. For each of the brokerage accounts in which Reed purchased APP securities, Reed liquidated all of the other stock holdings to make the APP stock purchases and even used margin in one of the accounts to buy additional APP stock.

32. Reed sold all but 300 of the APP shares (which he had sold on July 2 to meet a margin call) on July 7, 2008, the day that APP announced its pending acquisition, for \$706,602.

Excluding the profits realized from the July 2 sale of 300 shares of APP stock, Reed realized \$272,958 in profits, or a 38% gain, from the purchase and sale of APP stock.

D. Derusha Purchases APP Securities Based Upon Material Nonpublic Information.

33. On or before June 10, 2008, Reed tipped his father-in-law, Derusha, about the pending acquisition of APP, and Derusha purchased APP securities based upon that material nonpublic information.

34. Derusha made several purchases of APP stock based on his knowledge of APP's pending acquisition. On June 11, 2008, Derusha purchased 7,040 shares of APP stock in one of his brokerage accounts for \$98,214 and 7,500 shares of APP stock in one of his wife's brokerage accounts for \$105,057. On June 27, 2008, Derusha purchased 3,350 shares of APP stock in one of his brokerage accounts for \$54,102.

35. Derusha sold all of his APP stock (except for 40 shares which he sold on July 2) on July 7 or August 13, 2008, after APP publicly announced its pending acquisition, for \$420,549. Excluding the profits realized from the July 2 sale of 40 shares of APP stock, Derusha realized \$163,821 in profits, or a 39% gain, from the purchase and sale of APP securities.

Count I

Violation of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) Thereunder

36. The Commission incorporates by reference the allegations in paragraphs 1-35 as though fully set forth herein.

37. Reed knew, or was reckless in not knowing, that information regarding the pending acquisition of APP was confidential, material and nonpublic. Reed breached the duty of trust and confidence which he owed to APP by: (a) purchasing APP securities on the basis of material nonpublic information; and (b) disclosing material nonpublic information to Derusha,

whom he knew, or was reckless in not knowing, would purchase APP securities.

38. Reed received a personal benefit from his disclosure of material nonpublic information to Derusha.

39. Derusha knew, or was reckless in not knowing, that the information regarding the pending acquisition of APP was confidential, material and was conveyed to him in violation of a relationship of trust. On the basis of this information, Derusha purchased APP securities.

40. By their conduct described above, Reed and Derusha, in connection with the purchase or sale of securities, and by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly employed devices, schemes or artifices to defraud or engaged in acts, practices or courses of business which operated as a fraud or deceit upon other persons.

41. Reed and Derusha acted with *scienter* by trading based on and/or disclosing confidential information regarding APP's pending acquisition because they either knew, or were reckless in not knowing, that they were doing so in breach of a duty not to trade on that information or disclose that information to others.

42. By reason of the foregoing, Reed and Derusha have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently enjoin Reed and Derusha from violating 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;

II.

Order Reed and Derusha, jointly and severally, to disgorge the ill-gotten gains from each trade in APP securities which either they, or the person they tipped, entered into on the basis of material nonpublic information, including prejudgment interest thereon;

III.

Order Reed and Derusha to pay civil penalties pursuant to Section 21A of the Exchange Act, 15 U.S.C. §78u-1; and

IV.

Grant such other relief as the Court deems appropriate.

Respectfully submitted,

/s/Scott B. Tandy
Scott B. Tandy (Illinois Bar No. 6226214)
Securities and Exchange Commission
Chicago Regional Office
175 West Jackson Boulevard, Suite 900
Chicago, IL 60604-2615
(312) 353-7390
(312) 353-7398 (FAX)
tandys@sec.gov