

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	Civil Action No. <u>20-cv-536</u>
	:	
v.	:	JURY TRIAL DEMANDED
	:	
ERIC M. HILL,	:	
Defendant.	:	

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) files this Complaint against Defendant Eric M. Hill (“Hill”) and alleges as follows:

SUMMARY OF THE ACTION

1. This action alleges insider trading by Hill based on material, nonpublic information he misappropriated from his close friend (the “Insider”) about a potential merger involving Piedmont Natural Gas Company (“Piedmont”).

2. On October 13, 2015, the Insider, who worked at an actuarial consulting firm (the “Consulting Firm”) that assisted Piedmont in managing the company’s retirement benefits plan, was entrusted with confidential information about the potential merger during a phone call with Piedmont executives. The Piedmont executives told the Insider to keep the information confidential.

3. Later that day, the Insider conveyed the information he learned from the Piedmont executives to his close friend Hill, expecting Hill to maintain its confidentiality. The Insider had

been close friends with Hill for about twenty years. The Insider had vacationed with Hill, served in Hill's wedding party, and had a history of sharing work-related confidential information with him.

4. Hill misappropriated the information that his friend conveyed by using it to trade Piedmont securities. Approximately five minutes after learning information about the potential merger, Hill called his broker. Ten minutes after that, Hill logged into his brokerage account to begin purchasing Piedmont securities, which he had never traded before. In total, over the next week, Hill purchased \$6,799.75 in Piedmont options and \$41,830 worth of Piedmont stock.

5. On October 26, 2015, Piedmont publicly announced its merger with Duke Energy Corporation ("Duke") in a \$4.9 billion transaction. Following the announcement, Piedmont's stock price rose sharply and closed at \$57.82, an increase of 36.9% over the previous trading day's closing price. Minutes after the merger was announced, Hill sold all of his Piedmont stock and options, reaping ill-gotten gains of \$380,677.

6. By engaging in the conduct described in this Complaint, Hill violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1] seeking a final judgment that (1) permanently enjoins Hill from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint; (2) orders Hill to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and (3) awards any other relief the Court deems appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

8. The Court has jurisdiction pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78aa].

9. Venue is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], because certain of the acts, practices, and courses of business constituting the alleged violations occurred within the Western District of North Carolina. Also, Hill resides in the District.

DEFENDANT

10. Eric M. Hill, age 44, is an actuary who resides in Charlotte, North Carolina. He is an active trader who frequently posted on an online social media platform for investors.

RELEVANT THIRD PARTIES

11. The Insider, age 44, is an actuary who resides in Charlotte, North Carolina. At all relevant times, the Insider worked at the Consulting Firm and provided services to Piedmont relating to the management of Piedmont's pension plan.

12. Before the merger with Duke, Piedmont was a publicly-traded natural gas distribution company headquartered in Charlotte, North Carolina, that distributed natural gas to customers in North Carolina and surrounding states. Piedmont's stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange under ticker symbol "PNY."

13. Duke is a publicly-traded natural gas distribution company headquartered in Charlotte, North Carolina. Duke's stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under ticker symbol "DUK." Duke acquired Piedmont through an all-cash transaction, and Duke now operates Piedmont as one of its business units.

TERMS USED IN THIS COMPLAINT

14. Common stock is a form of equity ownership in a corporation.

15. Option contracts are financial instruments that offer the buyer an opportunity to buy or sell—depending upon the type of option contract—an underlying asset such as stock. As such, options are a derivative security.

16. A call option is a specific type of option contract that gives the owner the right, but not the obligation, to buy 100 shares of the underlying stock at a set price per share, known as the option's strike price, on or before a set future date, known as the option's expiration date.

17. Generally, the holder of a call option benefits when the price of the underlying stock increases. Thus, a trader might purchase a call option if he or she expects the underlying asset's price to exceed the strike price before the expiration date.

18. A call option is considered “out-of-the-money” when the current market price of the underlying stock is lower than its strike price.

FACTS

A. Hill Owed the Insider a Duty of Trust and Confidence.

19. At the time period relevant to this complaint, Hill and the Insider had been close friends for about 20 years: they went to college together, majored in the same field, and previously worked together as actuaries at the Consulting Firm. The Insider served as a member of Hill's wedding party in or about 2010.

20. The Insider began working at the Consulting Firm in June 1999, and played an active role in recruiting Hill to join him there, which Hill did in approximately August 2000.

21. The Insider and Hill worked together at the Consulting Firm for about five years before Hill left to join a competitor.

22. Even after Hill left the Consulting Firm, he and the Insider maintained a close relationship. Hill and the Insider vacationed together on destination golf trips, attended college football and basketball games together, and got together regularly to watch sports or otherwise socialize together and with friends.

23. In October 2015, Hill and the Insider were planning their joint 40th birthday celebration, a golf vacation in Arizona with more than a dozen friends for which the two had agreed to split the lodging costs for their guests.

24. The Insider believed that he could share personal details with Hill, confide in him when needed, and trust him with confidential information.

25. As a result, the Insider and Hill shared a history, pattern, and practice of sharing confidences—in particular with respect to business information. The Insider had previously shared confidential information with Hill about his work at the Consulting Firm, expecting Hill to keep it confidential. For example, the Insider previously confided in Hill about an incident at the Consulting Firm where the Insider had issued to a client a valuation report that contained a significant calculation error.

26. The Insider also previously disclosed confidential client names to Hill, including Piedmont, even though the Insider knew that the Consulting Firm's policies prohibited him from doing so, and even though Hill worked for a competing actuarial firm. Hill, based on his prior work at the Consulting Firm, understood that the client names were supposed to be kept confidential.

27. Hill knew, reasonably should have known, or was reckless in not knowing that when the Insider shared confidential information relating to his work at the Consulting Firm, the Insider expected Hill to maintain its confidentiality.

B. The Insider Learned Material, Nonpublic Information Relating to Piedmont's Anticipated Merger.

28. In early September 2015, Duke made a nonpublic offer to acquire all outstanding Piedmont shares through a merger, prompting Duke to begin a due diligence process with Piedmont.

29. As part of the due diligence process, throughout most of October 2015, Piedmont gathered and made available to Duke certain nonpublic information, including information relating to Piedmont's pension obligations.

30. The Insider had prepared actuarial reports for Piedmont relating to these pension obligations. Consequently, Piedmont contacted him to request copies of his reports and permission to disclose them to third parties as part of due diligence.

31. On October 13, 2015, shortly before 8:00 a.m., a Managing Director at Piedmont emailed the Insider to request a "confidential call this morning at 10:30."

32. Before speaking with the Insider, the Managing Director had to obtain approval from her supervisors because the call related to confidential information arising from Duke's due diligence process for the anticipated merger.

33. At 10:30 a.m., the Insider spoke with Piedmont's Managing Director, as well as a second Piedmont officer: Piedmont's Corporate Secretary and Deputy General Counsel.

34. The Insider's call with the Piedmont executives was unusual, as Piedmont's Deputy General Counsel rarely participated in calls with the Insider.

35. During the call, the Insider learned confidential information related to Piedmont's anticipated merger.

36. Piedmont asked the Insider to provide copies of his valuation reports, and for permission to share the reports with third parties.

37. At 11:40 a.m., the Insider sent an email to the Piedmont executives thanking them for the call and stating, “we are fine with [Piedmont] providing our reports to other parties as long as there are non-disclosure agreements in place.”

38. At 12:16 p.m., Piedmont responded to the Insider and assured him that non-disclosure agreements were in place. Piedmont also confirmed that it had provided the Insider with confidential information by stating, “[w]e appreciate you maintaining confidentiality around what we told you.”

C. Hill Purchased Short-Term, Out-of-Money Call Options in Piedmont Based on Material, Nonpublic Information that the Insider Shared with Him in Trust and Confidence.

39. Shortly afterward, at 12:59 p.m. on October 13, 2015, the Insider called Hill’s cell phone. Hill did not answer.

40. A minute later, the Insider tried to reach Hill at Hill’s office, but was again unsuccessful.

41. At 1:01 p.m., the Insider finally reached Hill on his third try by dialing Hill’s cell phone again. Hill and the Insider spoke for about two minutes.

42. During that call, the Insider provided to Hill material, nonpublic information relating to the potential merger that he had learned earlier from Piedmont.

43. The Insider had a meaningful close relationship with Hill that included a history of sharing confidential information learned during the course of their careers. The Insider did not expect Hill to trade based on the information, and expected him to keep it confidential.

44. Hill understood that the Insider had a duty to the Consulting Firm to keep the information about the potential merger confidential. Hill had previously worked with the Insider at the same Consulting Firm, so Hill understood the confidentiality of its client information.

Moreover, as an associate in the Society of Actuaries since 2008, Hill knew that actuaries may not disclose confidential information without authorization. Maintaining client confidentiality is a precept in the organization's Code of Conduct that Hill agreed to follow when he obtained his associate credential, after years of study and exams.

45. However, Hill quickly acted on the Insider's information.

46. At 1:08 p.m., five minutes after hanging up with the Insider, Hill called his broker.

47. At 1:14 p.m., Hill logged into his brokerage account.

48. At 1:27 p.m., Hill began purchasing short-term, out-of-the-money call options in Piedmont, a company in which he had never previously purchased or traded any securities.

49. Hill purchased 115 Piedmont call options with a \$45 strike price expiring on November 20, 2015, and 90 Piedmont call options with a \$45 strike price expiring on December 18, 2015. Hill's call options purchases were out-of-the-money, as Piedmont's stock was trading between a low of \$41.04 and a high of \$41.64 that day.

50. Hill's purchases accounted for all the purchases in these two options series on October 13, 2015, as well as the first purchases by anyone in these options series.

51. Two days later, on October 15, 2015, Hill purchased 50 additional Piedmont call options with a \$45 strike price expiring on November 20, 2015, as well as 1,000 shares of Piedmont stock at a cost of \$41,830. Again, the call options were out-of-the-money.

52. Later that evening, in an apparent effort to create a cover story for his trading on material, nonpublic information, Hill posted on an online stock trading message board that he was "long [Piedmont] on hopeful merger," citing the takeover of another natural gas company in August 2015, and wrote, "given strong rally I'm not the only 1." However, his purchases of

Piedmont options two days earlier had accounted for all the purchases—by anyone—in those options series.

53. Hill frequently posted on the stock trading message board, but this was his very first post about Piedmont.

54. Five days later, on October 20, 2015, Hill continued purchasing out-of-the-money Piedmont call options, buying 45 call options with a \$45 strike price expiring on November 18, 2015. The purchase required Hill to use the bulk of the cash he held in that account.

55. In total, during a one week period, Hill purchased 300 out-of-the-money Piedmont call options for \$6,799 and 1,000 shares of Piedmont stock for \$41,830.

D. Hill Reaped a Massive Profit After the Public Announcement of the Merger.

56. On October 24, 2015, a few days after Hill completed all of his purchases in Piedmont securities, Piedmont's board of directors formally agreed to the merger with Duke.

57. On October 26, 2015, the deal was announced in a public press release before the market opened.

58. On the day of the announcement, Piedmont's stock closed at \$57.82—an increase of 36.9% over the previous trading day's closing price.

59. As soon as the merger was announced, Hill sold all his stock and options in Piedmont, reaping a profit of \$380,677 through his illegal trading.

E. Hill Violated the Federal Securities Laws.

60. At all relevant times, Hill owed a duty of trust and confidence to his close friend, the Insider, based on their decades-long relationship which included a history, pattern, and practice of sharing confidences.

61. Hill obtained material, nonpublic information about the potential merger involving Piedmont from the Insider.

62. Hill knew, or was reckless in not knowing, that the information he acquired from the Insider was material, nonpublic information.

63. Hill also knew, should have known, or was reckless in not knowing that he owed a duty of trust and confidence to his close friend, the Insider, when the Insider had shared the material, nonpublic information with him.

64. By purchasing Piedmont call options and stock after receiving information relating to the potential merger, Hill misappropriated material, nonpublic information for securities trading purposes, in breach of a duty of trust and confidence he owed the Insider.

CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

65. The Commission re-alleges and incorporates by reference paragraphs one through 64 as though fully set forth herein.

66. By virtue of the foregoing, Hill, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, with scienter, used the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange to:

- a. employ devices, schemes, or artifices to defraud;
- b. make untrue statements of a material fact or to omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or

- c. engage in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon others.

67. By virtue of the foregoing, Hill, indirectly or indirectly, violated and, unless restrained and enjoined, will again violate, 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].

PRAYER FOR RELIEF

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

I.

Finding that Hill violated the provisions of the federal securities laws as alleged herein;

II.

Permanently restraining and enjoining Hill and his agents, servants, employees, and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise from, directly or indirectly, engaging in conduct in violation of 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];

III.

Ordering Hill to pay a civil monetary penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

Granting such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Date: September 25, 2020



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