

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MANHATTAN TRANSFER REGISTRAR COMPANY
and JOHN C. AHEARN,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

I. INTRODUCTION

1. From May 18, 2018 through at least August 7, 2018, recidivists John C. Ahearn (“Ahearn”) and Manhattan Transfer Registrar Company (“Manhattan Transfer”) (collectively, “Defendants”) violated a previously entered cease and desist order issued by the Commission in *In the Matter of Manhattan Transfer Registrar Company and John C. Ahearn*, SEC A.P. File No. 3-18491, 2018 WL 2260102 (May 17, 2018) (“Commission Order”) that, among other things, barred Ahearn from associating with a transfer agent during the relevant time. Ahearn and Manhattan Transfer violated the transfer agent associational bar when just days after entry of the Commission Order, Ahearn acted as Inspector of Elections on behalf of Manhattan Transfer at an issuer’s annual shareholder meeting. Manhattan Transfer further violated the Commission Order by holding Ahearn out as associated with Manhattan Transfer by maintaining Ahearn’s email account to correspond with at least one issuer for nearly three months after entry of the

Commission Order.

2. Separately, through October 2019, Manhattan Transfer further violated the Commission Order that required Manhattan Transfer to comply with certain undertakings, including retaining an independent consultant. The independent consultant retained by Manhattan Transfer failed to remain independent of Manhattan Transfer during the engagement and for a period of two years thereafter, as required. For example, despite the Commission Order requiring independence, Manhattan Transfer violated the Commission Order when it entered into contracts with the independent consultant providing for it to write and revise Manhattan Transfer's policies and procedures and certify compliance with the report the independent consultant prepared. Additionally, the independent consultant received monthly referral fees from Manhattan Transfer's Chief Financial Officer as well as a commission for brokering the ultimate sale of Manhattan Transfer.

3. By engaging in this conduct, Ahearn and Manhattan Transfer violated the Commission Order and also violated Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78q-1(c)(4)(C)]. The Commission seeks an injunction against Ahearn and Manhattan Transfer from future violations of Section 17A(c)(4)(C) of the Exchange Act, a court order pursuant to Section 21(e) of the Exchange Act [15 U.S.C. § 78u(e)] commanding Ahearn to comply with the Commission Order, disgorgement of ill-gotten gains and prejudgment interest thereon from Manhattan Transfer, and civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] from Ahearn and Manhattan Transfer and additionally pursuant to Section 20(d) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(d)] from Manhattan Transfer for violations of the Commission Order entered against it.

II. RELEVANT COMMISSION ORDER

4. The Commission Order, issued on May 17, 2018, censured Manhattan Transfer and ordered Ahearn and Manhattan Transfer to cease and desist from committing or causing any violations and any future violations of Section 5(a) and 5(c) of the Securities Act.

5. Ahearn, consented to entry of the Commission Order, which among other things, barred Ahearn from association with any transfer agent with the right to apply for reentry after five (5) years to the Commission.

6. Manhattan Transfer, without admitting or denying the findings in the Commission Order, also consented to the entry of the Commission Order, which among other things, required Manhattan Transfer comply with certain undertakings, including, that Manhattan Transfer:

- a. Retain an independent consultant to conduct a review of Manhattan Transfer's written supervisory policies and procedures ("WSPs"), to identify deficiencies and weaknesses in Manhattan Transfer's WSPs, or in the implementation thereof, intended to prevent the transfer agent from, directly or indirectly, participating in, enabling or facilitating violations of Securities Act Section 5;
- b. Require the independent consultant to enter into an agreement providing that (a) for the period of engagement and for a period of two years from completion of the engagement, (i) the independent consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Manhattan Transfer; (ii) the independent consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the independent consultant in performance of his/her duties under the order shall not, without prior written consent of the Commission's staff enter into any

employment, consultant, attorney-client, auditing or other professional relationship with Manhattan Transfer; (b) the independent consultant would submit a written report of its findings, including the independent consultant's recommendations for changes in or improvements to Manhattan Transfer's WSPs, within 180 days of the Commission Order; and,

- c. Certify, in writing, compliance with the undertakings set forth in the Commission Order.

III. DEFENDANTS

7. Ahearn, age 61, is a resident of Erie, Colorado. Ahearn was the President of Manhattan Transfer from May 2003 until January 2018 and an associated control person until barred by the Commission Order. Ahearn was previously charged with one count of conspiracy to sell unlawfully unregistered securities, pled guilty and was sentenced to 54 months' probation and ordered to pay \$133,570.50 in restitution. *U.S. v. Ahearn et al.*, Case No. 17-20883-CR-KMW (S.D. Fla. Dec. 14, 2017).

8. Manhattan Transfer is a transfer agent based in Port Jefferson, New York, and registered with the Commission since 2003.

IV. RELEVANT NON-PARTY

9. During the time relevant to this action, Manhattan Transfer hired a Florida limited liability company (the "Independent Consultant" or "IC") with its principal place of business in Palm Beach County, Florida, to serve as the independent consultant pursuant to the undertaking requirements in the Commission Order.

V. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and

27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa(a)].

11. This Court has personal jurisdiction over the Defendants and venue is proper in the Southern District of Florida pursuant to Section 27(a) of the Exchange Act [15 U.S.C. § 78aa] because, among other things, Defendants consented to this Court's jurisdiction over them, transacted business in this District, and certain of the acts and transactions constituting violations of the federal securities laws occurred in this District.

12. In connection with the conduct alleged in this Complaint, Defendants, directly or indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, and of the mails.

VI. FACTUAL ALLEGATIONS

A. Defendants Violated the Commission Order Because Ahearn Associated With Manhattan Transfer After Entry of the Commission Order

13. Defendants consented to the entry of the Commission Order and became aware of its issuance on or about May 17, 2018.

14. Days later, on May 22, 2018, Ahearn, on behalf of Manhattan Transfer, and in violation of the Commission Order, acted as inspector of elections at the annual shareholder meeting ("Annual Meeting") of an issuer client of Manhattan Transfer ("Issuer").

15. At the Issuer's Annual Meeting, Ahearn provided at least the following services to the Issuer: (a) examined the shareholder proxies and ballots, consulted with Manhattan Transfer with respect to proxies received at the office, and, ascertained the total holders of shares of the common stock of the Issuer issued and outstanding; (b) tallied the votes for the election of directors and the proposals presented for vote; (c) reported the votes presented to him; and (d) approved the election of the board of directors and the increase in the authorized shares of common stock from

15,000,000 to 25,000,000.

16. As a result of Ahearn's participation at the Issuer's Annual Meeting, Ahearn participated in the conduct of Manhattan Transfer's transfer agent business in violation of the Commission Order and Manhattan Transfer permitted Ahearn to become, or remain associated with Manhattan Transfer in violation of the Commission Order.

17. In addition, Manhattan Transfer held Ahearn out as associated with Manhattan Transfer by maintaining Ahearn's email account at Manhattan Transfer to correspond with the Issuer for almost three months after entry of the Commission Order.

18. While Manhattan Transfer was holding Ahearn out to the Issuer as being associated with Manhattan Transfer, in violation of the Commission Order, Manhattan Transfer received at least \$1,075 in ill-gotten gains from the Issuer for transfer agent services.

B. Manhattan Transfer Violated the Commission Order because its Independent Consultant Failed to Remain Independent

19. Pursuant to the undertakings required in the Commission Order, on July 20, 2018, Manhattan Transfer engaged the IC to conduct a review of Manhattan Transfer's WSPs and submit a report and recommendations ("IC Report").

20. On September 13, 2018, the IC submitted its IC Report to Manhattan Transfer and to the Commission staff identifying the deficiencies in Manhattan Transfer's WSPs and the IC's recommended improvements as required in the Commission Order. Manhattan Transfer agreed to adopt all the recommendations in the IC Report. Accordingly, the IC completed its engagement on September 13, 2018, and per the Commission Order, the IC was to remain independent for another two years thereafter.

21. From at least September 27, 2018 to October 2, 2019, however, the IC failed to remain independent of Manhattan Transfer.

22. Despite the requirements for independence included in the Commission Order, and without the consent of Commission staff, on September 25, 2018, Manhattan Transfer entered into two contracts with the IC providing for (a) the IC to write and revise Manhattan Transfer's WSPs and (b) certify compliance with the recommendations in the IC Report, respectively.

23. Thereafter, between approximately late September 2018 to early January 2019, the IC wrote and revised Manhattan Transfer's WSPs, and actively assisted Manhattan Transfer in implementing and certifying compliance with the recommendations in the IC Report.

24. Further violating the consultant's independence, the IC, with Manhattan Transfer's knowledge and involvement, participated in brokering the sale of Manhattan Transfer.

25. From approximately late December 2018 to early August 2019, the IC, with the participation of Manhattan Transfer's then President and Chief Financial Officer ("CFO"), brokered the sale of Manhattan Transfer.

26. As a result, on or around August 2019, the IC received approximate \$60,000 as a commission for brokering the sale of Manhattan Transfer.

27. Additionally, in further violation of the Commission Order, the IC referred Manhattan Transfer to an individual to serve as its CFO. Manhattan Transfer in fact hired the individual as its CFO. Manhattan Transfer's CFO then paid the IC a monthly referral fee of 10 percent of the amount paid by Manhattan Transfer to the CFO.

VII. CLAIMS FOR RELIEF

COUNT I **Violations of Section 17A(c)(4)(C) of the Exchange Act** **(Against Ahearn and Manhattan Transfer)**

28. The Commission repeats and realleges Paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Ahearn, while the May 17, 2018 Commission Order was, and remained in effect, and without the consent of the Commission, violated the Commission Order barring him from being associated with a transfer agent by willfully associating with Manhattan Transfer and participating in the conduct of Manhattan Transfer's transfer agent business.

30. Manhattan Transfer, while the May 17, 2018 Commission Order was, and remained in effect, and without the consent of the Commission, violated the Commission Order barring Ahearn from being associated with a transfer agent by permitting Ahearn to become, or remain, a person associated with it.

31. By reason of the foregoing, Defendants violated, and unless enjoined, are reasonably likely to continue to violate Section 17A(c)(4)(C) of the Exchange Act [15 U.S.C. § 78q-1(c)(4)(C)].

COUNT II
Violation of Commission Order
(Against Ahearn)

32. The Commission repeats and realleges Paragraphs 1 through 27 of this Complaint as if fully set forth herein.

33. Ahearn, while the May 17, 2018 Commission Order was, and remained in effect, violated the Commission Order that barred him from being associated with a transfer agent because Ahearn associated with Manhattan Transfer and participated in the conduct of Manhattan Transfer's transfer agent business during the time prohibited by the Commission Order.

34. By engaging in the conduct described above, Ahearn violated, and unless ordered to comply with the Commission Order pursuant to 21(e) of the Exchange Act [15 U.S.C. § 78u(e)], will continue to violate the Commission Order.

COUNT III
Violation of Commission Order
(Against Manhattan Transfer)

35. The Commission repeats and realleges Paragraphs 1 through 27 of this Complaint as if fully set forth herein.

36. By engaging in the conduct described above, Manhattan Transfer violated the May 17, 2018 Commission Order, which among other things, required that Manhattan Transfer comply with certain undertakings, including, retaining an independent consultant to conduct a review of Manhattan Transfer's WSPs and requiring the independent consultant and its affiliates be and remain independent of Manhattan Transfer during the engagement and for a period of two years thereafter.

37. For its violation of the Commission Order, Section 20(d) of the Securities Act authorizes the Commission to seek a civil penalty against Manhattan Transfer for its violations of a cease and desist order entered by the Commission.

VIII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court find Defendants committed the violations alleged, and:

A.
Permanent Injunctive Relief

Issue a Permanent Injunction restraining and enjoining Ahearn and Manhattan Transfer, their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, and each of them, from violating, directly or indirectly, Section 17A(c)(4)(C) of the Exchange Act [15 U.S.C. § 78q-1(c)(4)(C)].

B.
Compliance with Commission Order

Issue an Order pursuant to Section 21(e) of the Exchange Act [15 U.S.C. § 78u(e)] commanding Ahearn to comply with the order issued on May 17, 2018 by the Commission pursuant to Section 17A of the Exchange Act in *In the Matter of Manhattan Transfer Registrar Company and John C. Ahearn*, SEC A.P. File No. 3-18491, 2018 WL 2260102 (May 17, 2018).

C.
Disgorgement and Prejudgment Interest

Issue an Order directing Manhattan Transfer to disgorge all ill-gotten gains or proceeds received, with prejudgment interest thereon, resulting from the acts and/or courses of conduct alleged in this Complaint.

D.
Civil Money Penalties

Issue an Order directing Ahearn to pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and ordering Manhattan Transfer to pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act and Section 20(d) of the Securities Act [15 U.S.C. 77t(d)].

E.
Further Relief

Grant such other and further relief as may be necessary and appropriate.

F.
Retention of Jurisdiction

Further, the Commission respectfully requests the Court retain jurisdiction over this action and over Defendants in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for

additional relief within the jurisdiction of this Court.

September 20, 2022

Respectfully submitted,

By: **/s/Christine Nestor, Esq.**

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