

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

STANFORD COHEN,

Defendant.

No. __-__

COMPLAINT

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

SUMMARY

1. This case involves unlawful insider trading in the securities of Bed Bath & Beyond, Inc. (“Bed Bath & Beyond”) by Stanford Cohen (“Cohen”). Cohen profited in the amount of \$31,163 by effecting purchases of Bed Bath & Beyond stock after learning material nonpublic information about Bed Bath & Beyond’s positive earnings and revenue. Cohen also tipped that information to a friend, to relatives and to his broker, who also traded. Cohen’s friend, his relatives, his broker, and a client of his broker collectively profited by \$32,632 by similarly purchasing Bed Bath & Beyond stock before the earnings and revenue information was publicly disclosed.

2. More specifically, from at least September 2001 through December 2002, Cohen received Bed Bath & Beyond’s material nonpublic earnings and revenue information from a Bed Bath & Beyond employee and traded on the basis thereof by

purchasing Bed Bath & Beyond stock before the company's public dissemination of this information. Cohen had a relationship of trust and confidence with the Bed Bath & Beyond employee, who is an accountant at Bed Bath & Beyond and, by virtue of this position, had access to Bed Bath & Beyond's earnings and revenue information prior to its public dissemination.

3. Cohen placed these unlawful trades in his own brokerage accounts, his wife's account, his business' accounts and his business partner's account. Further, Cohen tipped a friend, relatives, and his broker who also purchased Bed Bath & Beyond stock prior to the public dissemination of the earnings information.

4. Cohen, his friend, relatives, broker, and a client of his broker, profited from these trades by selling the same amounts of Bed Bath & Beyond stock they had bought prior to the earnings releases after the releases at higher prices than what they paid for the stock.

5. By engaging in the conduct described above, and described more fully below, Cohen violated Section 10(b) of the Securities Exchange Act ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

JURISDICTION AND VENUE

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

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

8. Venue is proper because acts, transactions, practices, and courses of business constituting the violations alleged in this Complaint occurred within the Eastern District of Pennsylvania.

9. In connection with the conduct alleged in this Complaint, Cohen directly or indirectly made use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange.

DEFENDANT

10. Cohen, age 63, resides in Marlton, New Jersey. Cohen is the manager and co-owner of a ticket broker business in New Jersey called "A Better Connection." Cohen trades through a brokerage account with a broker-dealer's office located in Philadelphia, Pennsylvania. The registered representative on the account is one of Cohen's relatives.

OTHER RELEVANT ENTITY

11. Bed Bath & Beyond, headquartered in Union, New Jersey, runs a nationwide chain of stores selling domestic merchandise and home furnishings. Its stock is traded on the NASDAQ under the symbol "BBBY." During 2001, 2002, and 2003, trading volume in Bed Bath & Beyond stock averaged 3.7, 3.7, and 3.2 million shares daily and the stock price averaged \$28, \$34, and \$39, respectively.

FACTS

12. From at least September 2001 through December 2002, Cohen traded, and tipped others to trade, in the securities of Bed Bath & Beyond on the basis of nonpublic earnings and revenue information he received from a Bed Bath & Beyond employee (the "Employee"). The Employee's role as an accountant at Bed Bath & Beyond provided him with access to the company's financial statements and, thus, earnings and revenue

information prior to the public dissemination thereof. Cohen had telephone conversations with the Employee immediately before his trading in the securities of Bed Bath & Beyond. In addition, Cohen tipped Bed Bath & Beyond's material nonpublic information to a friend, to relatives and to his broker.

**The Employee Had Access to Bed Bath & Beyond's
Nonpublic Earnings and Revenue Information.**

13. During 2001 and 2002, the Employee had access to Bed Bath & Beyond's nonpublic earnings and revenue information by virtue of his employment as an accountant at Bed Bath & Beyond.

14. The Employee received nonpublic projected and unaudited actual sales revenues for each Bed Bath & Beyond store via e-mail from other employees in the accounting department. Both the projected sales revenues and the unaudited actual sales revenues the Employee received were not disseminated to the public at the time he received them.

15. In addition, the Employee had access to Bed Bath & Beyond's consolidated financial statements, including earnings and revenue information. During the relevant time period, Bed Bath & Beyond's consolidated financial information included the results of the Bed Bath & Beyond, Harmon, and Christmas Tree Shops stores. Financial information for these three entities was consolidated in worksheets on a network drive approximately one or two weeks before the public dissemination of the quarterly and annual reports. The Finance Department utilized these consolidated worksheets to create the quarterly and annual income statements and balance sheets for the company. The Employee had access to these consolidated worksheets.

16. The Employee also had access to the financial statements for the Bed Bath & Beyond stores in the company's computerized accounting system. The information necessary to create the consolidated worksheets was gathered from each of the entities. For the Harmon and Christmas Tree Shop stores, the necessary balance sheets and income statements came from the respective entities via e-mail. For Bed Bath & Beyond, a report reflecting the balance sheet and income statement was printed from the company's computerized accounting system. The Employee had unrestricted access to this system and to the Bed Bath & Beyond stores' financial statements therein.

**Cohen Traded on the Basis of the Nonpublic
Financial Information He Received from the Employee.**

17. After speaking to the Employee, and before Bed Bath & Beyond made public its positive earnings announcements in 2001 and 2002, Cohen effected purchases of Bed Bath & Beyond stock in his brokerage account, as well as in the brokerage accounts of his business, his wife, and his business partner (collectively "Cohen Accounts"). Cohen also effected sales of the same amounts of stock in the same accounts after Bed Bath & Beyond's stock price rose as a result of the earnings announcements. The Cohen Accounts all realized profits as a result of these trades.

18. While Cohen's name is not specifically associated with all of the Cohen Accounts, Cohen always made the trading decisions for these accounts. Cohen's broker, who is also a relative, is the registered representative assigned to all the Cohen Accounts. Cohen's wife and business partner merely confirmed the trading decisions with this registered representative on the telephone after Cohen made the decisions.

19. On September 25, 2001, Cohen effected purchases of Bed Bath & Beyond stock after speaking with the Employee and before the company's positive earnings

announcement of the same day. The Employee called Cohen twice--once at 9:47 a.m. and once at 10:45 a.m.--on September 25 and the calls lasted a total of 8 minutes. Cohen started purchasing Bed Bath & Beyond stock at 11:54 a.m. on the same day.

20. On September 25, Cohen also opened a new joint brokerage account under his name and his business partner's name expressly for making these trades.

21. On September 25, in this new account and another of the Cohen Accounts, Cohen purchased 1,000 shares each of Bed Bath & Beyond stock at about \$23. After the close of trading, Bed Bath & Beyond announced a second quarter net earnings increase of 23.8% as compared to the earnings of the prior year. After this favorable earnings announcement, the price of Bed Bath & Beyond stock rose almost 10%, from closing at \$22.96 on September 25, to \$25.09 at the close of trading on September 26. Similarly, trading volume rose from 3.5 million shares on September 25 to 14.5 million shares on September 26. On October 3, these same two accounts sold 1,000 shares each at about \$28, profiting by \$9,860.

22. In March and April 2002, Cohen again effected purchases of Bed Bath & Beyond stock in all five of the Cohen Accounts after speaking with the Employee and before the company's positive year-end earnings announcement.

23. The Finance Department began consolidating the financial statements for the company's fiscal year end 2001 on March 4, 2002. On March 5, the Employee called Cohen at 3:13 p.m. and the call lasted for 14.6 minutes. Cohen started purchasing Bed Bath & Beyond stock at 3:51 p.m. that same day and effected total purchases of 2,260 shares at approximately \$32 a share.

24. On April 3, Bed Bath & Beyond announced a fourth quarter net earnings increase of approximately 28.5% as compared to the earnings of the prior year. After this favorable earnings announcement, the price of Bed Bath & Beyond stock rose almost 7%, from closing at \$31.59 on April 3, 2002, to \$33.71 at the close of trading on April 4, 2002. Similarly, trading volume rose from 3.6 million shares on April 3 to 6 million shares on April 4. On April 16, Cohen liquidated these positions at an average price of approximately \$35.50 for a total profit of \$8,108.

25. Again, in June 2002, Cohen effected purchases of Bed Bath & Beyond stock in all five of the Cohen Accounts after speaking with the Employee and before the company's positive first quarter earnings announcement. On June 14, the Employee called Cohen at 10:33 a.m. and the call lasted for 7 minutes. Cohen started purchasing Bed Bath & Beyond stock at 10:34 a.m. and effected total purchases of 4,570 shares at approximately \$33 a share.

26. On June 20, Bed Bath & Beyond announced a first quarter net earnings increase of 54.3% as compared to the earnings of the prior year. After this favorable earnings announcement, the price of Bed Bath & Beyond stock rose 5%, from closing at \$34.50 on June 20, 2002, to \$36.26 at the close of trading on June 21, 2002. Similarly, trading volume rose from 3.4 million shares on June 20 to 8.1 million shares on June 21. On the same day, June 21, the Cohen Accounts liquidated these positions for a total profit of \$13,195.

Cohen Tipped a Friend, Relatives and His Broker Who Traded on the Basis of the Nonpublic Financial Information Cohen Received from the Employee.

27. Cohen provided the confidential earnings and revenue information he received from the Employee to a friend, to several of Cohen's relatives, and to Cohen's broker (collectively, the "Tippees"), who then traded on the basis of that information. The Tippees purchased and sold Bed Bath & Beyond stock on or around the same days as trading occurred in the Cohen Accounts in September 2001, and March, April and June 2002. Cohen's broker, who is also a relative, is the registered representative assigned to all of the Tippees' accounts.

28. Specifically, Cohen provided the confidential earnings and revenue information he received from the Employee to a friend and colleague in the ticket broker industry who traded on the basis of that information. This friend bought and sold 2,250 shares of Bed Bath & Beyond stock on or around the same days as the trading in the Cohen Accounts and earned \$8,670 in profits on these trades.

29. Cohen also provided the confidential earnings and revenue information he received from the Employee to at least six relatives, including his broker, who traded on the basis of that information. These relatives purchased and sold a total of 5,730 shares of Bed Bath & Beyond stock on or around the same days as the trading in the Cohen Accounts. These relatives earned a total of \$18,340 in profits on these trades.

30. In addition, Cohen provided Bed Bath & Beyond's confidential earnings and revenue information he received from the Employee to his broker who traded for his own account. Consistent with the Cohen Accounts and the Tippees' trading pattern, in December 2002, Cohen's broker purchased Bed Bath & Beyond stock before a positive

earnings announcement and sold shortly thereafter. On December 9, his broker sold 20 put options for Bed Bath & Beyond stock at \$210 an option.

31. On December 18, Bed Bath & Beyond issued a favorable earnings announcement. The price of Bed Bath & Beyond stock rose almost 4.5%, from closing at \$32.33 on December 18, to \$33.73 at the close of trading on December 19. Similarly, trading volume rose from 3.5 million shares on December 18 to 6.2 million shares on December 19. On December 19, Cohen's broker bought back the 20 put options at \$95 an option, profiting almost \$2,100.

32. Cohen's broker also traded in a client's account on the basis of the information he received from Cohen. The broker purchased and sold 1,000 shares of Bed Bath & Beyond stock in this client's account on or around the same days as trading in the Cohen Accounts. The client earned profits of \$3,735 on these trades.

The Information Cohen Received from the Employee was Material and Nonpublic.

33. The information Cohen obtained from the Employee concerning Bed Bath & Beyond's earnings and revenues was material and nonpublic. A reasonable investor would have viewed the significantly positive earnings and revenue information as being important to his or her investment decision. A reasonable investor would have also viewed this information as having significantly altered the total mix of information made available to the public.

34. The market reacted to Bed Bath & Beyond's earnings announcements on September 25, 2001, April 3, 2002, June 20, 2002, and December 18, 2002. The price of Bed Bath & Beyond stock rose 10%, 7%, 5% and 4.5%, respectively, from the close of trading the day before the announcements to the close of trading on the days after the

announcements. Similarly, after each announcement, trading volume increased by at least 150% from the volume before each announcement.

Cohen Breached His Duty of Trust and Confidence.

35. Cohen knew, or was reckless in not knowing, that the Employee had provided material and nonpublic information to him. Cohen also knew or was reckless in not knowing that the Employee expected him to keep the information confidential.

36. Cohen had a relationship of trust and confidence with the Employee. Therefore, Cohen assumed a duty of trust and confidence to the Employee neither to trade, nor to tip others to trade, in Bed Bath & Beyond securities. By trading on the basis of the information he received from the Employee and by tipping the Tippees, Cohen breached that duty.

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

37. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 36 above, as if the same were fully set forth herein.

38. Cohen, by engaging in the conduct described above, directly or indirectly, in connection with the purchase and/or sale of securities, and by use of the means or instrumentalities of interstate commerce, the mails, or the facilities of a national securities exchange:

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

(c) engaged in acts, practices, and courses of business which operated as a fraud and deceit upon other persons.

39. By reason of the foregoing, Cohen violated 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].

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue an order permanently restraining and enjoining Cohen and his agents, servants, employees, and attorneys, and those persons in active concert with any of them who receive actual notice of the order by personal service or otherwise from any future violations of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

II.

Issue an order requiring Cohen to pay disgorgement in the amount of \$63,795, plus prejudgment interest thereon in the amount of \$11,210.

III.

Issue an order requiring Cohen to pay a civil penalty in the amount of \$63,795.

IV.

Retain jurisdiction of this action for purposes of enforcing the Final Judgment and Order.

Respectfully submitted,

/ s /

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Dated: