

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

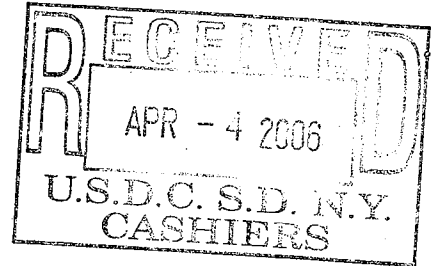
PLAINTIFF,

v.

ANDREAS BADIAN, JACOB SPINNER,
MOTTES DRILLMAN, JEFFREY "DANNY"
GRAHAM, POND SECURITIES CORPORATION
d/b/a POND EQUITIES, EZRA BIRNBAUM
and SHAYE HIRSCH,

DEFENDANTS.

Civil Action No.



COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

NATURE OF THE ACTION

1. This action involves fraudulent and manipulative trading in the common stock of Sedona Corporation (Sedona), a Pennsylvania software company. Defendant Andreas Badian and others, acting for Rhino Advisors, Inc. (Rhino), an unregistered investment adviser firm, used "short" selling to manipulate Sedona's stock price downward to favor the financial interest of Rhino's client, Amro International, S.A. (Amro). Under an agreement with Sedona, Amro loaned Sedona \$2.5 million, which was consideration for Sedona's promise to pay Amro \$3 million approximately four months later. The agreement permitted Amro to convert Sedona's debenture debt to shares of Sedona's stock when pre-established conversion dates occurred. The agreement operated to give Amro more shares of Sedona the lower its share price around the times of the

conversion dates. To preclude Amro from manipulating Sedona's share price, the agreement prohibited Amro from short selling¹ Sedona's stock. Notwithstanding this prohibition, Badian engaged in a scheme of extensive short selling of Sedona's shares in violation of this agreement and federal securities laws. This conduct operated as a fraud on Sedona and the market for Sedona's shares. Defendants Jacob Spinner, Mottes Drillman and Jeffrey "Danny" Graham assisted Badian in carrying out this scheme. They executed manipulative trades through accounts they controlled at Defendant Pond Equities and another broker, Refco Securities.

2. Badian illegally directed defendants Spinner, Drillman and Graham to sell short massive amounts of Sedona stock with "unbridled levels of aggression," intending to "clobber" Sedona's stock price until it "collapsed." These three individuals concealed Amro's identity from the market, which permitted them to create the false appearance that individual investors were selling large amounts of Sedona's stock. During March 2001, Badian directed trading in Sedona that comprised approximately 40% of all trading in the stock. During that period, Sedona's share price dropped from an average of \$1.43 a share before March 1, 2001, to an average of \$.75 per share by March 23, 2001.

3. Defendant Pond Equities violated the anti-fraud and certain record-keeping requirements of the federal securities laws in connection with its trading in Sedona's shares. Pond, its president defendant Ezra Birnbaum and its compliance officer defendant Shaye Hirsch failed to supervise Spinner and Drillman adequately to detect red

¹ A "short sale" is a sale of a security by an investor who does not actually own the stock. The short seller has three days from the date of the sale to deliver the security to the purchaser and typically borrows the security for delivery. The short seller later closes out the position by returning the security to the lender, usually by purchasing securities on the open market. At the time the defendants were selling shares for Amro, Amro owned no Sedona stock and consistently failed to deliver Amro stock by the day it was due.

of the Exchange Act. During the relevant period, Sedona had listed its stock for trading on the Nasdaq SmallCap Market.

16. During the relevant period, Rhino was an unregistered investment adviser located in New York, New York.

17. Amro is a Panamanian corporation, headquartered in Zurich, Switzerland. It provides convertible and equity line financing to companies in need of capital.

18. Refco Securities, LLC (Refco) is a broker-dealer that first registered with the Commission in or about September 1981. Refco maintains offices in New York, New York and Jersey City, New Jersey. Refco is currently winding down its operations in connection with Refco Inc.'s bankruptcy pending in the United States Bankruptcy Court for the Southern District of New York (*In re: Refco Inc.*, Case No. 05-60006).

19. Thomas Badian, age 34, is an Austrian national, who now resides in Austria, but formerly resided in New York, New York. Thomas Badian was Rhino's president and controlled its operations. His brother, defendant Andreas Badian, assisted Thomas Badian with its operations.

20. On February 27, 2003, the Commission filed a settled civil action in this Court against Rhino Advisors and Thomas Badian for their roles in the scheme to manipulate the price of Sedona stock.

21. On March 7, 2003, this Court entered a final judgment against Rhino and Thomas Badian. The judgment enjoined them from further violations of the anti-fraud provisions of federal securities laws; it required them to pay a penalty of \$1 million dollars; it required Rhino to respond to an order that the Commission issued to it pursuant to Section 21(a) of the Exchange Act; it required Rhino to hire an independent consultant

to review its compliance policies and procedures; and it required Rhino to implement the independent consultant's recommendations.

RELEVANT FACTS

Background

22. In the spring of 2001, defendant Andreas Badian worked for Rhino, a New York-based unregistered investment adviser that managed investments for overseas entities. He reported to his brother, Thomas Badian, Rhino's president at the time.

23. Rhino, through the Badian brothers, arranged for its clients to provide financing to public companies that had difficulty securing more conventional financing due to their financial condition. In these financings, commonly referred to as "private investment in public equities," or PIPEs, a public company typically would issue a debenture to Rhino's client, which the client could later convert to the issuer's stock.

24. In November 2000, Rhino helped its client Amro enter into a Convertible Debentures and Warrants Purchase Agreement (the "Agreement") with Sedona. Under the Agreement, Amro provided Sedona with \$2.5 million in financing, and Sedona issued to Amro a \$3 million 5% Convertible Debenture (the "Debenture"). The Debenture obligated Sedona to pay Amro \$3 million, a 20% return, on March 22, 2001. It also gave Amro the right to convert all or any portion of the Debenture into Sedona common stock at a price that equaled 85% of "the volume weighted average price of the Common Stock on the [Nasdaq Small Cap Market] during the five trading days immediately prior to the [Agreement's] Closing Date or Conversion Date, as the case may be," an additional 15% return. Thus, the lower Sedona's stock price during the five-day period prior to Amro's exercise of its conversion rights, the more shares Amro would receive on conversion.

typically placed orders with Graham before the markets opened. Badian directed Graham to trade Sedona's stock to depress its price, to "clobber" the stock, to sell Sedona shares with "unbridled levels of aggression," and to be "merciless" in selling it.³

28. Spinner, Drillman and Graham each made sales throughout the day in small amounts, and they routinely placed those orders through various electronic communication networks (ECNs) linked to the Pond proprietary account. Although Spinner, Drillman and Graham were physically located at Refco, they each executed the Sedona trades through Pond. Either they called the trading desk at Pond to direct a particular trade, or they used a computer terminal at Refco to execute trades in the Pond proprietary account through the ECN's facilities. Just after the market closed, Spinner, Drillman and Graham typically sold the Sedona shares from Amro's customer account at Refco to the Pond proprietary account. These sales would be at a price slightly below the average price of Pond's daily sales of Sedona stock. Spinner, Drillman and Graham each falsely described the stock sales at Refco as long sales. This was designed to disguise Amro's short sales.

29. Defendants' short selling of Sedona stock made up a significant percentage of the volume of Sedona trading reported to the public. From March 1, 2001 through March 29, 2001, Spinner, Drillman and Graham collectively were responsible for over 40% of the total reported trading volume in Sedona's shares. They sold short, on behalf of Badian, over 843,000 shares, which was double reported as over 1.6 million shares due to the method in which they traded.

³ Refco maintained a telephone taping system, which are the source of the quoted phrases in this complaint.

35. Rhino deposited the conversion shares that Amro received from Sedona into another account at a second U.S. broker-dealer designated to receive the conversion shares (the "Conversion Shares Account"). In the majority of these conversions, Spinner, Drillman and Graham used these shares to close the open and undelivered short positions they had created in Amro's account at Refco by purchasing the shares from Amro's Conversion Shares Account.

36. Instead of delivering the shares directly to broker-dealers that had handled the short sales, Spinner, Drillman and Graham each executed wash sales and matched orders from the Conversion Shares Account to the accounts where they had engaged in short selling. This gave the appearance that the accounts with short positions were purchasing shares in the open market, not covering their short positions with shares obtained through the debenture conversion. On at least ten occasions during April 2001, Badian directed Spinner, Drillman and Graham to process transactions which involved no change in beneficial ownership of shares of Sedona stock.

**Other Unlawful Acts by Spinner, Drillman, Graham
and Their Brokerage Firms**

37. For their sales of Sedona's shares at Refco, Spinner, Drillman and Graham intentionally marked all of the order tickets as "long" although they actually sold those shares "short." Furthermore, in violation of the record retention rules, Spinner, Drillman, Graham and their brokerage firms failed to preserve records of their trading, including correspondence and e-mail.

38. Several of Spinner and Drillman's clients, including Amro, sold stock into the U.S. markets from retail accounts held at Refco Capital Markets ("RCM"), Refco's offshore affiliate. They executed these trades through a cash account in RCM's name

In addition, Pond stated that one Pond trader executed all of the short sales in Sedona stock. In fact, Spinner, Drillman and Graham each executed those trades while they were physically located at Refco's New York offices.

FIRST CLAIM FOR RELIEF

**Violations of Section 10(b) of the Exchange Act and
Exchange Act Rule 10b-5
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]
By Defendants Badian, Spinner, Drillman, Graham and Pond**

44. The Commission realleges and incorporates by reference all preceding paragraphs.
45. From at least March 2001 through May 2001, Defendants Badian, Spinner, Drillman, Graham and Pond, directly or indirectly, by use of the means and instrumentalities of interstate commerce and of the mails, in connection with the purchase or sale of the securities, as described in this Complaint, have knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and 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 (c) engaged in acts, practices and courses of business which operated, are now operating, and will operate as a fraud upon the purchasers of such securities.
46. Defendant Pond is liable for the actions of Defendants Spinner and Drillman pursuant to the doctrine of respondeat superior because they conducted the above-described trading within the scope of their employment by Pond.
47. By reason of the activities described above, Defendants Badian, Spinner, Drillman, Graham and Pond have violated and, unless enjoined, will continue to violate,

53. From at least March 2001 through May 2001, Refco and its personnel permitted numerous short sales of Sedona stock in a cash account held at Refco in violation of Section 7 of the Exchange Act and Section 220.8 of Regulation T, 12 C.F.R. § 220.8.

54. From at least March 2001 through May 2001, Defendants Spinner, Drillman and Graham knew, or were reckless in not knowing, that the sales in Sedona stock that they were executing on behalf of Amro were short sales and that the trades all flowed through a cash account at Refco Securities.

55. By reason of the activities described in the paragraphs above, Defendants Spinner, Drillman and Graham aided and abetted violations of, and, unless enjoined, will continue to aid and abet violations of Section 7 of the Exchange Act and Section 220.8 of Regulation T.

FOURTH CLAIM FOR RELIEF

**Aiding and Abetting Violations of Section 17(a) of the Exchange Act and
Exchange Act Rule 17a-3
[15 U.S.C. § 78q(a) and 17 C.F.R. § 240.17a-3(a)]
By Defendants Spinner, Drillman and Graham**

56. The Commission realleges and incorporates by reference all preceding paragraphs.

57. From at least March 2001 through May 2001, Refco and its personnel created order tickets that were materially inaccurate in that they described transactions by Amro as long sales when they were actually short sales.

58. From at least March 2001 through May 2001, Defendants Spinner, Drillman and Graham knew, or were extremely reckless in not knowing, that they were creating order tickets or assisting in the preparation of order tickets at Refco that were

SIXTH CLAIM FOR RELIEF

**Violations of Section 17(a) of the Exchange Act and
Exchange Act Rules 17a-3 and 17a-4
[15 U.S.C. § 78q(a) and 17 C.F.R. § 240.17a-3(a) and § 240.17a-4(b)]
By Defendant Pond**

63. The Commission realleges and incorporates by reference all preceding paragraphs.
64. Pond did not maintain a blotter or other records of original entry containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities, all receipts and disbursements of cash and all other debits and credits.
65. Pond did not maintain a summary of the compensation arrangement or plan for each of its associated persons.
66. Pond did not retain e-mail messages received and generated by its associated persons.
67. By reason of the activities described in the paragraphs above, Defendant Pond has violated and, unless enjoined, will continue to violate Section 17(a) of the Exchange Act and Exchange Act Rules 17a-3 and 17a-4.

SEVENTH CLAIM FOR RELIEF

**Violations of an Order Issued by the Commission
Pursuant to Section 21(a)(1) of the Exchange Act
[15 U.S.C. § 78u(a)(1)]
By Defendant Pond**

68. The Commission realleges and incorporates by reference all preceding paragraphs.

69. On June 17, 2002, pursuant to Section 21(a)(1) of the Exchange Act, the Commission issued an Order to Pond that required it to file a statement under oath as to all the facts and circumstances concerning its trading in Sedona stock. Pond failed to respond fully and accurately to the Order.

70. By reason of the activities described in the paragraphs above, Defendant Pond has violated and, unless enjoined, will continue to violate Commission orders.

EIGHTH CLAIM FOR RELIEF

Violations of NASD Conduct Rule 3010 By Defendants Pond, Birnbaum and Hirsch

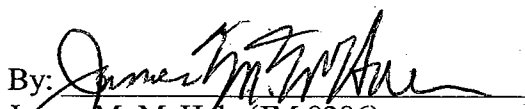
71. The Commission realleges and incorporates by reference all preceding paragraphs.

72. The NASD Conduct Rules requires members and their associated persons, among other things, to establish and maintain a system to supervise the activities of its registered representatives and associated persons and to establish, maintain and enforce written supervisory procedures designed to achieve compliance with applicable securities laws and regulations.

73. Pond's supervisory policies and procedures were inadequate to prevent and detect Spinner and Drillman's violations of the federal securities laws. The firm's policies and procedures did not require regular review of trades by its associated persons. Pond kept no trading blotter or other records of trading, and the firm's policies and procedures did not require it to maintain these, rendering impracticable its supervision of trading activities. In addition, the firm had inadequate policies and procedures for monitoring outside business activities of registered representatives.

(xi) Grants such other relief as this Court may deem just and appropriate.

Respectfully submitted,
Securities and Exchange Commission

By: 
James M. McHale (JM 8286)
Securities and Exchange Commission
Telephone: (202) 551-4476
Fax: (202) 772-9245
mchalejm@sec.gov
100 F Street, N.E., Mail Stop 4010
Washington, DC 20549-4010

Of Counsel:
Scott W. Friestad, Associate Director
James T. Coffman, Assistant Director
Melissa A. Robertson, Deputy Assistant
Director
Christopher C. Ehrman, Senior Counsel
Division of Enforcement
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

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