

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KOEHL

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KENNETH M. GERLAND and
CHRISTOPHER M. BERNABEI,

Defendants

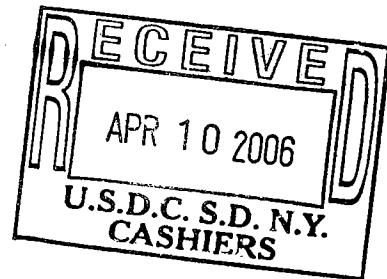
COMPLAINT

Plaintiff, the United States Securities and Exchange Commission
("Commission"), alleges as follows:

NATURE OF THE ACTION

1. This is an insider trading case. Prior to SunSource, Inc.'s ("SunSource") June 19, 2001 merger announcement, Christopher M. Bernabei purchased SunSource stock based on material, nonpublic information provided to him by his uncle and SunSource insider, Kenneth M. Gerland. As a result of his trading, Bernabei realized profits of \$20,670.

2. By their conduct, Gerland and Bernabei each violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. 240.10b-5]. Accordingly, the Commission seeks a final judgment: (1) permanently enjoining defendants Gerland and Bernabei from violating



Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; (2) requiring Bernabei to disgorge his ill-gotten gains, plus prejudgment interest, (3) imposing a civil penalty against both defendants and, (4) granting such other relief as the Court deems appropriate.

JURISDICTION and VENUE

3. This Court has jurisdiction over this action under Sections 21(d)(1), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1 and 78aa]. Venue is proper under Section 27 of the Exchange Act because certain of the transactions detailed below occurred in this District.

DEFENDANTS

4. Defendant **Kenneth M. Gerland**, 47, at all relevant times resided in Malvern, Pennsylvania. From May 1985 through June 2002, Gerland was employed by SunSource and its successor and predecessor firms in various accounting roles. During the relevant time, Gerland was SunSource's Director of Taxes and Manager of Budgeting & Performance Analysis.

5. Defendant **Christopher M. Bernabei**, age 36, lives in Philadelphia, Pennsylvania. Bernabei is a licensed chiropractor and is Gerland's nephew.

OTHER RELEVANT PARTIES

6. **SunSource, Inc.** ("SunSource") was a Delaware corporation headquartered in Philadelphia, Pennsylvania. From 1997 through June 19, 2001, shares of SunSource common stock were traded on the New York Stock Exchange. From June

20, 2001, through September 25, 2001, SunSource stock was traded on the American Stock Exchange. At all relevant times, SunSource's stock was registered with the Commission under Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)] and traded on the New York Stock Exchange.

7. **Allied Capital Corporation** ("Allied"), is a Maryland corporation headquartered in Washington, D.C. Allied provides long-term investment capital to support the expansion of growing middle-market companies. Allied's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange.

FACTS

8. Beginning in early April 2001, Gerland began working on due diligence relating to a potential merger transaction between SunSource and Allied.

9. Gerland's nephew, Bernabei, maintained an office within walking distance of SunSource's headquarters office. During the time period April – June 2001, Gerland visited Bernabei in his office on a regular basis for treatment of his back problems. In addition to personal visits, Gerland and Bernabei often spoke on the phone during the relevant time.

10. Bernabei knew that his uncle worked for SunSource and that his uncle learned material, nonpublic information about the company as an employee. Gerland and Bernabei saw each other regularly as Gerland was under Bernabei's care for back pain. Gerland and Bernabei saw each other socially as well. Gerland and Bernabei occasionally discussed SunSource, and Bernabei had previously invested in the company based on Gerland's recommendation.

11. Between April 18 and June 18, 2001, Bernabei purchased a total of 4,450 shares of SunSource stock based on material, nonpublic information communicated to him by Gerland.

12. On the morning of April 18, 2001, Bernabei purchased 550 shares of SunSource stock at \$3.90 per share. The following day, Bernabei purchased an additional 400 shares of SunSource stock at \$3.90 per share. Bernabei purchased an additional 2,600 shares at \$5.20 on May 31, 2001 after making several phone calls to Bernabei. Finally, on June 18, 2001, the day before the announcement, Bernabei bought another 1,000 shares of SunSource at \$5 per share.

13. On June 19, 2001, SunSource announced that it had signed a definitive agreement to merge with Allied Capital Corporation. SunSource's stock price closed at \$9.50 that day, representing a rise of \$4.54 from the close on the previous day.

14. After the announcement, Bernabei sold 4,150 shares of SunSource on June 19, 2001 for a profit of \$18,431. Bernabei realized a paper profit of \$2,240 on his remaining 400 shares. From the time he began working on the potential merger through the June 19 announcement, Gerland did not personally purchase any shares of SunSource.

15. Gerland knew or was reckless in not knowing that the information he possessed about the SunSource merger with Allied was material, nonpublic information and that disclosure of that information to Bernabei would breach his duty to SunSource.

16. Between April 18, 2001 and June 18, 2001, Gerland knowingly or recklessly provided Bernabei with material, nonpublic information about SunSource in breach of his duty of trust and confidence to SunSource and its shareholders.

17. Bernabei knew that Gerland worked at SunSource and knew or was reckless in not knowing that the material and nonpublic information that Gerland provided him about SunSource was communicated to him in breach of Gerland's duty.

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

18. The Commission incorporates the allegations in paragraphs 1 through 17 of this Complaint as though fully set forth in this paragraph.

19. As detailed above in this Complaint, Gerland and Bernabei, each, directly, by the use of the means or instrumentalities of interstate commerce, or the facilities of a national securities exchange, and/or the mails: (a) employed devices, schemes, and/or artifices to defraud; (b) made untrue statements of material fact, 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, or courses of business which operated or would have operated as a fraud or deceit on other persons in violation of Exchange Act Section 10(b) and Exchange Act Rule 10b-5.

20. Gerland and Bernabei will, unless restrained and enjoined, continue to engage in the transactions, acts, practices and courses of conduct alleged in this complaint, or in similar transactions, acts, practices and courses of conduct, in violation of the federal securities laws.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter judgment:

A. permanently enjoining Gerland and Bernabei and each of their agents, servants, employees, representatives, attorneys, affiliates and all persons in active concert or participation with them who receive actual notice of the Court's permanent injunction, from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

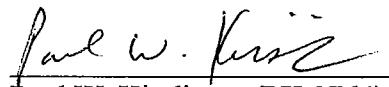
- B. imposing monetary penalties against Gerland and Bernabei under Section 21A of the Exchange Act;
- C. ordering Bernabei to disgorge the illicit profits he made from the unlawful trading alleged in this complaint, and prejudgment interest thereon; and
- D. granting such other relief as the Court deems just and proper.

Dated: April 7, 2006

Respectfully submitted,

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