

UNITED STATES DISTRICT COURT
District of Connecticut

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.) Civil Action No. _____
)
I. Joseph Massoud,)
)
Defendant.) JURY TRIAL DEMANDED
)
_____)

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges the following against defendant I. Joseph Massoud (“Massoud”):

PRELIMINARY STATEMENT

1. This case involves Massoud’s insider trading in the securities of Patriot Capital Funding, Inc. (“Patriot Capital”), which, until its merger with Prospect Capital Corporation (“Prospect Capital”), was a publicly traded business development company headquartered in Westport, Connecticut. Massoud is the founder and managing partner of Compass Group Management, LLC (“Compass Group”), an unregistered investment adviser based in Connecticut.

2. In May 2009, Massoud directed Compass Group to execute a Confidentiality Agreement in connection with Compass Group’s participation in a nonpublic process in which Patriot Capital was entertaining proposals for strategic investments, including its sale. Among

other things, this agreement prohibited Massoud from buying Patriot Capital securities for at least one year.

3. After Compass Group signed the Confidentiality Agreement, Patriot Capital provided Compass Group and Massoud with material, nonpublic information about Patriot Capital's financial condition and also about the value of acquisition proposals submitted to Patriot Capital by other bidders during the bidding process. While in possession of this information, and in direct violation of the Confidentiality Agreement, Massoud bought 322,216 shares of Patriot Capital stock in his personal brokerage account.

4. After the public announcement on August 3, 2009, that Patriot Capital was to be acquired by Prospect Capital, Patriot Capital's share price increased from \$1.79 per share to close at \$3.84 per share. On August 25, 2009, Massoud sold all 322,216 shares of his Patriot Capital stock, earning over \$676,000 in profits from these transactions.

5. By engaging in the conduct described above and more fully below, Massoud 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], and reaped over \$676,000 in ill-gotten gains. Accordingly, the Commission seeks the following relief against Massoud: (i) the entry of a permanent injunction prohibiting Massoud from violating 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]; (ii) disgorgement of Massoud's ill-gotten gains from his insider trading, plus prejudgment interest thereon; (iii) the imposition of a civil monetary penalty; and (iv) an order prohibiting Massoud from acting as an officer or director of a publicly-traded issuer.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Sections 21, 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u, 78u-1, and 78aa].

7. The Commission seeks a permanent injunction and disgorgement pursuant to Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)]. The Commission seeks the imposition of a civil monetary penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. The Commission seeks an order prohibiting Massoud from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

8. In connection with the conduct described in this Complaint, Massoud directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce or the means or instrumentalities of interstate commerce or the facilities of a national securities exchange.

DEFENDANT

9. **Massoud**, age 44 and of Westport, Connecticut, is the managing member of Compass Group. At all relevant times, Massoud served as the chief executive officer of a publicly-traded company.

OTHER RELEVANT PARTIES

10. **Compass Group** is an unregistered investment adviser.

11. **Patriot Capital Funding, Inc.** was a Delaware corporation headquartered in Westport, Connecticut, that specialized in investments in small to mid-sized companies. Until its

merger with Prospect Capital, Patriot Capital was a publicly-traded business development company (“BDC”) whose common stock traded on the Nasdaq Global Market System under the symbol “PCAP” and was registered with the Commission pursuant to Section 12(b) of the Exchange Act.

12. **Prospect Capital Corporation** is a Delaware corporation headquartered in New York, New York, that provides debt financing to both public and private companies. Prospect Capital’s common stock is listed on the Nasdaq National Market under the symbol “PSEC” and is registered with the Commission pursuant to Section 12(b) of the Exchange Act. Prospect Capital is a BDC.

FACTUAL ALLEGATIONS

Background

13. Massoud founded Compass Group in 1998, and he is currently the managing partner. Compass Group manages investments for clients.

14. In 2002, Compass Group founded Patriot Capital as a private company that specialized in providing financing to small and mid-sized companies. Patriot Capital referred to the companies to which it provided this financing as its “portfolio companies.” Compass Group controlled Patriot Capital until 2005, when Patriot Capital completed an initial public offering (“IPO”) of stock and became a publicly-traded BDC. After the IPO, Patriot Capital had its own management and was no longer controlled by Compass Group. After the IPO, Massoud was the chairman of Patriot Capital’s board of directors until August 1, 2006.

15. In its quarterly and annual reports, Patriot Capital, among other things, disclosed the estimated fair value of each of its investments and its own estimated “net asset value” (“NAV”) per outstanding share of stock based on its internal estimations of the value of its

investments in its portfolio companies. Patriot Capital's common stock could, and during the relevant period did, trade at a discount to its estimated NAV.

16. On March 16, 2009, Patriot Capital disclosed in its Form 10-K filed with the Commission for the fiscal year that ended on December 31, 2008, that Patriot Capital did not have adequate liquidity, including access to debt and equity capital markets, and that it was negotiating the renewal of its revolving credit agreements with two banks. In its Form 10-K, Patriot Capital also disclosed an estimated NAV of \$8.65 per share for the period ended December 31, 2008.

17. On April 7, 2009, in a Form 8-K filed with the Commission, Patriot Capital announced that two banks with whom it had credit agreements had terminated them because Patriot Capital's advances under those agreements exceeded the maximum amounts permitted under them. Patriot Capital reported that it was in discussions with its lenders to seek relief from the loan terms triggering the termination of the credit agreements. Patriot Capital also disclosed that it was evaluating other financing and/or strategic alternatives, including possible debt or equity financing, acquisition or disposition of assets, and other strategic transactions.

18. On April 30, 2009, FBR Capital Markets, Inc. ("FBR"), Patriot Capital's investment banking advisor, approached Massoud to disclose that Patriot Capital was soliciting bids from parties and invited Compass Group to participate in the Patriot Capital bidding process. Compass Group agreed to participate. At that time, Massoud learned that Patriot Capital was (at that point) looking for bids in the \$30-50 million range because that was what its primary lender was looking for to address the credit agreement issues discussed above. At Massoud's direction, on May 6, 2009, Compass Group executed a Confidentiality Agreement with Patriot Capital. The agreement, among other things, prohibited Compass Group or its

“directors, officers, employees, agents, advisors and potential financing sources” from buying Patriot Capital securities.

19. Massoud was aware that the Patriot Capital Confidentiality Agreement included a provision prohibiting those covered by it – including himself – from buying Patriot Capital securities. On May 18, 2009, Massoud required a third-party firm that was a “potential financing” source to agree to abide by the Patriot Capital Confidentiality Agreement, which he described to the third-party as a “general non-disclosure, non-solicitation and no trading agreement.”

20. After Compass Group executed the Patriot Capital Confidentiality Agreement, FBR provided Compass Group with access to an on-line “dataroom” that contained in electronic form detailed non-public information about Patriot Capital’s financial condition. This information included non-public data concerning, among other things, detailed financial information regarding Patriot Capital’s portfolio companies’ performance. This financial information was included in Patriot Capital’s nonpublic “Portfolio Monitoring Reports” (“PMRs”). Patriot Capital created these based, in part, on information provided by its portfolio companies. This information was material.

21. A Compass Group analyst (hereinafter referred to as “the Compass Group Analyst”) directed to review and analyze the Patriot Capital dataroom, accessed the dataroom as early as May 7, 2009. On May 8, 2009, the Compass Group Analyst emailed Massoud and others at Compass Group that Patriot Capital’s PMRs were the “jewel” of the dataroom and included, among other things, (a) historical and projected income statement data, (b) valuation techniques and rationale that Patriot Capital uses in its own fair value calculations, (c) investment ratings analysis, (d) recent trends affecting Patriot Capital’s portfolio companies, and

(e) transaction descriptions and rationale. The Compass Group Analyst told Massoud and others that this data would be “useful in determining a more accurate fair value of [Patriot Capital’s] portfolio and indirectly a fair value share price” for Patriot Capital. In the May 8 email the Compass Group Analyst wrote that he would provide the PMRs to Massoud and others at a meeting scheduled for that day.

22. Beginning on May 11, 2009, the Compass Group Analyst started to provide Massoud with a series of reports that included both actual dataroom material and the Compass Group Analyst’s analysis of that material. The Compass Group Analyst’s reports varied in levels of detail, but each of them bolstered Massoud’s overall investment hypothesis that the market price of Patriot Capital’s common stock did not reflect how well Patriot Capital’s investments were actually performing. For example, the Compass Group Analyst’s May 11, 2009 report detailed Patriot Capital’s expected earnings on its investments and when its loan agreements (the terms of which were nonpublic) called for those payments to be made. The amount and timing of these payments was important, because it could be used to help assess the risk associated with Patriot Capital’s loans.

23. The Compass Group Analyst’s May 17, 2009 report included detailed financial information regarding the amounts that Patriot Capital’s portfolio companies had borrowed from Patriot Capital and other lenders and included historical and projected earnings information for those companies. Although Patriot Capital disclosed limited information regarding its portfolio company loans in its SEC filings, more expansive information about its portfolio companies’ financial condition -- including information about their earnings and other debt -- was not publicly available. Access to this information made it possible to identify the portfolio companies’ debt-to-earnings ratios, which are important in evaluating the risk of default.

24. On May 20, 2009, the Compass Group Analyst provided Massoud a comprehensive analysis of Patriot Capital's investments that included his fair value estimates for each investment and an overall estimated NAV for Patriot Capital. In his May 20, 2009 email transmitting the extensive fair value analysis to Massoud, the Compass Group Analyst explained that his analysis utilized "proprietary information found in the on-line dataroom" and that part of the gain in valuation is "attributed to finally having access to non-public and more detailed information on the financial performance" of each of Patriot Capital's portfolio companies.

25. The Compass Group Analyst based his analysis largely on Patriot Capital's PMRs, which he called at the time, the "jewel" of the dataroom.

26. Based, in part, on the information in the dataroom, the Compass Group Analyst increased his Patriot Capital NAV estimate from \$4.85 per share, which he developed based on public data in March 2009, to \$6.07 per share.

27. On July 6, 2009, at Massoud's request, the Compass Group Analyst sent an email to Massoud with several key documents attached. These documents included both material from the dataroom and the Compass Group Analyst's analysis, including the comprehensive revised NAV analysis he first gave Massoud on May 20, 2009. Massoud asked for these documents in connection with preparing for meetings with Patriot Capital's management team and a potential bidding partner scheduled for the next day.

28. During the bidding process, Massoud also learned material non-public information about the value of bids Patriot Capital received from other parties during the bidding process. Specifically, on July 7, 2009, Massoud emailed the Compass Group Analyst and others at Compass Group working on the Patriot Capital transaction and indicated that he had just talked with Patriot Capital's CEO, and that Compass Group was "waaaaay off" on its Patriot

Capital bid. Massoud learned during that conversation that Patriot Capital had received several acquisition bids in which the potential acquirer proposed buying the Company outright and paying off all of its debt obligations, which at the time totaled approximately \$175 million, and that to be considered, Compass Group would have to increase its bid to match those proposals.

29. Starting on May 12, 2009, Massoud bought Patriot Capital shares in violation of the Confidentiality Agreement. As of that date, Massoud knew that Patriot Capital had entered into confidentiality agreements with potential bidders (*i.e.*, he knew, unlike the investing public, that Patriot had advanced to the next step in the process), and he knew that the Compass Group Analyst had accessed important information through the online dataroom that was not available to the investing public and that would be “useful in determining a more accurate fair value of [Patriot Capital’s] portfolio and indirectly a fair value share price” for the company. He also knew that Patriot Capital was initially looking for bids in the range of \$30-50 million because the company believed that amount would satisfy its primary lender. From May 12 through July 22, 2009, Massoud bought 322,216 shares of Patriot stock in transactions on 15 different trading days. Massoud purchased 158,944 of these shares after July 7, when Patriot Capital’s CEO told him that the Company had received several bids to acquire the Company and pay off the full amount of its debt. Massoud started making those purchases on July 7, the same day he learned this information and continued buying Patriot Capital shares on nine more trading days through July 22, 2009 (including 7 of the next 8 trading days starting on July 7, during which time he bought 148,391 shares and increased his net Patriot Capital position by over 45%).

30. After the August 3, 2009 announcement that Prospect Capital was going to acquire Patriot Capital, Patriot Capital’s share price increased from \$1.79 per share to close at

\$3.84 per share. On August 25, 2009, Massoud sold all 322,216 shares of his Patriot Capital stock, earning over \$676,000 in profits from these transactions.

FIRST CLAIM FOR RELIEF

31. The Commission realleges and incorporates by reference paragraphs 1 through 30 above.

32. As set forth above, during 2009, Massoud knew that the information he possessed or misappropriated concerning Patriot Capital was material, confidential, and nonpublic. While in possession and on the basis of that information, and in breach of the confidentiality agreement that was executed on behalf of Compass Group, he purchased shares of Patriot Capital stock. Massoud received ill-gotten gains as a result of the increase Patriot Capital's stock price following the announcement that Prospect Capital was to acquire Patriot Capital.

33. By engaging in the conduct described above, Massoud directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter: (a) employed devices, scheme or artifices to defraud; (b) made untrue statements of a material fact, or omitted to state a material fact necessary in order to make the statements made, in 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 operate as a fraud or deceit upon other persons.

34. By engaging in the conduct described above, Defendant Massoud violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Massoud, and each of his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in violations 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].

B. Enter an order pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] prohibiting Massoud from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

C. Enter an order pursuant to Section 21(d)(6) [15 U.S.C. § 78u(d)(6)] permanently barring Massoud from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

D. Order Massoud to disgorge his ill-gotten gains, plus pre-judgment interest;

E. Order Massoud to pay a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

F. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

G. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s John B. Hughes

John B. Hughes (CT05289)
Connecticut Federal Bar No. ct05289
Assistant United States Attorney
Chief, Civil Division
United States Attorney's Office
Connecticut Financial Center
157 Church Street, 23rd Floor
New Haven, CT 06510
(203) 821-3700
(203) 773-5373 (Facsimile)

/s Deena R. Bernstein

Deena Bernstein (phv02906)
Senior Trial Counsel
Kevin M. Kelcourse (phv0063)
Assistant Regional Director
James Fay
Senior Counsel
Securities & Exchange Commission
33 Arch Street, 23rd Floor
Boston, Massachusetts 02110
(617) 573-8813 (Direct dial: Bernstein)
(617) 424-5940 (Facsimile)

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Attorneys for Plaintiff
U.S SECURITIES & EXCHANGE COMMISSION