

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SECURITIES AND EXCHANGE COMMISSION,)	
	Plaintiff,)	
v.)	Civil Action No. _____
)	
JOSEPH McVICKER)	
	Defendant.)	JURY TRIAL DEMANDED
_____)	

COMPLAINT

Plaintiff Securities and Exchange Commission (“Plaintiff” or “Commission”) alleges the following against Joseph McVicker (“McVicker” or “Defendant”), a resident of Wayland, Massachusetts:

PRELIMINARY STATEMENT

1. This case involves unlawful insider trading by McVicker in the common stock of Massachusetts-based Art Technology Group, Inc. (“Art Technology”) in advance of the public announcement prior to the opening of the markets on Tuesday, November 2, 2010 that California-based Oracle Corporation (“Oracle Corporation”) had agreed to acquire Art Technology for \$6.00 per share. McVicker acquired material nonpublic information from a long-time friend (“Friend”) who, by virtue of this Friend’s spouse’s employment with Art Technology, had material nonpublic information regarding an imminent acquisition of Art Technology.

2. McVicker then improperly used this material non-public information to trade in the securities of Art Technology for his own benefit. As a result of his illegal trading, McVicker made actual profits of \$44, 268.

3. By knowingly or recklessly engaging in the conduct described in this Complaint, Defendant McVicker violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u-1]. The Commission seeks a permanent injunction against the Defendant, enjoining him from engaging in the acts, practices and courses of business alleged in this Complaint, disgorgement of all profits, prejudgment interest, civil money penalties and such other and further relief as the Court may deem just and appropriate.

5. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), 21A and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e), 78u-1 and 78aa]. McVicker, directly or indirectly, used the mails and instrumentalities of transportation or communication in interstate commerce, or of the mails, or the facilities of a national securities exchange.

6. Venue in this district is proper under Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the acts, practices, and courses of business constituting the violations alleged herein occurred within the District of Massachusetts and elsewhere.

DEFENDANT

7. Joseph McVicker, age 47, is a resident of Wayland, MA. McVicker is self employed at a private technology company.

RELEVANT ENTITY

8. Art Technology Group, Inc. is headquartered in Cambridge, Massachusetts. During the relevant time, Art Technology's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on the NASDAQ under the symbol "ARTG." In January 2011, Art Technology was acquired by Oracle Corporation. It continues to operate under its own name as a subsidiary of Oracle Corporation.

FACTUAL ALLEGATIONS

9. During the relevant time period, the Friend was married to an executive employee of Art Technology. The executive employee had access to high level, confidential and sensitive information relating to the business of Art Technology. McVicker knew that the Friend's spouse worked at Art Technology in an executive capacity and therefore had access to material nonpublic information about the company.

10. During the course of their friendship, the Friend and McVicker shared confidential information with one another, which information was expected to be, and was maintained, as confidential.

11. On the evening of Saturday October 30, 2010, McVicker and the Friend were together for a social occasion. That evening, in the context of a discussion of personal matters, the Friend communicated to McVicker the material non-public information about an imminent acquisition of Art Technology. McVicker understood that the information was material nonpublic information, that it was expected to be maintained as confidential, and that he should not use it to trade for his own personal benefit.

12. On Monday November 1, 2010, the first business day after he learned of the material nonpublic information regarding the acquisition of Art Technology, McVicker

misappropriated and misused the confidential information to purchase 24,400 shares of Art Technology at the market price of \$4.14 per share. Prior to November 1, 2010, McVicker had never purchased Art Technology securities.

13. On Tuesday November 2, 2010, prior to the opening of the markets, Art Technology announced that Oracle Corporation had agreed to acquire Art Technology for \$6.00 per share. After the announcement of the acquisition, Art Technology common stock closed at \$5.95 per share, up \$1.85 per share or approximately 45% from the prior day's closing price of \$4.10. If McVicker had sold his shares that day, he would have made a profit of \$44,164 in one day. McVicker then held his Art Technology shares until the acquisition by Oracle Corporation was completed in January 2011 and received cash for his shares, earning \$44,268 in actual profits.

14. The confidential information that McVicker obtained from the Friend was material, concerning a significant potential acquisition. A reasonable investor would have viewed this information as being important to his or her investment decision or a significant alteration of the total mix of information made available to the public about Art Technology. McVicker knew, or was reckless in not knowing, that the information he obtained from the Friend was material and nonpublic.

CLAIM FOR RELIEF

(Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)

15. The Commission repeats and incorporates by reference the allegations in paragraphs 1-14 above.

16. By engaging in the conduct described above, McVicker, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by the use of means and instrumentalities of interstate commerce, or of the mails, or a facility 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 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 any person in connection with the purchase or sale of any security.

17. The conduct of McVicker involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in substantial losses to other persons.

18. As a result, McVicker violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78(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 Defendant and his agents, servants, employees and attorneys and those persons in active concert or participation with him 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 the conduct describe above, or in conduct of similar purport and effect, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

B. Require Defendant to disgorge his ill-gotten gains, plus pre-judgment interest;

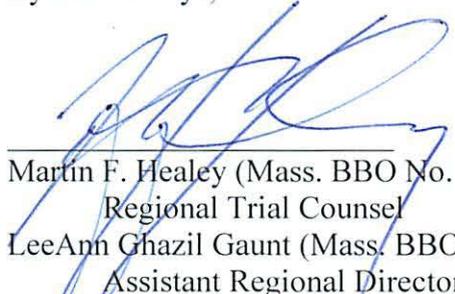
C. Order Defendant to pay a civil monetary penalty;

- D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and
- E. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

**SECURITIES AND EXCHANGE
COMMISSION**

By its attorneys,



Martin F. Healey (Mass. BBO No. 227550)
Regional Trial Counsel
LeeAnn Ghazil Gaunt (Mass. BBO No. 630557)
Assistant Regional Director
33 Arch Street, 23rd Floor
Boston, Massachusetts 02110
(617) 573-8952 (Healey)
(617) 573-4590 (Facsimile)
Healeym@sec.gov

Dated: August 3, 2012