

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE	:	
COMMISSION	:	
	:	
Plaintiff,	:	Civil Action No.
v.	:	
	:	
JOHN H. PAMPLIN, JR.	:	JURY TRIAL
	:	DEMANDED
Defendant.	:	

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Securities and Exchange Commission (the “Commission”), files its complaint and alleges that:

OVERVIEW

1. This case involves insider trading by Defendant John H. Pamplin, Jr. (“Pamplin”), a former Chief Information Officer of TurboChef Technologies, Inc. (“TurboChef”), an Atlanta-based developer of food preparation equipment for the commercial market, which is now a wholly owned subsidiary of The Middleby Corporation (“Middleby”).

2. From July 2 to August 4, 2008, Pamplin bought TurboChef call options while in possession of material nonpublic information and in advance of news that the company would soon be acquired by Middleby.

3. Overall, Pamplin executed at least ten trades while in possession of material nonpublic information. As a result of his trading, he recognized gains of more than \$68,000.

4. Before the insider trading described below, Pamplin already owned more than 6,000 shares of TurboChef stock. With access to material nonpublic information, though, he knew that he could turn a bigger profit by owning TurboChef call options instead. Pamplin therefore sold all of his TurboChef shares and invested “most of his liquid net worth” in TurboChef call options that would expire worthless if TurboChef shares did not increase in price soon. The seemingly high risk strategy involved very little risk to Pamplin, who knew that Middleby would soon announce its acquisition of TurboChef.

5. Defendant has engaged and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of 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].

Jurisdiction and Venue

6. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin defendant from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties, and for other equitable relief.

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

8. Defendant, directly and indirectly, made use of the mails and the means and instrumentalities of interstate commerce in connection with the acts, practices, and courses of business, including the purchase of securities, alleged in this complaint.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2). A substantial part of the transactions, acts, practices, and courses of business constituting violations of the Exchange Act and giving rise to this claim occurred in the Northern District of Georgia. For example, TurboChef has its principal place of business in this district, Pamplin solicited information about the acquisition from TurboChef employees in this district, and Pamplin's insider trading involved TurboChef securities.

The Defendant

10. John H. Pamplin, Jr., 45 years of age, resides in Nashville, Tennessee. From May 2004 to April 2008 he was a TurboChef employee. When TurboChef terminated him he was serving as the company's Chief Information Officer.

11. Approximately three months before his termination, Pamplin signed a severance agreement that provided, in relevant part, that, for two years after his employment at TurboChef, he was prohibited from using or disclosing confidential information that he acquired as a result of his employment.

Relevant Entities

12. TurboChef Technologies, Inc. was a Delaware corporation, headquartered in Atlanta, Georgia. The company developed food preparation equipment for the commercial market. TurboChef's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the NASDAQ Global Market under the symbol "OVEN." Its options traded on the Chicago Board Options Exchange. On August 12, 2008, TurboChef announced that it had reached an agreement to be acquired by Middleby. TurboChef is now a wholly owned subsidiary of Middleby.

13. The Middleby Corporation, a Delaware corporation headquartered in Elgin, Illinois, is also in the business of selling commercial equipment for the preparation and cooking of food.

Middleby's Acquisition of TurboChef

14. In April 2008, Middleby contacted TurboChef and the parties began preliminary discussions and due diligence concerning a potential acquisition.

15. On April 15, 2008, approximately two weeks after Defendant Pamplin's last day at TurboChef, Middleby and TurboChef entered into a confidentiality agreement in connection with discussions concerning a possible business combination.

16. While the negotiations were ongoing, TurboChef held an internal meeting with all Atlanta employees. During that meeting, management told employees that acquisition discussions were ongoing and instructed employees to keep this information confidential.

17. Between April and July, TurboChef and Middleby moved toward completing the acquisition, meeting to negotiate the terms of the acquisition and conduct due diligence.

18. During the last week of July 2008 and continuing through August 11, 2008, the companies exchanged drafts of the merger agreement, and the board of directors of each company met separately to discuss the proposed acquisition.

19. On August 12, 2008, the companies executed the merger agreement.

20. Before the markets opened on August 12, 2008, Middleby and TurboChef issued their respective press releases, for the first time making their merger discussions public and announcing that they had entered into a definitive merger agreement.

21. Under the agreement, Middleby agreed to pay \$6.47 per share—a combination of \$3.67 cash and 0.0486 share of Middleby stock—to acquire TurboChef. The deal valued TurboChef at approximately \$200 million, representing a 15.50 percent premium over TurboChef's August 11 closing price of \$5.60 per share and an approximately 30 percent premium over the twenty-day trading average price.

22. The announcement of the merger had an immediate impact on the stock price, with TurboChef's share price reaching a peak of \$6.08 before closing at \$5.98, an increase of nearly seven percent from the previous day's closing share price.

23. Trading volume that day also increased dramatically to nearly eight-million shares, more than a twelve-fold increase from the previous day's volume of approximately 625,000 shares.

Pamplin's Frequent Contact with TurboChef Insiders

24. Pamplin's employment with TurboChef was terminated in early April 2008.

25. On information and belief, during his employment at TurboChef, or shortly thereafter, Pamplin learned of the pending acquisition from TurboChef staff. After leaving TurboChef, Pamplin maintained contact with many of his former colleagues at the company and pestered several of his former coworkers on numerous occasions for more information about the progress of the acquisition.

26. For example, on June 16, 2008, nearly two months before the public announcement of the acquisition, Pamplin emailed a TurboChef employee who previously reported to Pamplin. In the email, Pamplin wrote:

Jim, I've heard some whispers that the pending acquisition may not go through. I hope that's not the case. You guys are having some serious difficulties lately—I do hope you're weathering it. My offer for dinner for you and your wife still stands. Let me know what's a good weekend for you.

27. Another example is Pamplin's repeatedly contacting a person whom Pamplin had hired to work in TurboChef's IT department as a software consultant ("the Software Consultant").
28. Pamplin and the Software Consultant were close friends.
29. The Software Consultant was in TurboChef's Dallas office in July 2008 and learned of a visit to that office by senior Middleby officers.
30. That visit was unusual and significant, and signaled to the Software Consultant and others that acquisition discussions were serious.
31. After his departure from TurboChef, Pamplin also maintained regular contact with the vice president of TurboChef and president of the company's residential oven division ("the Vice President").
32. The employment agreement between TurboChef and the Vice President required him to hold in a fiduciary capacity any confidential information that he gained during his employment, or as a result of his employment, for two years after his departure.
33. Pamplin and the Vice President were friends.

34. In April, the Vice President learned of TurboChef's merger negotiations with Middleby.

35. In early April, the Vice President attended a convention where he had a conversation with TurboChef's president and chief operating officer.

36. After that convention, on April 12, 2008, the Vice President sent an email to TurboChef's president in which the Vice President discussed his potential departure from the company later that month, and stated, in part, "If we have the prospect of selling to Middleby then I get some payback for my investment since that would get my 133,333 options above my strike price"

37. The Vice President left TurboChef's employment on or around April 25, 2008.

38. On information and belief, after leaving the company, the Vice President continued to receive information from TurboChef insiders about the status of the merger negotiations between Middleby and TurboChef.

39. After the Vice President left TurboChef, but before the merger with Middleby was publicly announced, the Vice President had frequent communication with Pamplin.

40. From July 14 through August 11 (four weeks), the period when Pamplin made his most aggressive trades in TurboChef options, there were eight telephone calls between the Vice President and Pamplin, ranging in duration from four minutes to sixty-three minutes.

41. That frequency of communication between the two was out of the ordinary. Indeed, Pamplin's phone records indicate that from April 1, 2008 through December 27, 2008 (nine months), Pamplin and the Vice President spoke by phone only two other times.

Pamplin's Suspicious Trading

42. Before the five-week period described below (July 2 to August 4, 2008), Defendant Pamplin was not an active trader of securities.

43. In August 2002, Pamplin opened a TD Ameritrade account ("brokerage account")—his only known brokerage account—but traded very little.

44. From June 2005 until March 2008, Pamplin's brokerage account was inactive.

45. In April 2008, Pamplin bought \$1,500 shares of a penny stock in his brokerage account.

46. Aside from the insider trading described below, that penny stock purchase was Pamplin's only securities trade between June 2005 and August 2008.

47. Before the insider trading described below, Pamplin's only previous experience trading options was a small investment (approximately \$2,000 to \$3,000) in Intel options a decade ago.

48. As of early 2008, Pamplin's brokerage account held 10,803 shares of TurboChef stock that he had received in stock option grants.

49. In April 2008, Pamplin sold 4,000 of the TurboChef shares for the purpose of paying taxes on the grants. He did not buy or sell any other TurboChef securities in April, May, or June 2008.

50. On June 30, 2008, the TurboChef Vice President with whom Pamplin had frequent contact bought 10,000 TurboChef shares. The following day, Pamplin sold his remaining TurboChef shares for \$31,494. The next trading day, Pamplin used the cash from that sale to purchase 200 TurboChef call options that were to expire on January 16, 2009.

51. When Pamplin purchased these options, the strike price for these options was "out of the money," meaning that the cost at which Pamplin could purchase

TurboChef' shares pursuant to these options was higher than the current market price for TurboChef shares.

52. On July 10, 2008, the TurboChef Vice President purchased 1,000 TurboChef shares. On the same day, Pamplin bought 100 more TurboChef calls that were to expire on October 17, 2008, and an additional 100 calls that were to expire on January 16, 2009, for a total cost of \$12,500. The strike price of these options was \$5, which was again out of the money as TurboChef shares closed that day at \$4.29.

53. As the August 12, 2008 merger announcement drew near, Pamplin accelerated his purchases of call options and focused on those with shorter term expirations.

54. On July 22, 2008, Pamplin purchased 200 calls that were to expire on August 15, 2008, for \$6,500. These options were again out of the money as the strike price was \$5 while TurboChef shares closed that day at \$4.60.

55. After the July 22, 2008 purchase, Pamplin had no more cash in his brokerage account with which to trade. On July 24, 2008, Pamplin transferred \$16,000 in cash to that account.

56. Pamplin continued to seek information from insiders. For example, on July 28, 2012, Pamplin and a TurboChef insider had a telephone conversation that lasted for 35 minutes.

57. On July 30, 2008, Pamplin transferred another \$57,000 in cash to his brokerage account. On July 30 and 31, 2008, Pamplin used that cash to purchase 500 TurboChef calls with an expiration date of August 15, 2008, for \$32,000, and an additional 300 calls that expired on October 17, 2008, for \$30,000.

58. Finally, on August 1 and 4, 2008, only days before the August 12 merger announcement, Pamplin used the last of his available cash to buy an additional 200 TurboChef calls that were to expire eleven days later on August 15, 2008, for \$10,500.

59. The purchases between July 30 and August 4, accounting for 1,000 of Pamplin's 1,600 total TurboChef calls, began within 48 hours after Pamplin had the 35 minute call with a TurboChef insider.

60. Although TurboChef shares traded above the strike price of the options at that time, due to transaction costs the options still were worthless without a further rise in the share price.

61. In sum, between July 2, 2008 and August 4, 2008, Pamplin purchased 1,600 TurboChef call option contracts, controlling 160,000 TurboChef shares, at a total cost of \$103,789 (including transaction costs).

62. On days when he bought TurboChef options, Pamplin accounted for most of the trading volume in TurboChef options. For instance, on nine of the ten days Pamplin purchased calls, his trades accounted for more than 90 percent of trades made that day, indicating that his trading was not part of a broad increase in interest in TurboChef securities.

63. The amount that Pamplin invested in TurboChef calls represented all the money that Pamplin could come up with at a time when he was unemployed and had no other significant source of income.

64. Before the markets opened on August 12, 2008, TurboChef and Middleby announced publicly that they had entered into a definitive merger agreement. The market reacted favorably to the news, as TurboChef's stock rose to a little more than six dollars per share.

65. Between August 12 and August 28, 2008, Pamplin sold all of his TurboChef call option contracts, or exercised the options and sold the shares, for a net profit of \$68,280.

66. If Pamplin simply had held the 6,803 shares in TurboChef stock he owned before his five-week insider trading spree, he would have realized a gain of more than \$11,000 in the weeks following the acquisition announcement.

67. By executing his options trading strategy, Defendant Pamplin was able to increase his profit more than six-fold.

68. Pamplin purchased the TurboChef options while in possession of material nonpublic information regarding the TurboChef merger with Middleby.

69. Pamplin received the material nonpublic information from a TurboChef insider or from the Vice President.

70. Pamplin knew or was reckless in disregarding the likelihood that information from the insider was disclosed in breach of a duty of confidentiality that the insider owed to TurboChef.

71. Likewise, Pamplin knew or was reckless in not knowing that the Vice President obtained the information from a TurboChef insider.

FRAUD

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]

72. Paragraphs 1 through 71 are hereby re-alleged and are incorporated herein by reference.

73. Between July 2 and August 4, 2008, defendant, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly employed devices, schemes, and artifices to defraud, and engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the sellers of such securities, all as more particularly described above.

74. Defendant knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, defendant acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

75. By reason of the foregoing, defendant directly and indirectly, has violated and, unless enjoined, will continue to violate 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].

PRAYER FOR RELIEF

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that defendant committed the violations alleged herein.

II.

A permanent injunction enjoining defendant, his agents, servants, employees, and attorneys from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, by tipping or trading on the basis of material nonpublic information.

III.

An order requiring disgorgement by defendant of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV.

An order pursuant to Section 21A(1)(A) of the Exchange Act [15 U.S.C. § 78uA(1)(A)] imposing civil penalties against defendant.

V.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Commission demands trial by jury in this action of all issues so triable.

Dated: November 29, 2012

Respectfully submitted,

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