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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
-against-	:
	:
TODD DAVID ALPERT,	:
	:
Defendant.	:
	:
-----X	

17 Civ. 1879

ECF CASE

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) files this Complaint against Defendant Todd David Alpert (“Alpert” or “Defendant”) and alleges as follows:

SUMMARY

1. This case involves insider trading by Alpert in the stock and options of H.J. Heinz Company (“Heinz”) in advance of a February 14, 2013 announcement that it would be acquired by an investment consortium comprised of Berkshire Hathaway, Inc. (“Berkshire Hathaway”) and 3G Capital Partners Ltd. (“3G Capital”). Alpert worked at the home of a Heinz board member (“Board Member”) and misappropriated material nonpublic information about the acquisition from him in breach of a duty of trust and confidence and in breach of a

confidentiality agreement that required him to keep such information confidential. Based on the misappropriated information, Alpert purchased 1,000 shares of Heinz stock and 30 call options, which he sold on the date of the announcement for total profits of nearly \$44,000.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

2. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)]. The Commission seeks a permanent injunction against Defendant, enjoining him from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, disgorgement of all ill-gotten gains from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest, and civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. The Commission seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

JURISDICTION AND VENUE

3. 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), 78u(e), and 78aa].

4. Venue lies in this Court pursuant to Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. § 78u(d), 78u-1, and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York and elsewhere, and were effected, directly or indirectly, by making use of means or instrumentalities of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange. During the time of the conduct at issue, shares of Heinz stock were traded on the New York Stock Exchange (“NYSE”), headquartered in New York, New York, and 3G Capital’s main office was located in New York, New York. Alpert

worked and resided in Westchester County, New York during the time of the conduct alleged in this Complaint.

DEFENDANT

5. **Todd David Alpert** is a resident of Kingston, Pennsylvania. From January 2011 through early July 2015, he worked for a security company (the “Security Company”) that provided security and other various services to the Board Member and his family at the Board Member’s homes. During the SEC investigation that preceded this action, Alpert asserted his Fifth Amendment privilege against self-incrimination in response to the staff’s questions concerning his misappropriation of material nonpublic information and trading in Heinz stock and options while in possession of such information. He is currently unemployed.

RELEVANT PEOPLE AND ENTITIES

6. **Heinz** is currently co-headquartered in Pittsburgh, Pennsylvania and Chicago, Illinois. During the relevant period and prior to the acquisition by Berkshire Hathaway and 3G Capital, Heinz’s stock was quoted on the NYSE under the ticker symbol HNZ and options to buy and sell Heinz stock were traded on various options markets.

7. **Berkshire Hathaway** and its subsidiaries engage in various businesses including property and casualty insurance, utilities, freight rail transportation, finance, manufacturing, retailing, and services. Its common stock is listed on the NYSE.

8. **3G Capital** is a private equity firm with its main office in New York, New York.

9. The **Board Member** served as a member of the Heinz board of directors for several years prior to and at the time of the Heinz acquisition proposals.

FACTS

A. Agreement to Acquire Heinz

10. In December 2012, Heinz's CEO began communicating with 3G Capital about a potential acquisition. On January 14, 2013, 3G Capital and Berkshire Hathaway made a formal proposal to acquire Heinz for \$70 per share.

11. The Heinz board of directors considered the proposal at board meetings held on January 15 and 16.

12. On January 24, 2013, Berkshire Hathaway and 3G Capital submitted a revised proposal to acquire Heinz for \$72.50 per share, which was sent to the Heinz board of directors including the Board Member.

13. On January 30, 2013, Heinz informed 3G Capital and Berkshire Hathaway that it would move forward with due diligence and documentation of the proposed merger, but Heinz wanted any transaction to be announced by February 21, 2013. Between January 31 and February 13, the Heinz board held meetings to discuss the transaction and the parties worked toward finalizing the deal.

14. On February 13, 2013, the Heinz board of directors held a special meeting in Pittsburgh, Pennsylvania with all directors in attendance. The board of directors discussed the proposed transaction and unanimously approved the merger agreement.

15. Before the market opened on February 14, 2013, Heinz announced that it had entered into a definitive merger agreement to be acquired for \$72.50 per share. This represented a 20% premium to Heinz's closing share price of \$60.48 on February 13. As a result of the announcement, Heinz's stock price closed up nearly 20% and the stock's trading volume increased over 1,700% on February 14.

16. Heinz shareholders approved the merger with Berkshire Hathaway and 3G Capital on April 30, 2013 and the transaction closed on June 7, 2013.

B. Alpert's Employment at the Board Member's Residences

17. In January 2011, Alpert began working for the Security Company providing security and other services to the Board Member and his family.

18. As a condition of his employment, Alpert signed an agreement with the Security Company specifically concerning work at the Board Member's properties. In a paragraph titled "Confidentiality," Alpert acknowledged that he may acquire access to confidential and private information about the personal or business affairs of the Board Member and his family. The agreement prohibited Alpert from disclosing such information to a third party or from using "any of such information for any purpose other than rendering the Services [he was] engaged to provide" to the Board Member and his family.

C. Alpert Traded on Material Nonpublic Information about the Heinz Acquisition

19. During the course of Alpert's work for the Board Member and his family, Alpert reported almost daily to the Board Member's home in New York, where he served as a dispatcher.

20. As a dispatcher for the Board Member and his family, Alpert worked in a security booth located on the Board Member's New York property and was involved in various aspects of the personal, day-to-day lives of the Board Member and the Board Member's family.

21. Among other things, Alpert's responsibilities included answering phone calls, receiving requests from the Board Member and his family, delegating tasks to other staff, and reviewing email messages sent to a designated email account (the "Security Email Account"). Alpert accessed the Security Email Account using a computer located in the security booth.

22. In his role as a dispatcher, Alpert was responsible for reading and attending to all emails that the Security Email Account received during his shift. Alpert and the other dispatchers were also responsible for reading all emails that the Security Email Account received since their last shift.

23. On occasion, the Board Member would forward emails to the Security Email Account so that the emails and any attachments could be printed by the dispatchers for the Board Member.

24. In January and February 2013, the Board Member and the Board Member's executive assistant sent to the Security Email Account emails containing material nonpublic information concerning the potential acquisition of Heinz including detailed information about the price and the timing of the proposed acquisition.

25. On the evening of January 24, 2013, for example, the Board Member forwarded an email regarding the potential Heinz acquisition to the Security Email Account with a direction to "print now" the email and its attachments. The attachments to the email contained materials that would be discussed on an upcoming Heinz board of directors' conference call, including a copy of the revised acquisition proposal letter that Berkshire Hathaway and 3G Capital sent to Heinz. This letter, which included the word "CONFIDENTIAL" in boldface type at the top, stated that the investment consortium proposed to acquire Heinz for \$72.50 per share.

26. The next day, Friday, January 25, 2013, Alpert was on duty as a dispatcher at the Board Member's home. Alpert arrived at the security booth, which included a computer for accessing the Security Email Account, and clocked in at 1:53 p.m.

27. Minutes later, at approximately 2:15 p.m., while in possession of material nonpublic information concerning the potential acquisition of Heinz, Alpert called his broker and placed an order to purchase 1,000 shares of Heinz common stock.

28. The following Tuesday, January 29, 2013, Alpert purchased 10 Heinz call options with a strike price of \$60 and an expiration date of March 2013. Each call option gave Alpert the right to purchase 100 shares of Heinz stock at \$60 per share until the options expired on the third Friday in March.

29. On the evening of Friday, February 8, 2013, the Board Member forwarded another email concerning the potential Heinz acquisition to the Security Email Account for printing.

30. This February 8th email provided a status update from the Heinz CEO and contained confidential details regarding the progress of the Heinz deal, the deal timeline, and upcoming board meeting dates. The CEO noted the “tremendous progress” over the past several days that had been made on due diligence and the merger agreement. He further wrote that “both sides believe it would be prudent to accelerate the overall timeline in order to avoid leaks.”

31. Alpert worked as a dispatcher at the Board Member’s home on Friday, February 8, as well as the following Monday, February 11, and thus had access to this email containing confidential information about the impending Heinz acquisition.

32. On February 12, 2013, at approximately 1:27 p.m., while Alpert was serving as dispatcher at the Board Member’s home, one of the Board Member’s assistants forwarded an email to the Security Email Account with a schedule for the Board Member’s travel to Pittsburgh for the Heinz board of directors special meeting to be held on February 13, 2013.

33. At approximately 2:04 p.m. on February 12, Alpert called his broker and purchased another 10 Heinz call options with a \$60 strike price and an expiration date of March 2013.

34. The next day, February 13, 2013, at approximately 11:40 a.m. and again at 11:45 a.m., Alpert spoke to his broker by telephone and Alpert purchased 10 more Heinz call options with the same strike price and expiration date.

35. Alpert was on duty at the Board Member's home on February 14, 2013, the day of the acquisition announcement. The acquisition of Heinz was publicly announced at 7:53 a.m. that day.

36. Between 8:24 a.m. and 9:38 a.m. that day, February 14, there were five phone calls between Alpert and his broker.

37. Between approximately 9:30 a.m. and 9:52 a.m., that day, February 14, Alpert sold his 1,000 Heinz shares and all 30 of his Heinz call options.

38. Alpert reaped total profits of \$43,873.32 from his sale of Heinz stock and options that he purchased based on material nonpublic information he misappropriated.

39. Alpert's trading in Heinz stock and options in January and February 2013 was his most profitable trading in 2013. These trades accounted for over 45% of the total realized gains in his brokerage accounts in 2013.

40. In or about July 2015, Alpert admitted to the Board Member that Alpert had read the Board Member's private papers concerning Heinz and then bought Heinz stock. The Board Member considered this to be a breach of his trust and a violation of Alpert's terms of employment.

CLAIMS FOR RELIEF

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

41. The Commission realleges and incorporates by reference paragraphs 1 through 40, as though fully set forth herein.

42. At the time Defendant purchased Heinz common stock and call options, as alleged above, he was in possession of material nonpublic information that he obtained from the Board Member about the contemplated acquisition of Heinz.

43. Defendant had signed a confidentiality agreement with the Security Company that employed him to keep the personal and business affairs of the Board Member and his family confidential and was prohibited from using such information for any purpose other than to provide services to the Board Member and his family.

44. Defendant knew or was reckless in not knowing that the information he obtained from the Board Member was material and nonpublic, and that he owed a fiduciary duty, or obligation arising from a similar relationship of trust or confidence, to the Board Member and/or the Security Company to keep the information confidential and to refrain from trading on it.

45. Defendant breached a fiduciary duty, or a similar duty of trust and confidence to the Board Member and/or the Security Company, by trading for his own benefit on the basis of material nonpublic information that he misappropriated from the Board Member and/or the Security Company.

46. By virtue of the foregoing, Defendant, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes 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; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

47. By virtue of the foregoing, Defendant, directly or indirectly, violated, and unless enjoined, will again 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].

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining Defendant, 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, and each of them, 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.

Ordering Defendant to disgorge, with prejudgment interest, all illicit trading profits or other ill-gotten gains received as a result of the conduct alleged in this Complaint, pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)];

III.

Ordering Defendant to pay a civil monetary penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
March 15, 2017



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