

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

<b>UNITED STATES SECURITIES AND EXCHANGE COMMISSION,</b>	)	Civil Action No. 17-cv-895
	)	
Plaintiff,	)	JUDGE
	)	
v.	)	MAGISTRATE JUDGE
	)	
<b>VICTORY HO,</b>	)	
	)	
Defendant.	)	<b>COMPLAINT</b>
	)	

Plaintiff United States Securities and Exchange Commission (the “Commission”) alleges as follows:

**SUMMARY OF THE ACTION**

1. This case involves unlawful insider trading in the securities of The Shaw Group, Inc. (“Shaw”), a Louisiana-based energy construction company, by Victory Ho (“Defendant”). The trading occurred in advance of Shaw’s July 30, 2012 announcement of its merger with Chicago Bridge & Iron Company N.V. (“CBI”). News of the merger (the “Announcement”) caused the price of Shaw stock to rise by more than 55%.

2. During July of 2012, Ho obtained material non-public information about the impending Shaw merger. On July 27, 2012, the last trading day prior to the acquisition announcement, Victory Ho used \$8,000 (the entire amount in his brokerage account) to buy 296 “out-of-the money” short term Shaw call options. When Ho made this investment, he would only profit if Shaw shares increased in price significantly

within three weeks before the options expired. When he placed this trade, he sought assurance from the broker that he would be able to sell the options “in a day.” He sold on the day of the announcement and realized profits of about \$295,000.

3. By engaging in the conduct described in this Complaint, Defendant violated and, unless enjoined and restrained, 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 thereunder [17 C.F.R. § 240.10b-5].

### **JURISDICTION AND VENUE**

4. The Commission brings this action pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] to restrain and permanently enjoin the Defendant from engaging in the transactions, acts, practices and courses of business alleged in this Complaint. The Commission also seeks a judgment ordering disgorgement, prejudgment interest, and civil penalties against the Defendant pursuant to Section 21A(a) of the Exchange Act [15 U.S.C. § 78u-1(a)].

5. The Court has jurisdiction over this action under Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1 & 78aa]. Defendant, directly or indirectly, singly or in concert, made use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

6. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Ho resides in the Western District of Louisiana.

**DEFENDANT**

7. **Victory Ho**, age 36, resides in Morgan City, Louisiana. He is self-employed as a convenience store owner.

**RELATED ENTITIES**

8. **Chicago Bridge & Iron Company N.V.** (“CBI”) is a Netherlands Company based in The Hague, The Netherlands. The company specializes in energy infrastructure. CBI acquired Shaw pursuant to a merger agreement that was publicly announced on July 30, 2012, and closed on February 13, 2013. Shaw operates as a business sector under the brand name CB&I Shaw.

9. **The Shaw Group, Inc.** provided engineering, construction, maintenance, technology, fabrication, remediation and support services for clients in the energy, chemicals, environmental, infrastructure and emergency response industries and during the relevant time period was headquartered in Baton Rouge, Louisiana. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act until Shaw was acquired by CBI. It was listed on the New York Stock Exchange (former ticker symbol SHAW) and options on Shaw stock traded on multiple U.S. options exchanges.

**FACTS**

**A. The Merger Negotiations**

10. On April 30, 2012, Toshiba Corporation approached Shaw about a possible acquisition. On May 12, 2012, Toshiba delivered a non-public written indication of interest, proposing a range of \$44 to \$46 per share for Shaw, and disclosing CBI as its partner in an acquisition. At the time, Shaw’s stock was trading at about \$29 per share.

11. On July 4, 2012, CBI confidentially advised Shaw that it was prepared to acquire Shaw, without Toshiba, for \$46 per share. Shaw was trading at about \$28 per share. CBI delivered this proposal in writing to Shaw on July 9, 2012. That day, the Shaw board of directors held a special telephonic meeting and decided to proceed with due diligence. Over the next few days, the parties exchanged non-public draft agreements. On July 15, 2012, Shaw's board held a special meeting in Charlotte, North Carolina to discuss the transaction, attended by Shaw executives, its investment banker, and outside counsel.

12. By July 29, 2012, Shaw and CBI had finalized the deal. On Monday, July 30, 2012, prior to the opening of trading on the New York Stock Exchange, CBI and Shaw each issued a press release announcing that CBI would acquire Shaw for \$46 per share in cash and stock (the "Announcement"). At the close of trading on July 30, 2012, Shaw's stock closed at \$41.49 which was an increase of approximately 55% from its closing price on the previous trading day.

13. Both Shaw and CBI maintained the confidentiality of the negotiations until the Announcement.

**B. Ho Receives Confidential Non-Public Information and Purchases Shaw Call Options on the Friday before the Monday Announcement.**

14. On July 18, 2012, Ho opened two brokerage accounts – one each at two different firms. Ho had a number of telephone discussions with the firms concerning the purchase of out-of-the-money Shaw Call options. An out-of-the-money call option is an option whose strike price for a stock is higher than the current price. On July 19, 2012, Ho wired \$8,000 to one of the accounts.

15. On July 27, 2012, the last trading day before the Announcement, Ho telephoned his broker and told him that he wanted to use all his cash to purchase Shaw call options but wanted to be assured that he could sell the options in one day. After he received the assurance, he instructed the broker to enter an order for \$8000 worth of August 30 and 31 call options. The broker then placed orders which were executed for 125 August 31 Shaw Calls and 171 August 30 Shaw Calls. These options would become profitable only if the price of Shaw stock, which closed at \$26.69 that day, rose above \$30 or \$31 per share within three weeks before the options expired. Shaw had not traded as high as \$30 per share in the previous two months. If the price did not rise to \$30 or above, Ho risked losing his entire investment of \$8000.

16. Ho's purchase of the August 31 Shaw call options accounted for 96% of the market for the options that day and his purchase of the August 30 call options accounted for 44% of the market for the options that day.

17. On information and belief, Ho's purchase of out-of-the-money Shaw call options on July 27, 2012 was his first-ever purchase of securities. The \$8,000 he spent on the purchase represented one-half to one-third of his annual income as stated in one of his brokerage account applications.

18. Ho sold the Shaw call option contracts on July 30, 2012 for a profit of approximately \$295,420 after the Announcement.

19. On the day prior to opening his brokerage account, Ho had an unusual number of texts with the boyfriend of a Shaw employee. On the day that he opened the account, his sister and the Shaw employee exchanged a significant number of calls and texts. In the hour prior to opening his account, he had seven texts or calls with his sister.

Ho also had a telephone call with the boyfriend of the Shaw employee approximately 20 minutes before he placed his first order with one of his new brokerage firms on July 19, 2012 (which he later cancelled before it was executed).

20. On July 26, 2012, the Shaw employee, who at this time, had information confirming the Shaw acquisition, and Ho's sister texted and called each other numerous times interspersed with calls and texts between Ho and his sister.

21. Ho purchased the Shaw call options based on material non-public information concerning the acquisition of Shaw that he knew or should have known came from someone in breach of a fiduciary duty to Shaw or as the result of the misappropriation of that information from someone in possession of material non-public information concerning the acquisition of Shaw.

22. During the Commission's investigation that led to this action, Ho invoked his Fifth Amendment privilege against self-incrimination and refused to answer questions substantively during sworn testimony.

### **CLAIM FOR RELIEF**

#### **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

23. The Commission re-alleges and incorporates by reference ¶¶ 1 through 22, above.

24. The information concerning CBI's acquisition of Shaw was material and nonpublic. In addition, Shaw considered the information to be confidential.

At all times relevant to the complaint, the Defendant acted knowingly or recklessly.

25. By engaging in the conduct described above, the Defendant, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or

instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, with scienter:

employed devices, schemes, or artifices to defraud;  
made untrue statements of material fact 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 engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any persons, in connection with the purchase or sale of securities.

26. Members of the investing public who were trading at the same time and in the same security as the Defendant was harmed by the Defendant's gaining of an advantageous market position through insider trading.

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

### **PRAYER FOR RELIEF**

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

#### **I.**

Permanently restraining and enjoining Defendant and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of him, who receive actual notice of the judgment by personal service or

otherwise, 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 disgorgement, prejudgment interest, and a civil penalty under Section 21A of the Exchange Act [15 U.S.C. § 78u-1] against Defendant.



**III.**

Granting such other and further relief as this Court may determine to be just and necessary.

Respectfully submitted,

DEREK S. BENTSEN  
District of Columbia Bar No. 493102  
MELISSA R. HODGMAN  
MELISSA A. ROBERTSON  
SECURITIES AND EXCHANGE COMMISSION  
100 F Street, N.E.  
Washington, DC 20543  
(202) 551-6426  
(202) 551-772-9245 (facsimile)  
[bentsend@sec.gov](mailto:bentsend@sec.gov)

COUNSEL FOR PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION

*Lead Trial Counsel to be Noticed*

ALEXANDER C. VAN HOOK  
Acting United States Attorney

By: *s/ Karen J. King*  
KAREN J. KING (#23508)  
U.S. ATTORNEY'S OFFICE  
WESTERN DISTRICT OF LOUISIANA  
800 Lafayette Street, Suite 2200  
Lafayette, Louisiana 70501-6832  
(337) 262-6618  
(337) 262-6693 (facsimile)  
[karen.king@usdoj.gov](mailto:karen.king@usdoj.gov)  
*Local Counsel*

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