

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

_____)	
SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	<u>Jury Trial Demanded</u>
)	
KEVIN J. HOBBS,)	
BRUCE C. MAYHEW,)	
Defendants.)	
_____)	

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

SUMMARY

1. Defendant Kevin J. Hobbs (“Hobbs”) and defendant Bruce C. Mayhew (“Mayhew”) engaged in illegal insider trading of the securities of Granite State Bankshares, Inc. (“Granite State”) in October and November 2002. Defendant Hobbs, a Granite State executive, purchased Granite State stock for himself, his parents and an investment club while in possession of material, non-public information prior to the public announcement of an acquisition of Granite State by Chittenden Corporation (“Chittenden”). Defendant Hobbs also tipped his friend Defendant Mayhew, who bought Granite State stock for himself and his mother prior to the public announcement of the acquisition. As a result of their trading, Hobbs, his parents and his investment club earned imputed profits of \$95,109, and Mayhew and his mother earned imputed profits of \$51,241.

2. During the relevant time period, Defendant Hobbs was employed at Granite State as administrative vice president and director of internal audit. In October 2002, Hobbs obtained

material, non-public information concerning an acquisition of Granite State through discussions with other insiders and through his inside observations of acquisition-related activity at Granite State's offices. Hobbs then tipped Mayhew, his friend and a partner in an investment club.

3. From October 29, 2002 through November 6, 2002, Hobbs and Mayhew purchased shares of Granite State stock at prices ranging from \$32.73 per share to \$36.10 per share while in possession of information relating to the upcoming acquisition that was not available to the public. On November 7, 2002, after the market closed, Granite State and Chittenden publicly announced that they had entered into a definitive merger agreement for Chittenden to acquire Granite State and its subsidiary, Granite Bank, in a transaction valued at approximately \$247 million. The price of Granite State stock closed the next day at \$43.95 per share, up \$7.07 per share, or 19.17%, from the previous day's close of \$36.88 per share.

4. By virtue of the conduct alleged in this Complaint, Hobbs and Mayhew violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. Accordingly, the Commission seeks: (i) entry of permanent injunctions prohibiting Hobbs and Mayhew from further violations of Section 10(b) and Rule 10b-5 thereunder; (ii) disgorgement of the profits from their insider trading, plus pre-judgment interest; and (iii) the imposition of civil monetary penalties of up to three times the profits from their insider trading.

JURISDICTION

5. The Court has jurisdiction over this action pursuant to Sections 21(e), 21A(a)(1) and 27 of the Exchange Act [15 U.S.C. §§78u(e), 78u-1(a)(1) and 78aa]. Many of the acts and practices complained of herein occurred within the District of New Hampshire.

6. The Commission brings this action pursuant to the authority conferred upon it by Sections 21(d)(1), 21(e), and 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(1), 78u(e), and 78u-1].

7. In connection with the conduct described in this Complaint, defendants directly and indirectly made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of national securities exchanges.

DEFENDANTS

8. **Kevin J. Hobbs**, age 46, is a resident of Mont Vernon, New Hampshire. Hobbs was administrative vice president and director of internal audit at Granite State during the relevant period. In 1998, Hobbs founded an informal investment club called the JLS Investment Club. At all relevant times, Defendants Hobbs and Mayhew were members of the investment committee of the JLS Investment Club and had authority to direct trades in the club's account. During the Commission's investigation that led to the institution of this action, Hobbs asserted his Fifth Amendment privilege against self-incrimination and refused to answer questions concerning the allegations set forth in this Complaint.

9. **Bruce C. Mayhew**, age 35, is a resident of Manchester, New Hampshire. Mayhew is a friend and frequent contact of Hobbs. At all relevant times, Defendants Hobbs and Mayhew were members of the investment committee of the JLS Investment Club and had authority to direct trades in the club's account. From 1995 through 1998, Mayhew was a registered representative of broker-dealer A.G. Edwards & Sons, Inc. During the Commission's investigation that led to the institution of this action, Mayhew asserted his Fifth Amendment

privilege against self-incrimination and refused to answer questions concerning the allegations set forth in this Complaint.

RELATED PARTIES

10. **Granite State Bankshares, Inc.** was, prior to its acquisition by Chittenden, a publicly-traded bank based in Keene, New Hampshire. During the relevant time period, Granite State's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ National Market System under the symbol "GSBI."

11. **Chittenden Corporation** is a publicly-traded bank holding company based in Burlington, Vermont. Chittenden's stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the symbol "CHZ."

BACKGROUND

12. Beginning in September 2002 and continuing until the public announcement of the acquisition on November 7, 2002, Granite State and Chittenden were engaged in secret efforts to merge the two banks. During this entire period, Hobbs, as an executive of Granite State, was a corporate insider who was prohibited from trading and from tipping others to trade Granite State stock while in possession of material, non-public information about Granite State.

13. In approximately 19 separate transactions in October and November 2002, Hobbs purchased a total of 10,030 shares of Granite State stock for himself, his parents and his investment club. In approximately seven separate transactions in October and November 2002, Mayhew, acting on Hobbs's tip, purchased a total of 4,700 shares of Granite State stock for himself and his mother.

Granite State and Chittenden Begin Acquisition Discussions

14. Granite State and Chittenden began acquisition discussions on September 19, 2002, when executives from Chittenden approached executives from Granite State at an investment banking conference and expressed a desire to explore a possible business combination between the two banks.

15. By early October 2002, Granite State had retained two investment banking firms, and Granite State and Chittenden had executed a confidentiality agreement to enable the companies to share non-public, confidential information to evaluate a possible transaction. On October 21, 2002, after several weeks of meetings and negotiations, Chittenden offered to acquire Granite State for \$46.00 per share of Granite State stock. Granite State's chief executive officer agreed to present Chittenden's proposal to its board of directors.

16. Beginning October 26, 2002, and continuing into November 2002, Chittenden conducted due diligence on Granite State. Due diligence was the process of gathering information about all aspects of Granite State's business that might be relevant to Chittenden in connection with the acquisition. During the detailed and exhaustive due diligence process, Granite State employees were requested to gather large amounts of documents and information. Much of that due diligence material was then copied, boxed and delivered from Granite State to an inn in Chesterfield, New Hampshire, where from October 30, 2002 through November 1, 2002, Chittenden representatives reviewed it. As a result of acquisition-related meetings and the due diligence process, there was a significant increase in activity at Granite State's offices.

17. On November 7, 2002, the boards of directors of both banks voted unanimously to approve the transaction. That evening, after the close of the markets, Granite State and

Chittenden issued a joint public announcement that they had signed a definitive merger agreement for Chittenden to acquire Granite State. The announcement disclosed to the public for the first time that under the terms of the agreement, Granite State shareholders would receive \$46.00 or 1.64 shares of Chittenden stock for each share of Granite State stock.

Hobbs Learns Granite State Will be Acquired

18. At all relevant times, Granite State had in place policies and procedures designed to ensure the confidentiality of material, non-public corporate information prior to the public dissemination of such information. Hobbs knew or was reckless in not knowing of Granite State's confidentiality policies and of his fiduciary responsibility to maintain the confidentiality of information concerning the merger.

19. Beginning in or about late October 2002, Defendant Hobbs obtained non-public, material information about the Chittenden acquisition of Granite State as a result of his position as an insider at Granite State.

20. In or about late October 2002, Hobbs had a conversation with a Granite State employee who held the position of compliance officer and who reported directly to Hobbs. The compliance officer told Hobbs that Granite State's chief financial officer had requested copies of certain regulatory compliance reports concerning Granite State. The bank compliance officer and Hobbs discussed that this request was unusual and that such a request had never been made before. Hobbs and his employee also discussed that the request indicated that an acquisition involving Granite State was "going to happen."

21. Also, in or about late October 2002, Hobbs had a conversation with another Granite State employee who held the position of loan review officer and who reported directly to

Hobbs. Prior to the public announcement, the employee was asked by a Granite State executive to collect an unusual, voluminous amount of data concerning Granite State's assets. The nature of the request led the employee to conclude that someone was performing due diligence on Granite State. The employee then told Hobbs, his boss, of the request.

22. Based on these two conversations, Hobbs obtained information about the upcoming acquisition of Granite State by Chittenden that could be known only to an insider. Hobbs then used his position as an insider at Granite State to further substantiate the information obtained during these two conversations. For example, beginning in or about late October 2002, Hobbs participated in discussions with other Granite State employees about the likelihood of an acquisition involving Granite State and heard numerous rumors among Granite State employees that an acquisition was taking place. Hobbs and other employees further discussed that they had observed unusual closed-door meetings involving unfamiliar executives and unfamiliar cars with Vermont license plates in Granite State's parking lot.

23. The information that Hobbs obtained was available only to an insider at Granite State and confirmed, for Hobbs, that Granite State was engaged in acquisition-related activity. The information that Hobbs obtained was material and non-public, and it was obtained by Hobbs solely by virtue of his employment as an insider at Granite State.

24. Hobbs had a duty to keep confidential, and not trade based on, this information.

25. After learning this material, non-public information, Hobbs decided to buy shares of Granite State stock for himself, his parents, and the JLS Investment Club.

Hobbs Tips Mayhew

26. In or about late October 2002, after learning information about the upcoming acquisition of Granite State, Hobbs had a telephone conversation with his friend Mayhew. In breach of his duty to keep material, non-public information confidential, Hobbs told Mayhew the information he had learned.

27. Mayhew knew that Hobbs worked at Granite State and knew, or was reckless in not knowing, that Hobbs was providing confidential information to him in breach of Hobbs's duty to Granite State.

28. During or shortly after their telephone conversation, Mayhew decided to buy shares of Granite State stock for himself and his mother.

Hobbs Purchases Granite State Stock

29. From October 30, 2002 through November 6, 2002, Defendant Hobbs purchased a total of 10,030 shares of Granite State stock at a total cost of \$345,310 for himself, his family and his investment club in eight separate accounts.

30. On October 30, 2002, Hobbs purchased 1,000 shares of Granite State stock at a price of \$32.89 per share in the JLS Investment Club's account.

31. On October 30, 2002, Hobbs purchased 2,000 shares of Granite State stock at an average price of \$32.93 per share in an account owned by his parents.

32. On November 1, 2002, Hobbs purchased 1,800 shares of Granite State stock at an average price of \$33.94 per share in two separate accounts in his name.

33. On November 1, 2002, Hobbs purchased 200 shares of Granite State stock at a price of \$33.80 per share in an account he held jointly with his former wife.

34. On November 4, 2002, Hobbs purchased 1,100 shares of Granite State stock at an average price of \$35.64 per share in an account in his name.

35. On November 4, 2002, Hobbs purchased 2,000 shares of Granite State stock at a price of \$35.40 per share in an account owned by his parents.

36. On November 4, 2002, Hobbs purchased of 30 shares of Granite State stock at a price of \$36.09 per share in an account owned by his father.

37. On November 4, 2002, Hobbs purchased of 800 shares of Granite State stock at a price of \$35.75 per share in the JLS Investment Club's account.

38. On November 5, 2002, Hobbs purchased 200 shares of Granite State stock at a price of \$36.10 per share in an account in his name.

39. On November 5, 2002, Hobbs purchased 400 shares of Granite State stock at a price of \$35.15 per share in the JLS Investment Club's account.

40. On November 6, 2002, Hobbs purchased 400 shares of Granite State stock at a price of \$36.00 per share in the JLS Investment Club's account.

41. At the time of each of Hobbs's purchases from October 30, 2002 through November 6, 2002, the definitive merger agreement between Granite State and Chittenden had not been publicly disclosed.

Mayhew Purchases Granite State Stock

42. From October 29, 2002 through November 1, 2002, Defendant Mayhew purchased a total of 4,700 shares of Granite State common stock at a total cost of \$155,324 for himself and his mother.

43. On October 29, 2002, Mayhew purchased 1,500 shares of Granite State stock at an average price of \$32.74 per share in two separate accounts in his name.

44. On October 29, 2002, Mayhew purchased of 1,000 shares of Granite State stock at a price of \$32.75 per share in an account in his mother's name.

45. On November 1, 2002, Mayhew opened a new brokerage account jointly with his wife and purchased 1,000 shares of Granite State stock at a price of \$33.39 per share in that account.

46. On November 1, 2002, Mayhew purchased 500 shares of Granite State stock at a price of \$33.49 per share in an account in his name.

47. On November 1, 2002, Mayhew purchased 700 shares of Granite State stock at a price of \$33.33 per share in his mother's account.

48. At the time of each of Mayhew's purchases on October 29, 2002 and November 1, 2002, the definitive merger agreement between Granite State and Chittenden had not been publicly disclosed.

Defendants' Illicit Profits

49. On November 7, 2002, the price of Granite State stock closed at \$36.88 per share. After the close of the market that day, Granite State and Chittenden announced the definitive merger agreement for Chittenden to acquire Granite State.

50. On November 8, 2002, the first trading day after the public announcement, the price of Granite State stock increased by more than \$7.00 to a closing price of \$43.95 per share.

51. As a result of their purchases of Granite State stock prior to the public announcement of the merger agreement, Hobbs's trades netted imputed profits of \$95,109, and Mayhew's trades netted imputed profits of \$51,241.

CLAIM FOR RELIEF

(Insider Trading in Violation of Exchange Act § 10(b) and Rule 10b-5 thereunder)

52. The allegations set forth in Paragraphs 1-51 above are hereby realleged and incorporated by reference herein.

53. By reason of the foregoing, Defendants, directly or indirectly, acting intentionally, knowingly, or recklessly, by use of the means or instrumentalities of interstate commerce, or of the mails, or any facility of any national securities exchange, in connection with the purchase or sale of securities: (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; or (c) engaged in transactions, acts, practices or courses of business which operated as a fraud or deceit upon any persons, including purchasers or sellers of Granite State's securities in violation 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court issue a final judgment:

A Permanently enjoining Hobbs and Mayhew and each of their 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 engaging, directly or indirectly, 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. Ordering Hobbs to disgorge all ill-gotten gains received from illegal trades made or directed by Hobbs, plus prejudgment interest thereon;

C. Ordering Hobbs and Mayhew, jointly and severally, to disgorge all ill-gotten gains received from illegal trades made or directed by Mayhew, plus prejudgment interest thereon;

C. Ordering Hobbs and Mayhew each to pay an appropriate civil monetary penalty pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1]; and

D. Awarding such other and further relief as the Court deems just and proper.

Dated: November 16, 2004

Respectfully submitted,

By: /s/ Ian D. Roffman
Ian D. Roffman (Mass. Bar No. 637564)
LeeAnn Ghazil Gaunt (Mass. Bar No. 630557)
Dawn A. Edick (Mass. Bar No. 641659)
ATTORNEYS FOR PLAINTIFF
SECURITIES AND EXCHANGE COMMISSION
73 Tremont Street, 6th Floor
Boston, Massachusetts 02108
(617) 573-8987 (Roffman)
(617) 424-5940 fax