

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT J. DOWNS, JR. and  
STEPHEN J. MESSINA,

Defendants.

C.A. No.

06 - 2031

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges:

SUMMARY

1. This case involves unlawful insider trading by Stephen J. Messina ("Messina") in the securities of Electronics Boutique Holdings Corp. ("Electronics Boutique") based on material nonpublic information that his close friend, Robert J. Downs ("Downs"), communicated to him about an imminent merger.

2. At the time Downs communicated the material nonpublic information to Messina, Downs was a partner in a Philadelphia law firm that was representing Electronics Boutique in connection with the company's merger with GameStop Corp. ("GameStop"). On April 11, 2005, one week before the public announcement of the intended merger between Electronics Boutique and GameStop, Downs communicated material, nonpublic information to Messina concerning the merger in violation of the fiduciary duty or similar relationship of trust or confidence that he owed to his law firm and its client, Electronics Boutique. Messina knew or was reckless in not knowing that the information he had received from Downs regarding the Electronics Boutique

merger was material and nonpublic and that Downs had breached a duty to his law firm and its client by providing him with the information. Nonetheless, while in possession of and based on the material nonpublic information that he received from Downs, Messina bought bullish options on the securities of Electronics Boutique. After Electronics Boutique and GameStop announced their agreement and plan of merger on April 18, 2005, Messina closed his option positions and realized a profit in excess of \$308,000.

3. By their conduct, Downs and Messina violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

#### **JURISDICTION AND VENUE**

4. 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)(3)(A), 78u(e), 78u-1 and 78aa].

5. Venue properly lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because the defendants inhabit this judicial district and the acts and transactions constituting the violations in this case occurred within this judicial district.

6. The defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the acts, practices, and courses of business alleged in this Complaint. Certain of these acts, practices, and courses of business occurred within the Eastern District of Pennsylvania.

7. Unless restrained and enjoined by this Court, the defendants will continue to engage in acts, practices and transactions similar to those described herein.

## **DEFENDANTS AND RELEVANT ENTITY**

8. Robert J. Downs, Jr. resides in a suburb of Philadelphia, PA. Until June of 2005, Downs was a partner in a Philadelphia law firm. By reason of his position, Downs was routinely exposed to confidential information regarding the firm's clients. As a lawyer in the firm, Downs owed a fiduciary duty to the firm and its clients to keep such information confidential.

9. Stephen J. Messina resides in a suburb of Philadelphia, PA. He is an employee in the operations department of a computer supply company based in suburban Philadelphia.

10. Electronics Boutique Holdings Corp. was a West Chester, Pennsylvania-based video game retailer. At all relevant times, Electronics Boutique's securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act.

## **FACTUAL ALLEGATIONS**

### **Downs and Messina are Close Friends**

11. Downs and Messina met in May of 1999 when their families traveled to the same vacation destination. They quickly formed a close relationship.

12. Downs and Messina share some of the same interests, including the stock market. They have discussed investment ideas, and have invested in some of the same stocks at the same time.

13. In the past, Downs has provided free legal services to Messina.

### **Messina Knew that Electronics Boutique was the Highest Profile Public Client of Downs' Law Firm**

14. Since the time they met in May of 1999, Downs and Messina have discussed Electronics Boutique on a number of occasions. They talked about the fact that Electronics Boutique was a local success story, having started as a single kiosk in a suburban Philadelphia mall.

15. From his discussions with Downs, Messina learned that Electronics Boutique was the highest profile public client of Downs' firm.

**Downs Informed Messina that a Firm Client was Being Bought**

16. On the morning of Monday, April 11, 2005, Downs learned that his law firm was representing Electronics Boutique in connection with its merger with its largest competitor, GameStop.

17. Also on the morning of April 11, 2005, after learning about the intended merger between Electronics Boutique and GameStop, Downs participated in a telephone conversation with Messina in which he provided Messina with material nonpublic information about the merger.

**Messina Bought Electronics Boutique Call Options**

18. On the morning of April 12, 2005, Messina called a brokerage firm where he maintained an account in an attempt to gain approval to trade options in his account.

19. Because Messina had not yet obtained approval to trade options in his own brokerage account, later that morning he began purchasing call options in Electronics Boutique securities in an account held in his father's name at another brokerage firm. Messina had trading authority in this account. Messina purchased 400 May call option contracts with strike prices of \$45, \$47.50 and \$50 in the account held in his father's name.

20. Downs and Messina remained in uncharacteristically close contact by telephone throughout the week of April 10 through April 18, 2005.

**Electronics Boutique and GameStop Announced The Merger and  
Messina Immediately Closed His Option Positions**

21. On April 18, 2005, before the market opened, Electronics Boutique and GameStop announced an agreement and plan of merger.

22. Also on April 18, 2005, within hours after the merger was announced, Messina ordered the sale of all his Electronics Boutique call options. For the May call option contracts he had purchased six days earlier on Tuesday, April 12, 2005, Messina realized a profit of \$308,335.76.

**CLAIM FOR RELIEF**

**[Insider Trading]**

**Downs and Messina Violated Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and  
Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]**

23. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 22 above.

24. Prior to the public announcement of the agreement and plan of merger between Electronics Boutique and GameStop on April 18, 2005, information relating to the intended merger was material, nonpublic information.

25. As an attorney in a law firm, Downs owed a fiduciary duty or similar duty of trust and confidence to the firm and its clients. As a result, Downs had a duty not to disclose confidential client information that he obtained regarding the firm or its clients.

26. Downs, in knowing or reckless breach of these duties, misappropriated the material nonpublic information described above regarding the intended merger involving Electronics Boutique and passed that information to Messina.

27. Downs' disclosure of material nonpublic information to Messina regarding the intended merger involving Electronics Boutique was made under circumstances in which he knew, or was reckless in not knowing, that Messina was likely to trade on such information.

28. Messina knew, or was reckless in not knowing, that the information he received from Downs was material and nonpublic, and that the information was disclosed to him in violation of a fiduciary duty or other duty of trust and confidence.

29. By their conduct, described above, defendants Downs and Messina, in connection with the purchase and sale of securities described herein, by use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of any national securities exchange, directly and indirectly:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts and 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, and courses of business which would and did operate as a fraud and deceit upon other persons, as more particularly described above.

30. By reason of the foregoing, defendants Downs and Messina directly and indirectly violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Commission respectfully requests that this Court enter final judgments:

I.

Permanently enjoining Robert J. Downs, Jr. and Stephen J. Messina from violating Exchange Act Section 10(b) and Exchange Act Rule 10b-5.

II.

Ordering Messina to disgorge the amount of his ill-gotten gain as a result of the conduct described above, plus prejudgment interest thereon.

III.

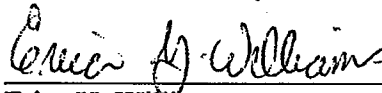
Ordering Downs and Messina to each pay a money penalty pursuant to Section 21A of the Exchange Act.

IV.

Ordering such other relief as this Court deems appropriate.

Dated: May 11, 2006

Respectfully submitted,



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