

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TERRY F. FAVILLA and
GARY R. DOWELL,

Defendants.

Civil Action No.

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") for its Complaint alleges as follows:

SUMMARY

1. This matter involves insider trading by Terry F. Favilla, a former employee of a regional financial services holding company, and one of his friends, Gary R. Dowell. During the course of his employment at Susquehanna Bancshares, Inc. ("Susquehanna"), Favilla learned that Susquehanna was exploring a possible acquisition of F&M Bancorp ("F&M"). On the basis of this material, nonpublic, and confidential information, Favilla bought shares of F&M common stock. Favilla knew, or was reckless in not knowing, that the information concerning the possible acquisition of F&M was confidential and that by trading on the basis of this information, he misappropriated the information and breached a fiduciary duty or similar relationship of trust or confidence that he owed to Susquehanna. After the public announcement of F&M's acquisition by a Susquehanna competitor, Mercantile Bankshares Corporation ("Mercantile"), Favilla sold his shares of F&M common stock for a profit.

2. Favilla also tipped his friend Dowell about the possible acquisition of F&M. Based on this material nonpublic information, Dowell likewise bought shares of F&M common stock for himself and his family members. After the public announcement of the acquisition of F&M by Mercantile, Dowell sold most of his shares of F&M common stock for a substantial profit. After the sale of these shares, Dowell sent Favilla a money order for \$1,000 with a note that said “thank you.”

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

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Section 21(d) and (e) of the Exchange Act [15 U.S.C. § 78u(d) and (e)] to enjoin such acts, transactions, practices, and courses of business; obtain disgorgement and civil monetary penalties; and for other appropriate relief.

5. This Court has jurisdiction over this action pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Venue lies in this District because certain acts or transactions constituting violations occurred within the Eastern District of Pennsylvania and elsewhere.

6. In connection with the transactions, acts, practices, and courses of business described in this Complaint, defendants, directly and/or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce, and of the facilities of a national securities exchange.

DEFENDANTS

7. Terry F. Favilla, age 44, resides in Lititz, Pennsylvania. From February 1984 to September 15, 2003, he was employed as a Vice-President for Liability Management at Susquehanna.

8. Gary R. Dowell, age 59, resides in Reisterstown, Maryland. He is retired and is a private investor. Dowell hired Favilla in 1984 to work at Reistertown Federal Savings Bank ("Reistertown Federal"), a predecessor institution to Susquehanna, and Dowell was Favilla's supervisor at Reistertown Federal. For several years prior to the events at issue, Dowell paid Favilla to prepare his income tax returns.

RELEVANT ENTITIES

9. F&M Bancorp was a bank holding company incorporated in Maryland and headquartered in Frederick, Maryland. At all relevant times, F&M'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. Mercantile acquired F&M on August 12, 2003.

10. Mercantile Bankshares Corporation is a bank holding company incorporated in Maryland and headquartered in Baltimore, Maryland. Mercantile's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and trades on the NASDAQ National Market System.

11. Susquehanna Bancshares Corporation is a financial services holding company incorporated in Pennsylvania and headquartered in Lititz, Pennsylvania. Susquehanna's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and trades on the NASDAQ National Market System.

FACTS

Favilla's Fiduciary Duty

12. At the time of the transactions and events alleged in this Complaint, Favilla was an employee of Susquehanna and therefore owed a fiduciary duty to Susquehanna and its shareholders. As a result, Favilla had a fiduciary duty, among other things, not to trade while in possession of material nonpublic information learned in the course of his employment and to keep such material nonpublic information confidential.

Events Surrounding The Acquisition Of F&M

13. On December 11, 2002, Mercantile contacted the Chairman of F&M's Board of Directors and conveyed to him Mercantile's interest in exploring a possible business combination. On January 21, 2003, after consideration of Mercantile's interest, F&M's Board of Directors decided that F&M should solicit competing indications of interest from other financial services companies. On February 14, 2003, Mercantile, Susquehanna, and two other companies provided F&M with preliminary indications of interest.

14. On February 18, 2003, after reviewing these preliminary indications of interest, F&M's Board of Directors decided to pursue more in-depth conversations with Mercantile and Susquehanna. Susquehanna conducted due diligence activities on February 24 and 25, 2003 and March 3, 2003. Mercantile conducted due diligence activities on February 27 and 28, 2003 and March 1, 2003.

15. On March 5, 2003, Mercantile and Susquehanna submitted revised indications of interest to F&M. On March 7, 2003, after a review of these proposals, F&M decided to continue merger discussions with only Mercantile. F&M and Mercantile then negotiated terms from March 8 through March 12, 2003.

16. On March 12, 2003, F&M's Board of Directors accepted Mercantile's merger proposal. On the morning of March 13, 2003, a merger agreement was executed and a public announcement followed that same day before the securities markets opened. After the public announcement of the merger, the market price of F&M common stock rose substantially. On the day before the public announcement, shares of F&M closed at \$31 per share. On the day of the public announcement, F&M stock closed at \$42.48 per share. This change in price represented a one-day gain of 37%.

**Favilla Signs Two Separate Confidentiality Agreements
And Participates In Merger-Related Due Diligence**

17. Favilla worked in Susquehanna's Finance Department and consolidated financial information for Susquehanna's Chief Financial Officer. During the course of his employment with Susquehanna, Favilla was asked to sign, and did sign, Susquehanna's Code of Conduct. Susquehanna's Code of Conduct expressly stated that any employee who had access to material nonpublic information was an insider and was prohibited from trading or recommending securities based on that nonpublic information.

18. On February 19, 2003, Favilla attended a meeting at Susquehanna where he learned of Susquehanna's interest in acquiring F&M and was asked to participate in Susquehanna's due diligence efforts. As part of this assignment, on February 24, 2003, Favilla visited the law offices of Skadden, Arps, Slate, Meagher & Flom LLP in Washington, DC in order to review confidential F&M documents.

19. In connection with his review of confidential documents, Favilla was asked to sign, and did sign, a confidentiality agreement dated February 24, 2003. The due diligence-related confidentiality agreement, among other things, prohibited Favilla from disclosing nonpublic information about F&M. After reviewing F&M's confidential documents, Favilla, on

February 28, 2003, attended a due diligence meeting at Susquehanna and presented a report, based on information learned in due diligence, that examined risks associated with the proposed Susquehanna-F&M merger.

Favilla Purchases Shares Of F&M Based On Insider Information And Tips Dowell Who Also Purchases Shares

20. On March 3, 2003, Favilla placed a phone call at 10:25 a.m. to Dowell from Susquehanna's office and spoke with him for 38 minutes. At 10:41 a.m., during the course of this telephone call, Favilla placed an order to purchase 500 shares of F&M common stock at \$30.27 per share. During the course of this phone conversation, Favilla also conveyed material nonpublic information about F&M to Dowell.

21. Shortly after speaking with Favilla, Dowell also purchased shares of F&M common stock. At 11:11 a.m., eight minutes after the call's completion, Dowell purchased 1,000 shares of F&M common stock. Later that day, Dowell purchased another 3,000 shares of F&M common stock. In addition, Dowell purchased more shares of F&M common stock on March 4, 5, and 6, 2003.

The Second Phone Call And Dowell's Subsequent Purchases

22. On March 10, 2003, a second telephone conversation occurred between Favilla and Dowell. This call lasted 44 minutes. Following this conversation, Dowell purchased, on March 11 and 12, 2003, an additional 3,000 shares of F&M common stock. Between March 3 and March 12, 2003, Dowell purchased, in various accounts, at least 8,800 shares of F&M common stock. These shares ranged in price from \$30.20 per share to \$31.27 per share. In total, Dowell spent at least \$269,511 acquiring F&M common stock.

Favilla And Dowell Sell Their F&M Shares After The Public Announcement

23. After the March 13, 2003 public announcement that F&M had entered into a merger agreement with Mercantile, Favilla sold his shares of F&M common stock for a profit of at least \$6,105.

24. After the March 13, 2003 public announcement that F&M had entered into a merger agreement with Mercantile, Dowell sold his shares of F&M common stock for a profit of at least \$104,133.

25. On April 2, 2003, after Dowell had sold most of his shares, he sent Favilla a money order for \$1,000 with a note that said "thank you."

CLAIM FOR RELIEF

**Violations Of Section 10(b) Of The Exchange Act
[15 U.S.C. § 78(b)] And Exchange Act Rule 10b-5 [17 C.F. R. § 240.10b-5]**

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. At all relevant times, Favilla knew, or was reckless in not knowing, that the information concerning the possible acquisition of F&M was material, confidential, and nonpublic. In breach of a duty of trust and confidence that he owed to Susquehanna, and on the basis of this material nonpublic information, Favilla purchased shares of F&M common stock and disclosed this confidential information to his friend, Dowell, who he knew, or was reckless in not knowing, would also purchase shares of F&M common stock on the basis of this information.

28. When Dowell purchased shares of F&M common stock, Dowell knew, or should have known, that Favilla had conveyed material nonpublic information to him in breach of a fiduciary duty, or other duty arising out of a relationship of trust and confidence, that Favilla owed to Susquehanna.

29. By reason of the foregoing, defendants Favilla and Dowell knowingly or recklessly violated, and unless restrained will violate, 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, the Commission respectfully requests that this Court:

I.

Permanently restrain and enjoin Terry F. Favilla and Gary R. Dowell, and their respective officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them 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 Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

II.

Order defendant Favilla to account for and disgorge all ill-gotten gains, including prejudgment interest thereon, resulting from his violative trading alleged in this Complaint and order defendants Favilla and Dowell to account for and disgorge, jointly and severally, all ill-gotten gains, including prejudgment interest thereon, resulting from Dowell's violative trading alleged in this Complaint.


III.

Order defendants Favilla and Dowell to pay a civil monetary penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

IV.

Grant such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,



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