IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	§	
v.	§	**Civil Action No.**
GARY M. KORNMAN, Defendant.	§	**3:04CV1803-L**

COMPLAINT

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

SUMMARY

1. This case involves repeated insider trading by Dallas attorney and securities professional Gary M. Kornman. During the relevant period, Kornman operated The Heritage Organization LLC ("Heritage"), a firm that previously offered tax shelters and estate planning to wealthy individuals. During 2001, Kornman learned material nonpublic information concerning the acquisitions of two public companies during confidential personal tax-planning discussions with senior executives of the companies. In each instance, the senior executive who supplied the material nonpublic information was a prospective Heritage tax client, and in each instance, Kornman traded on the basis of the information.

2. In February 2001, Kornman learned from MiniMed, Inc. founder and then-chief executive officer (the "MiniMed executive") that there was a "70% chance" that MiniMed would be acquired by June 2001 by a Fortune 100 company. As Kornman knew, public announcement of such a transaction would almost certainly cause the share price of the NASDAQ-listed

medical-equipment company to rise. Two days after learning the information, Kornman purchased 6600 shares of MiniMed on behalf of a hedge fund he controlled. In May 2001, MiniMed publicly announced its acquisition by Medtronic Inc., and Kornman's hedge fund sold its MiniMed shares for a profit of approximately $67,000.

3. Kornman obtained similar material nonpublic information during a November 2001 tax-strategy meeting with founder, board member, major shareholder and former chief executive officer of Hollywood Casino Corp. (the "Hollywood executive"). Kornman learned from the Hollywood executive that Hollywood was "definitely" going to be sold in the near future, probably in the late summer of 2002, at between $10 and $11 per share. Kornman knew that news of such a transaction would surely cause Hollywood's share price to rise, as it had with MiniMed. Immediately after the meeting, Kornman began acquiring Hollywood shares in the account of another hedge fund he controlled, at prices below $11 per share. By the time Hollywood announced it was being acquired by another publicly held casino firm in August 2002, Kornman's hedge fund had acquired 29,900 shares at an average cost of $9.39 per share. At Kornman's direction, the hedge fund sold all of these shares for a profit of approximately $75,000 shortly after the acquisition was announced.

4. Kornman breached a duty of trust and confidence to the executives of the two companies. Given the nature of the tax and estate-planning services being offered by Heritage and Kornman, and the type of personal information being provided by the potential clients, both executives reasonably expected that the information would be kept confidential. Indeed, a Kornman associate specifically advised the MiniMed executive that information shared during the interview process would be kept confidential. Likewise, correspondence provided to the Hollywood executive was routinely marked "PERSONAL & CONFIDENTIAL." Furthermore,

the standard Heritage employment agreement defined confidential information to include information from prospective clients.

5. By reason of these activities, Kornman has violated 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. The Commission, in the interest of protecting the public from any further violations of the federal securities laws, brings this action against Kornman seeking permanent injunctive relief, appropriate civil money penalties, and disgorgement of ill-gotten gains plus prejudgment interest.

JURISDICTION

6. The Commission brings this action under Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] to enjoin Kornman from future violations of the federal securities laws and to seek disgorgement, prejudgment interest, and a civil penalty.

7. This Court has jurisdiction over this action under Sections 21(d), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa].

8. Kornman, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce, as well as the facilities of a national securities exchange in connection with the acts, practices and courses of business described in this Complaint. Kornman was unjustly enriched as a result of these activities.

9. Venue is proper because transactions, acts, practices and courses of business described below occurred within the Northern District of Texas, including that all the securities transactions were placed through Kornman's Dallas-based companies.

DEFENDANT

10. Gary M. Kornman, age 60, is an Alabama-licensed attorney who resides in Dallas, Texas. Since at least 1994, Kornman has provided tax and estate-planning advice to wealthy individuals through a private entity he controls, The Heritage Organization LLC. Kornman is an officer of Heritage.

11. Kornman owns Heritage Securities Corporation, a securities broker-dealer registered with the SEC, and he individually holds Series 7 and Series 63 securities licenses.

12. Kornman asserted his Fifth Amendment privilege against self-incrimination during the SEC investigation and refused to testify.

RELATED ENTITIES

13. The Heritage Organization LLC is a Delaware limited liability company formed by Kornman in 1994. From 1994 until 2004, Heritage, through as many as 120 Dallas-based employees or associates, offered estate planning and capital gains tax advice to wealthy individuals. On May 17, 2004, Heritage filed for Chapter 11 bankruptcy protection.

14. During the relevant period, Heritage Capital Partners I LP and Heritage Capital Opportunities Fund I LP were hedge funds managed by a Kornman-controlled management company, which charged the funds a fee based on the assets under management. Kornman personally directed the hedge fund investments for the benefit of Kornman, several entities he controlled, and a few third-party investors. Kornman's illegal stock trading occurred in the hedge funds' brokerage accounts. Kornman discontinued operating the funds and liquidated them in 2003.

STATEMENT OF FACTS

Background

15. Heritage offered its tax and estate-planning services primarily to individuals with at least $10,000,000 in net worth. Chief among the several services offered by the firm were tax-shelter investments involving the use of partnerships to shelter capital-gains income.

16. In phone calls and in written correspondence, the firm touted the experienced lawyers and accountants on its staff. The firm's research department also created a profile for each prospective client that included detailed financial information, family relationships, work history, associations, political contributions and summaries of telephone conversations and face-to-face meetings.

17. Heritage went to great lengths to ensure that the information obtained from its clients and prospective clients was accurate. For example, the firm required its employees to surreptitiously record telephone conversations and face-to-face meetings with clients and prospective clients.

18. Heritage policy also required protection of confidential client information. At the conclusion of each meeting with clients and prospective clients, Heritage personnel were required to prepare a memorandum summarizing the meeting. Each memorandum emphasized the sensitive nature of the information and bore the following legend:

> This document and the information contained in it are Confidential Information owned by The Heritage Organization, L.L.C. The removal, copying or disclosure of this document and the information contained in it by anyone, other than an authorized employee of The Heritage Organization, L.L.C. only in the normal performance of their duties as an employee of The Heritage Organization, L.L.C. without the express written approval of the Chief Executive of The Heritage Organization, L.L.C. is strictly prohibited by law and by contract and will be enforced according to any contract and prosecuted to the limits of the law.

Employees who failed to prepare such memoranda were subject to fines.

19. Additionally, Heritage required its employees to sign a fifty-page employment agreement that strictly prohibited the disclosure or use of confidential information, which was broadly defined to include information from prospective clients.

Kornman's Illegal MiniMed Trades

20. Between October 2000 and June 2001, Heritage personnel had a series of phone conversations and meetings with the founder and then-CEO of MiniMed. The MiniMed executive was considering retaining Heritage as a personal tax adviser in anticipation of selling his controlling interest in MiniMed.

21. During this period, a Heritage employee told the MiniMed executive that all information discussed with Heritage would be kept confidential. In addition, the MiniMed executive was provided a copy of the Heritage agreement that contained a "Confidentiality" provision requiring Heritage "to keep confidential … all documents received from the [client]," except in four specifically enumerated circumstances, such as being compelled under the process of law.

22. Further, due to the types of tax and estate-planning services and related legal and financial services offered by Heritage, the types of professionals it purportedly employed, and the personal, confidential, and sensitive nature of the information that needed to be shared in order to obtain the services offered by Heritage**,** the MiniMed executive expected Heritage to maintain the confidentiality of the information he provided.

23. By letter dated February 2, 2001, after more than a year of confidential, nonpublic discussions, Medtronic proposed a one-for-one stock exchange to acquire MiniMed and another company.

24. On February 7, 2001, Kornman and another Heritage associate traveled to California to meet with the MiniMed executive. As recorded in a memorandum prepared by the Heritage associate immediately after the meeting, the MiniMed executive informed Kornman that MiniMed "had a suitor who could potentially purchase Minimed and gave it a 70% chance of going through." Moreover, the MiniMed executive identified the suitor as a "Fortune 100 company" and stated that the acquisition would probably take place "around June 2001." Recognizing the highly confidential nature of the information received from the MiniMed executive, the memorandum contained the confidentiality provision described in paragraph 18 of this Complaint.

25. On February 9, 2001, two days after meeting with the MiniMed executive, Kornman orally directed his trading assistant to purchase 6600 shares of MiniMed for the account of a Kornman hedge fund – Heritage Capital Partners I LP – at the market price of $37.86 per share.

26. Kornman executed these trades on the basis of the material nonpublic information regarding the upcoming acquisition of MiniMed.

27. Discussions continued between Medtronic and MiniMed. On May 30, 2001, the companies publicly announced that Medtronic had agreed to purchase all of the outstanding shares of MiniMed at $48 per share.

28. On August 31, 2001, Kornman's hedge fund received cash for merged shares of MiniMed. Based on the $48 per share paid by Medtronic to acquire MiniMed, Kornman's hedge fund profited by approximately $67,000 on the MiniMed trades.

29. The February 7, 2001 meeting at which Kornman obtained material nonpublic information was the third face-to-face meeting between the MiniMed executive and Heritage

representatives. On two earlier occasions – October 25 and November 30, 2000 – the MiniMed executive had disclosed confidences to Heritage regarding his personal financial condition and the potential acquisition of MiniMed. Kornman did not purchase MiniMed shares, however, until he received more definitive information about the acquisition at the February 7, 2001 meeting.

Kornman's Illegal Hollywood Trades

30. Kornman learned in a meeting with another potential Heritage client – the Hollywood executive – of the sale of Hollywood. The Hollywood executive was a Hollywood board member, founder, former CEO and major shareholder.

31. On November 12, 2001, Hollywood's board of directors internally expressed its intent to sell Hollywood to another gaming firm, which, if completed, would result in substantial capital gains for the Hollywood executive.

32. On November 19, 2001, the Hollywood executive met with Kornman and another Heritage employee at Hollywood's offices to discuss retention of Heritage as a personal tax adviser. As reflected in the memorandum of the November 19th meeting prepared by a Heritage employee, the Hollywood executive told Kornman that Hollywood was "definitely" going to be sold in the "near future," probably in the "late summer of 2002."

33. The Hollywood executive also disclosed, as noted in the memorandum, that the purchase price "should be over $10 and possibly over $11 per share." On the eve of the meeting Hollywood's share price closed at $9.25.

34. Recognizing the highly confidential nature of the information received from the Hollywood executive, the memorandum of the November 19th meeting contained the confidentiality provision described in paragraph 18 of this Complaint.

35. Before the November 19th meeting, the Hollywood executive had held telephone discussions with Heritage personnel and had received correspondence from Heritage marked "PERSONAL & CONFIDENTIAL." Due to the types of tax and estate-planning services and related legal and financial services offered by Heritage, the types of professionals it purportedly employed, and the personal, confidential, and sensitive nature of the information that needed to be shared in order to obtain the services offered by Heritage**,** the Hollywood executive expected Heritage to maintain the confidentiality of the information he provided.

36. As of the November 19th meeting with Kornman, the Hollywood executive had already held merger discussions with the CEO of Penn National Gaming, Inc. ("PNG"), a NASDAQ-listed gaming company. Although no agreements between the two companies had been signed at the time, the Hollywood executive believed PNG was an excellent prospect for acquiring Hollywood because Hollywood was a good fit for PNG's expansion strategy.

37. The Hollywood executive based the probable $10 to $11 purchase price on Hollywood's earnings before interest, taxes, depreciation, and amortization. He based the "late summer 2002" timing of the acquisition on the time he expected it would take to complete an expansion project at one of Hollywood's several casinos.

38. The Hollywood executive was aware that Hollywood's board intended to sell the company when the expansion was complete. In fact, on August 7, 2002, less than two months after the expansion was completed, a merger was announced in which PNG would acquire Hollywood for $12.75 per share.

39. Once again taking advantage of a prospective client, not to mention the unsuspecting sellers of Hollywood shares, Kornman bought ahead of the expected good news.

40. Specifically, within a week of the November 19th meeting with the Hollywood executive, Kornman directed his trading assistant to begin acquiring Hollywood shares in the account of another Kornman hedge fund, Heritage Capital Opportunities Fund I LP. Kornman instructed the assistant to purchase the shares at prices below $11 per share (the highest acquisition price mentioned by the Hollywood executive).

41. Between November 26, 2001 and June 27, 2002, the hedge fund acquired 29,900 shares at prices between $7.65 and $10.70 per share, with the average price being $9.39. Kornman did not direct the purchase of any Hollywood shares from February 24 through May 24, 2002, when the stock traded between $13.70 and $16.92 per share.

42. On August 7, 2002, a merger was announced in which PNG would acquire Hollywood for $12.75 per share. Six days later, on August 13, 2002, the hedge fund sold all of its Hollywood shares at Kornman's direction for a profit of approximately $75,000.

43. Kornman had a pattern of dealings with the Hollywood executive that predated the November 19, 2001 meeting at which Kornman obtained material nonpublic information. In fact, letters from Heritage to the Hollywood executive dated February 28, March 2 and March 14, 2001 bore the legend "PERSONAL & CONFIDENTIAL." In addition, Heritage had face-to-face meetings with the Hollywood executive on March 23 and April 11, 2001 at which the Hollywood executive disclosed confidences about his personal financial condition and the potential acquisition of Hollywood. But Kornman did not purchase Hollywood shares until obtaining more definitive information about the merger on November 18, 2001.

CLAIMS

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

44. Plaintiff Commission repeats and incorporates paragraphs 1 through 43 of this Complaint by reference as if set forth verbatim.

45. Kornman, by engaging in the conduct described above, directly and indirectly, in connection with the purchase and sale of securities, and by use of the means and instrumentalities of interstate commerce, the mails, and a national securities exchange has:

(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 the light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices or courses of business that have operated or will operate as a fraud and deceit upon other persons.

46. Kornman purchased and sold securities of issuers Minimed and Hollywood, in breach of a duty of trust or confidence that he owed directly, indirectly, or derivatively, to the sources of the material nonpublic information – the MiniMed and Hollywood executives. Kornman breached duties of trust and confidence established by agreement, by history, pattern, or practice of sharing confidences, and by the sensitive nature of the professional services discussed.

47. Kornman intentionally, knowingly or with severe recklessness made the untrue statements and omissions and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above.

48. By reason of the foregoing acts and practices, Kornman violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

REQUEST FOR RELIEF

The Commission respectfully requests that this Court enter a judgment:

(i) permanently enjoining Kornman from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

(ii) ordering Kornman to pay civil penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-1], for his violations of the federal securities laws;

(iii) ordering Kornman to disgorge all ill-gotten gains from his unlawful conduct, with prejudgment interest; and

(iv) granting any additional relief the Court deems appropriate.

Dated this ________ day of August, 2004.

Respectfully submitted,

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