

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,
450 Fifth Street, N.W.
Washington, DC 20549

Plaintiff,

v.

JOHN TURCHETTA,

Defendant.

Case: 1:08-cv-00819
Assigned To : Bates, John D.
Assign. Date : 5/13/2008
Description: General Civil

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") for its Complaint against Defendant John Turchetta ("Turchetta") alleges as follows:

SUMMARY

1. This case arises out of insider trading by Turchetta and trading caused by Turchetta in the securities of U.S. Foodservice, Inc. ("USF") after he acquired material, nonpublic information concerning a proposed tender offer for USF by Royal Ahold (Koninklijke Ahold, N.V.) ("Ahold").

2. During the period February 16, 2000 through February 28, 2000, after learning from a USF vendor of Ahold's intention to acquire USF at approximately \$24 to \$26 per share and that the source of the information was a senior executive at USF, Turchetta purchased 30,000 shares of USF common stock at an average price of \$13.19 per share. Turchetta was tipped about the pending acquisition by the USF vendor, Peter Marion, who had been tipped by Timothy J. Lee, a senior executive at USF. On March 7, 2000, Ahold and USF publicly announced Ahold's tender offer at \$26 per share. Turchetta tendered his shares at the offer price

after the announcement and Turchetta profited from those trades in an amount of approximately \$384,156.

3. Turchetta also caused others to purchase USF, resulting in a profit to Turchetta of approximately \$168,844.

4. When he purchased USF shares and caused the purchase of USF shares by others, Turchetta knew or acted in reckless disregard of the fact that the information he possessed concerning the then-contemplated tender offer for USF was material nonpublic information that had been communicated to him directly or indirectly in breach of a duty of trust and confidence by an insider of USF.

JURISDICTION AND VENUE

5. This Court has jurisdiction and venue over this action pursuant to Sections 21(e), 21A(a)(1) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(e), 78u-1(a)(1) and 78aa].

6. Defendant Turchetta engaged in acts, practices, and courses of business that violated Sections 10(b) and 14(e) of the Securities Exchange Act [15 U.S.C. §§ 78j(b) and 78m(e)], and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3], through the means or instrumentalities of interstate commerce, the mails, or the facilities of a national securities exchange.

7. The Commission seeks a judgment permanently enjoining Turchetta from future violations and directing disgorgement of his illegal profits and profits he caused, pursuant to Section 21(d)(1) and (e) of the Exchange Act [15 U.S.C. § 78u(d)(1) and (e)]. Unless enjoined, Turchetta will continue to engage in transactions, acts, practices, and courses of business that

violate the provisions of the Exchange Act. The Commission also seeks an award of civil penalties, pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

THE DEFENDANT

8. John Turchetta, age 72, resides in Naples, Florida. Turchetta was a close friend of Peter Marion.

9. U.S. Foodservice, Inc. was, prior to its acquisition by Ahold, a publicly traded company engaged in the food distribution business. USF was headquartered in Columbia, Maryland. The common stock of USF was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed for trading on the New York Stock Exchange.

10. Ahold, an international retail and wholesale food provider, is a publicly held company organized in The Netherlands with securities that were registered with the Commission pursuant to Section 12(b) of the Exchange Act. Ahold's securities traded on the New York Stock Exchange and are evidenced by American Depositary Receipts.

FACTS

11. On September 7, 1999, the Chief Executive Officers of USF and Ahold met at a social outing and discussed opportunities, including a business combination, involving the two companies.

12. On October 11, 1999, the Chief Executive Officers of USF and Ahold met again and discussed business opportunities, including a business combination, involving the two companies.

13. On December 14, 1999, following additional discussions between the two companies and their representatives, USF's management informed its Board of Directors of the possibility of a business combination involving USF and Ahold. That same day, USF's Board of

Directors authorized the company's management to engage financial and legal advisors to assist the company in pursuing a possible business combination.

14. On January 21, 2000, investment bankers for the companies met to discuss valuation issues and possible synergies from a potential business combination.

15. On January 25, 2000, senior executives from the companies met to discuss an overview of their operations and potential synergies as well as potential administrative, procurement, distribution, equipment, and supplies savings, and implementation issues.

16. On February 7, 2000, after various confidential discussions among the parties, Ahold presented a preliminary proposal to USF whereby Ahold would acquire USF at a price of \$26 per share. On that date, the price of USF stock closed at \$12 3/8.

17. On March 6, 2000, following additional confidential discussions and related activity, USF's Board of Directors unanimously approved the terms and conditions of a merger agreement with Ahold. On March 7, 2000, the two companies publicly announced Ahold's tender offer for the outstanding shares of USF at \$26 a share.

18. Throughout the discussions and negotiations concerning the contemplated acquisition, Ahold and USF took steps to ensure that the contemplated acquisition remained confidential. On or before February 7, 2000, the information regarding Ahold offer was material and Ahold and USF had taken substantial steps toward a tender offer.

19. On or before February 16, 2000, Turchetta spoke with Peter Marion, who had been tipped by Timothy J. Lee, a senior executive in USF's purchasing department. Prior to their conversation, Marion had learned, directly or indirectly from Lee, that USF was the target of a contemplated but unannounced acquisition and that the acquisition price for USF stock would be approximately \$24 to \$26 per share. Lee told Marion that information in breach of his

duty of trust and confidence to the shareholders of USF. On or before February 16, 2000, Marion informed Turchetta, in substance and in part, that he learned from Lee that an overseas company was going to acquire USF and that the purchase price of each share of USF stock was to be approximately \$24 to \$26 per share. Turchetta knew at the time that neither Ahold nor USF had publicly announced Ahold's proposed acquisition. Turchetta also knew at the time, or had reason to know, that the information related to Turchetta by Marion regarding the acquisition of USF originated from Lee. This information was material and nonpublic, and Lee directly or indirectly owed a duty of trust and confidence to USF and its shareholders not to disclose it.

20. On February 16, 2000, after learning from Marion that USF was the target of a proposed acquisition and that the acquisition valued USF at approximately \$24 to \$26 per share, Defendant Turchetta purchased 20,000 shares of USF common stock at an average price of \$11.7453. On February 28, 2000, Defendant Turchetta purchased an additional 10,000 USF shares.

21. Prior to Turchetta's purchases, the information concerning the tender offer for USF shares had not been publicly disclosed.

22. On March 7, 2000, before the market opened, Ahold and USF publicly announced Ahold's tender offer for USF at \$26 per share.

23. Following the public announcement, on April 12, 2000 Turchetta tendered his 30,000 shares of USF stock at the tender price of \$26.00 per share.

24. Turchetta made illegal profits of approximately \$384,156 by his trading in USF stock.

25. The following chart reflects Turchetta's trading in USF:

<u>Date</u>	<u>B/S</u>	<u>Account Name</u>	<u>Shares</u>	<u>Price</u>	<u>Total</u>
02/16/00	BUY	John Turchetta	20,000	11.74530	-234,906.00
02/28/00	BUY	John Turchetta	10,000	16.09380	-160,938.00
04/12/00	TNDR	John Turchetta	-30,000	26.00000	780,000.00

26. After receiving the information of the contemplated tender offer as described above, Turchetta told others that the basis for his purchase was information he obtained from Marion regarding positive business developments at USF. As a result of this and other information, Turchetta's downstream tippees purchased USF stock, resulting in profits to Turchetta of approximately \$168,844.

27. Turchetta knew that his tippees purchased USF stock and that he would benefit from such trading.

FIRST CLAIM FOR RELIEF

Violations of 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

28. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

29. As set forth above, Turchetta purchased 30,000 shares of USF common stock after learning from Marion that USF was the target of a proposed acquisition that valued USF at approximately \$24 to \$26 a share. When he purchased these shares, Turchetta knew or was reckless in not knowing that the information he possessed concerning the proposed acquisition of USF was material and nonpublic and that it had been communicated to him directly or indirectly in breach of a duty of trust and confidence. When Turchetta discussed USF and the information obtained from Marion with his tippees, as alleged above, Turchetta knew or was reckless in not knowing that they would purchase USF securities and that Turchetta would benefit.

30. By reason of the foregoing, Turchetta, directly or indirectly, acting intentionally, knowingly, or recklessly, by use of the means or instrumentalities of interstate commerce or of

the mails, in connection with the purchase of securities: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated as a fraud or deceit upon other persons.

31. By reason of the foregoing, Turchetta violated 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].

SECOND CLAIM FOR RELIEF

Violations of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] Thereunder

32. Paragraphs 1 through 31 are realleged and incorporated herein by reference.

33. As set forth above, by February 1, 2000, Ahold had taken substantial steps towards commencing its tender offer for the securities of USF by, among other things, holding several confidential meetings and discussions with representatives of USF and by communicating to USF prices at which it was prepared to acquire USF.

34. Turchetta purchased USF stock, as described above, while he possessed material information relating to a tender offer for USF stock by Ahold. At the time that he purchased the USF stock, Turchetta knew or had reason to know that the information he possessed concerning the tender offer was nonpublic and had been acquired directly or indirectly from USF. When Turchetta discussed USF and the information obtained from Marion with his tippees, as alleged above, it was reasonably foreseeable to Turchetta that they would purchase USF securities.

35. By reason of the foregoing, Turchetta violated Section 14(e) of the Exchange Act [15 U.S.C. § 78(e)], and Rule 14e-3 [17 C.F.R. § 240.14e-3], promulgated thereunder.

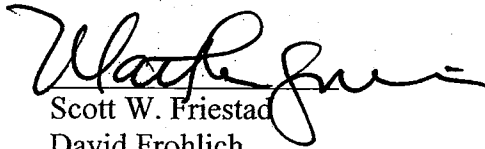
PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

- a. Permanently enjoin Turchetta from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.
- b. Order Turchetta to disgorge jointly and severally all illegal gains from his unlawful conduct, gained directly or indirectly from the transactions complained of herein, including without limitation the trading profits he made as set forth herein, together with prejudgment interest thereon.
- c. Order Turchetta to pay a civil money penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].
- d. Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.
- e. Grant such other and further relief as this Court may determine to be just and appropriate.

Dated: May 13, 2008

Respectfully submitted,



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