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U.S. DISTRICT COURT E.D.N.Y.

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GLASSER, J.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CHAYA UNGER,

Defendant.

CV 10 - 0991

GLASSER, J.

REYES, M.J.

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Defendant Chaya Unger ("Unger"), alleges:

SUMMARY

1. This case involves the fraudulent purchase of stock in four public offerings of banks that were converting from mutual to stock form of ownership. In each instance, Unger circumvented offering terms and banking regulations by secretly using her friends or relatives, who were depositors at the converting banks and thus had priority rights in the offerings, as nominees to acquire stock in those conversions. In each instance, Unger had the nominees falsely represent to the converting banks that the nominees were purchasing the stock for their own accounts, and that they had no agreement or understanding regarding the sale or transfer of

the stock. In fact, the nominees were purchasing the stock with funds provided mostly or wholly by Unger and with the understanding that, once the stock was received, most or all of the stock or the proceeds from its sale would be transferred to Unger. The illegal profits from the fraudulently obtained stock amounted to approximately \$227,589.

2. Through this scheme, Unger and her nominees circumvented federal and state banking regulations that require banks to give their own depositors first priority to purchase stock ahead of other interested investors when converting from mutual to stock ownership. These priority subscription rights allow depositors to purchase up to a certain number of shares at a relatively low subscription price. If an offering is oversubscribed, then the available shares are allocated among depositors according to various criteria. Bank offering stock is usually priced at \$10 per share and can often be sold in the secondary market at a high premium over the offering price. Therefore, these offerings typically attract significant investor interest. To ensure that only depositors benefit from their priority stock subscription rights, federal and state banking regulations prohibit depositors from transferring ownership of their subscription rights or from entering into any agreement regarding the sale or transfer of shares purchased in the offering. These restrictions are set forth in the offering prospectus, and depositors are required to sign a subscription agreement certifying that they are purchasing the stock solely for their own accounts, and that they have no agreement or understanding regarding the sale or transfer of any shares they receive.

3. To circumvent these restrictions, Unger secretly provided most or all of the funding for the stock purchases made by nominee depositors who, despite the arrangement they had with Unger, falsely certified that they were purchasing the shares solely for their own accounts and that they had no agreement or understanding regarding the sale or transfer of any

shares they received. These nominees then transferred most or all of the illegally obtained shares, or of the proceeds from the sale of the illegally obtained shares, to Unger.

4. Through this scheme, Unger violated and aided and abetted the violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Unless she is permanently restrained and enjoined, Unger will again engage in the acts, practices, transactions and courses of business set forth in this complaint and in acts, practices, transactions and courses of business of similar type and object.

#### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this action pursuant to Sections 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

6. Venue is proper in the Eastern District of New York pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the acts and transactions constituting the violations alleged herein occurred within the Eastern District of New York. Unger resides in the Eastern District of New York and arranged the fraudulent stock purchases alleged herein substantially from her residence in the Eastern District of New York.

7. Unger, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or of facilities of national securities exchanges in connection with the fraudulent stock purchases alleged herein.

#### **DEFENDANT**

8. Unger, age 53, is, and at all relevant times was, a resident of Flushing, Queens.

## FACTS

### **A. The Conversion Process**

9. Savings banks are generally organized either as mutual associations, or thrifts, owned by depositors, or as capital stock companies owned by shareholders. In conversion from mutual to stock form, subscription rights to the stock are granted in tiers to defined groups with different levels of priority. Typically, depositors who have held accounts for a certain period of time before the offering have first priority. Groups with lower levels of priority generally include bank employee benefit plans and borrowers or others who held accounts for a shorter period of time before the offering. Public investors may receive shares in the offering only if shares remain available after the orders of those with priority rights are filled.

10. Federal and state banking laws prohibit depositors from transferring their subscription rights or entering into any arrangement for the transfer of shares before the shares are issued. These prohibitions are typically incorporated into offering terms set forth in the prospectus.

11. Because mutual-to-stock conversions have historically proven to be lucrative investment opportunities, in many instances, depositors, in the aggregate, subscribe for more shares than the bank intends to issue. When offerings are oversubscribed, some eligible depositors may receive fewer shares than they requested or no shares at all. The four conversions described in this complaint were all oversubscribed.

12. To request shares in a conversion, depositors have to fill out and sign a stock order form and submit that form to the converting bank together with payment for the shares requested. The order forms usually contain, in the "Acknowledgement" section, a version of the following provision that would-be subscribers must certify:

[Applicable banking] regulations prohibit any person from transferring, or entering into any agreement, directly or indirectly, to transfer the legal or beneficial ownership of subscription rights or the underlying securities to the account of another. . . . Under penalty of perjury, I certify that I am purchasing shares solely for my account and that there is no agreement or understanding regarding the sale or transfer of such shares, or my right to subscribe for shares.

13. If the stock order form is not certified, the subscriber will not receive shares in the offering.

**B. Unger's Scheme**

14. As described below, in connection with four bank conversions between April 2002 and April 2007, Unger, by using her friends and relatives as nominees, fraudulently obtained a benefit – i.e., shares, dividends, and the proceeds of shares sold in the secondary market – to which she was not entitled. Because the conversions were all oversubscribed, legitimate depositors were harmed as a result of Unger's conduct.

15. In this case, in all four conversions described below, the nominees each certified stock order forms containing the Acknowledgment described in paragraph 12 above. In all four cases, the certifications were false because the depositors were buying all or most of the shares with funds provided by Unger with the understanding that all or most of the shares or of the proceeds from the sales of those shares would go to Unger.

16. These misrepresentations were material. Had the converting banks known that the shares were being ordered for the benefit of an ineligible person rather than for the eligible depositors who filled out and signed the stock order forms, the banks would not have sold shares to these depositors.

17. At all times, Unger acted intentionally, or at a minimum, recklessly, in arranging the fraudulent stock purchases described below.

1. **Willow Grove Bancorp., Inc. (April 2002)**

18. In September 2001, Willow Grove Bancorp., Inc., the holding company of Willow Grove Bank (together, "Willow Grove"), announced a plan of conversion from mutual to stock form of ownership. The prospectus issued in connection with the conversion, dated February 11, 2002, provided, among other things, that Willow Grove Bank account holders who had at least \$50 on deposit on June 30, 2000, would be given first priority in the offering; that the offering would close on March 19, 2002; and that subscription rights in connection with the offering were not transferable.

19. On or about March 13, 2002, Unger's friend, who was a depositor at Willow Grove Bank and had first priority rights in the upcoming offering ("Nominee A"), submitted a stock order form to Willow Grove, requesting 46,500 shares at the price of \$10 per share, together with payment of \$465,000.

20. In the stock order form, Nominee A certified that the stock order was only for her own account, and that there was no agreement or understanding regarding any further sale or transfer of the stock.

21. That certification was materially false because Nominee A was purchasing virtually all of the shares with funds provided by Unger and for Unger's benefit.

22. Specifically, on or about March 15, 2002, Unger wired \$450,000 to the account of Nominee A – an amount equal to the offering price of 45,000 of the 46,500 shares that Nominee A had ordered.

23. Willow Grove issued 46,500 shares to Nominee A in or about April 2002. Of those 46,500 shares, 45,000 shares were deposited into Nominee A's joint brokerage account with Unger. All these shares were sold, at a profit, and Unger received all the proceeds.

24. The illegal profits from the fraudulently purchased Willow Grove stock equaled \$81,758.25.

2. **Kearny Financial Corp. (February 2005)**

25. In or about September 2004, Kearny Financial Corp., the parent company of Kearny Federal Savings Bank (“Kearny Bank” or, together with its parent company, “Kearny”), filed with the Commission a registration statement describing its plan to offer for sale shares in connection with its upcoming conversion. Depositors of Kearny Bank who, as of March 30, 2003, had deposits of at least \$50, were to have first priority right in the offering.

26. On or about January 26, 2005, Unger’s relative, who was an eligible depositor at Kearny Bank with first priority rights (“Nominee B”), submitted to Kearny a stock order form together with payment of \$500,000, requesting 50,000 shares in the offering. In the stock order form, Nominee B certified that he was purchasing the stock only for his own account, and that there was no agreement or understanding regarding sale or transfer of the stock.

27. That certification was materially false because Nominee B’s stock order was funded in part by Unger and in part by another Unger relative, acting in concert with her; and the shares were requested for the benefit of Unger and that relative’s family.

28. Specifically, Unger and her relative wired \$395,000 and \$105,000, respectively, to Nominee B’s account on the same day when Nominee B submitted his payment to Kearny for the stock. Thus, all funding for Nominee B’s stock order came from Unger or her relative acting in concert with her.

29. Because the offering was oversubscribed, Nominee B only received 11,657 shares in the offering. Thus, Kearny returned to Nominee B approximately \$383,430 in excess funds, plus interest. All \$383,430 of excess funds were returned to Unger.

30. Of the 11,657 shares that Nominee B ultimately received in the Kearny conversion, 8,657 shares were soon after their receipt transferred to Unger's brokerage account and sold at a profit. The proceeds from the sale of the remaining 3,000 shares were transferred to the family of the relative who co-funded the purchase in concert with Unger.

31. The illegal profits from the fraudulently purchased Kearny stock equaled \$36,384.03.

**3. Investors Bancorp Inc. (October 2005)**

32. In or about February 2005, Investors Bancorp, Inc., the holding company of Investors Savings Bank ("Investors Bank" or, together with its holding company, "Investors"), announced the plan to convert to stock form of ownership by conducting an offering of its shares in October 2005. Investors Bank depositors as of January 31, 2004, were to have first priority rights in the offering. The prospectus issued in connection with the offering, dated August 12, 2005, similarly described the priority right of the depositors and stated that the subscription rights were not transferable.

33. In or about September 2005, Unger's friend, who was an eligible depositor of Investors Bank with first priority rights ("Nominee C"), submitted a stock order form to Investors, together with payment of \$267,000, requesting 26,700 shares and certifying that he was buying the shares solely for his account, and that there was no agreement or understanding regarding the sale or transfer of the shares, or of his right to subscribe for the shares.

34. That certification was materially false because Nominee C's stock order was funded by Unger, and the shares were being requested for Unger's benefit.

35. Specifically, Unger wired \$267,000 to Nominee C's account in the days preceding Nominee C's payment to Investors for the stock.



36. Because the offering was oversubscribed, Investors only issued 9,125 shares to Nominee C. When Investors returned approximately \$175,750 in excess funds, plus interest, to Nominee C, Nominee C returned at least \$175,250 of that money to Unger.

37. After Nominee C received the 9,125 shares in the Investors conversion, Nominee C transferred those shares to Unger, who then sold them at a profit.

38. The illegal profits from the fraudulently purchased Investors stock equaled \$40,812.25.

**4. TFS Financial Corp. (April 2007)**

39. On or about December 13, 2006, TFS Financial Corporation filed a registration statement for its upcoming offering of stock in connection with conversion to stock form of ownership. Depositors of Third Federal Savings and Loan Association of Cleveland (together with TFS Financial Corporation, "TFS") with at least \$50 on deposit as of April 30, 2005, were to have first priority rights in the offering.

40. On or about March 24, 2007, Unger's friend, who was an eligible depositor of TFS with first priority rights ("Nominee D"), submitted a stock order form to TFS with payment of \$350,000, requesting 35,000 shares. In the stock order form, Nominee D certified that he was buying the shares solely for his account, and that there was no agreement or understanding regarding the sale or transfer of the shares, or of his right to subscribe for shares.

41. That certification was materially false. Approximately 85% of funding for Nominee D's stock order came from Unger, and most of the shares were being purchased for Unger's benefit.

42. Specifically, Unger wired at least \$298,000 to Nominee D's account in the days preceding Nominee D's payment to TFS for the stock.

43. Shortly after Nominee D received 35,000 shares in the TFS conversion, Unger learned of the Commission's investigation of her activities. As a result, TFS shares that were purchased for Unger's benefit were not transferred to Unger but instead were transferred to another account Nominee D owned jointly with a family member. Ultimately, most of those shares were sold in a series of transactions, at a profit. A significant portion of the proceeds from the secondary market sales of the stock was transferred to Unger or her relatives.

44. The illegal profits from the fraudulently purchased TFS stock equaled \$68,634.31.

**CLAIM FOR RELIEF**  
**Violations of Section 10(b) of the Exchange Act**  
**and Rule 10b-5 Thereunder**

45. Paragraphs 1 through 44 are incorporated by reference as if set forth fully herein.

46. From at least April 2002 to at least April 2007, Unger, in connection with the purchase or sale of securities, directly and indirectly, by the use of means or instrumentalities of interstate commerce, or of the mails, or of facilities of a national securities exchange, employed devices, schemes or artifices to defraud; made untrue statements of material fact 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 engaged in acts, practices and courses of business which operated as a fraud and deceit upon others.

47. By reason of the activities herein described, Unger violated and aided and abetted 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].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment against Unger granting the following relief:

**I.**

Finding that Unger 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].

**II.**

Permanently restraining and enjoining Unger, her 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 committing future 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].

**III.**

Directing Unger to disgorge her ill-gotten gains, plus prejudgment interest thereon.

**IV.**

Directing Unger to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

V.

Granting such other and further relief as this Court deems just and appropriate.

Dated: New York, New York  
March 4, 2010

SECURITIES AND EXCHANGE COMMISSION

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