

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

JOHN M. DARDEN, III

Defendant.

Civil Action File No.

COMPLAINT

The plaintiff Securities and Exchange Commission files this Complaint and alleges as follows:

1. This matter involves insider trading by Defendant John M. Darden, III in the common stock and options of AirTran Holdings, Inc. (“AirTran”) (formerly New York Stock Exchange (“NYSE”) ticker symbol AAI) based on material, nonpublic information about AirTran’s merger, obtained by Darden from a longtime board member of AirTran.

2. Based upon the inside information obtained from the board member, Darden purchased 40,000 common shares and 200 out-of-the-money call options in

the days before the September 27, 2010 public announcement that Southwest Airlines Company and AirTran had entered into a definitive merger agreement.

3. As a result of his improper use of the inside information concerning the merger, Darden generated trading profits of \$159,160.

4. By knowingly or recklessly engaging in the conduct described in this Complaint, Defendant has violated, and unless restrained and enjoined by this Court, will continue to violate Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

5. The Commission seeks to enjoin Defendant from further violations of the securities laws, to obtain disgorgement of the insider trading profits, and a civil penalty.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78u-1.

7. This Court has jurisdiction of this action pursuant to 15 U.S.C. §§ 78u(d), 78u(e), 78u-1 and 78aa, and pursuant to 28 U.S.C. § 1345.

8. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the actions set forth herein occurred within the Northern District of Georgia, including but not limited to, the communication

or misappropriation of material non-public information about the acquisition of AirTran and Defendant's insider trading based upon such information. Defendant is further a resident of the Northern District of Georgia.

DEFENDANT AND OTHER PERSONS AND ENTITIES

9. Defendant Darden, age 73, is a resident of Atlanta, Georgia and the owner of a non-operating consulting company.

10. AirTran was a Nevada corporation headquartered in Orlando, Florida, and was the parent company of AirTran Airways, Inc., the operator of a passenger airline. The stock of AirTran was traded on the NYSE and its securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act.

11. Southwest is a Texas corporation headquartered in Dallas, Texas, that operates a passenger airline.

FACTUAL ALLEGATIONS

12. During the relevant time period, the board member served on AirTran's board of directors and had access to high level, confidential and sensitive information relating to the business of AirTran. Defendant knew that the board member served on the board of directors of AirTran and therefore had access to material, nonpublic information concerning AirTran.

13. Defendant and the board member have maintained regular contact over 30 years. The board member has been leasing commercial office space from Defendant's consulting company for approximately six years. During the relevant time period the Defendant and the board member shared an office suite with adjoining offices and a single telephone number and secretary. They spoke on the phone or in person in each other's office one or two times a week.

14. During the course of their friendship, the board member and Defendant shared confidential information, which information was expected to be and was maintained as confidential.

15. On May 6, 2010, Southwest's CEO met with the CEO of AirTran to discuss whether AirTran would be receptive to an acquisition by Southwest.

16. On May 18, 2010, the members of AirTran's board of directors, including the board member, were advised of Southwest's interest in acquiring AirTran. Thereafter, discussions began between senior management at AirTran and at Southwest regarding an acquisition.

17. On June 22, 2010, AirTran and Southwest executed a confidentiality agreement and standstill agreement, after which Southwest commenced preliminary due diligence review of certain nonpublic information concerning

AirTran. AirTran provided details of the status of merger negotiations throughout the process to its directors, including the board member.

18. On September 21, 2010, the board member attended an AirTran board of directors meeting at which the finalized terms of the merger were discussed.

19. The board member either shared this material nonpublic information with Defendant with the intent of personally benefiting Defendant or, in the alternative, the board member shared this information with Defendant in confidence and Defendant then misappropriated and traded on this information.

20. On September 22, 2010, the day after the board member attended the AirTran board meeting at which they discussed terms of the proposed acquisition, and three trading days before the public merger announcement, Darden misused the material, nonpublic information concerning the merger to purchase a total of 40,000 AirTran shares and 200 out-of-the-money AirTran call options that were to expire on January 22, 2011. Defendant financed the purchase of 20,000 of those AirTran shares and all of the call options on margin.

21. On Monday, September 27, 2012, prior to the opening of the markets, AirTran and Southwest announced that that they had signed a definitive merger agreement whereby Southwest would acquire all of the outstanding shares of AirTran.

22. After the merger announcement, AirTran common stock closed at \$7.34, a 61% increase from the prior day's close.

23. The next day, Darden sold all of his AirTran calls for realized profits of \$40,600. The following day, Darden sold 20,000 AirTran shares for realized profits of \$58,250. Darden sold his remaining 20,000 AirTran shares on October 20, 2010 for realized profits of \$60,310. Darden's total realized profits for his improper trading in AirTran amounted to \$159,160.

24. The confidential information that Darden obtained from the board member was material, as it included information identifying a potential merger. A reasonable investor would have viewed this information as being important to his or her investment decision or a significant alteration of the total mix of information made available to the public about AirTran. Darden knew, or was reckless in not knowing, that the information he obtained from the board member was material and nonpublic.

25. As a result of their close and long-standing business and personal relationship (a) Defendant knew or was reckless in not knowing that the board member owed a fiduciary duty to AirTrain; and (b) Defendant owed a duty of trust and confidence to the board member and knew or reasonably should have known that information from the board member concerning the AirTran acquisition was

expected to be maintained as confidential and that Darden could not trade on this information.

26. Defendant misused the confidential information by trading in AirTran securities when he knew it had been divulged in breach of a fiduciary duty or by trading on the basis of the information in breach of his duty of trust and confidence to the board member.

COUNT I
FRAUD

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

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

28. Defendant, in connection with the purchase and sale of securities described herein by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly employed devices, schemes, and artifices to defraud, and engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the sellers of such securities, all as more particularly described above.

29. Defendant knowingly, intentionally, or recklessly engaged in the devices, schemes and artifices to defraud. Defendant acted with scienter, that is, with intent to deceive, manipulate or defraud or with reckless disregard for the truth.

30. By reason of the foregoing, Defendant, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that the Court:

I.

Permanently enjoin Defendant and his agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, and each of them from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

II.

Require Defendant to disgorge all ill-gotten gains as alleged in the Commission's Complaint, plus pay prejudgment interest thereon.

III.

Require Defendant, pursuant to Sections 21(d)(3) and 21A of the Exchange Act to pay civil monetary penalties.

IV.

Grant such other and further relief as may be necessary and appropriate.

JURY DEMAND

The Commission hereby demands a trial by jury as to all issues so triable.

This 15th day of January, 2013.

M. Graham Loomis
Regional Trial Counsel
Georgia Bar No. 457868
loomism@sec.gov

/s/ Joshua A. Mayes
Joshua A. Mayes
Senior Trial Counsel
Georgia Bar No. 143107
mayesj@sec.gov

COUNSEL FOR PLAINTIFF
U.S. SECURITIES AND EXCHANGE COMMISSION
Atlanta Regional Office
950 East Paces Ferry Road, N.E.
Suite 900
Atlanta, Georgia 30326-1382
Tel: (404) 842-7600
Fax: (404) 842-7633