

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

100 F Street, NE
Washington, DC 20549

Plaintiff,

v.

POWELL CALDER,

Defendant.

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Case: 1:07-cv-01786
Assigned To : Huvelle, Ellen S.
Assign. Date : 10/4/2007
Description: General Civil
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COMPLAINT

Plaintiff, the Securities and Exchange Commission (the "Commission"), for its

Complaint alleges as follows:

SUMMARY

1. This is an insider trading case. On April 19, 2005, defendant Powell Calder's sister-in-law, the executive assistant to the Chairman and Chief Executive Officer of Commercial Federal Corporation ("Commercial Federal"), learned that Commercial Federal might be acquired by BancWest Corporation. Sometime between that date and May 31, 2005, Calder's sister-in-law told her husband, Calder's brother, in confidence, about the possible acquisition. During this same time period, Calder's brother passed the information, in confidence, to Calder. Calder misappropriated the information from his brother by using it to purchase common stock of Commercial Federal prior to the public announcement of the proposed acquisition and by recommending the purchase of Commercial Federal to a friend. His friend purchased Commercial Federal common stock on the basis of Calder's recommendation.

2. Calder realized profits of \$31,150, and his friend realized profits of \$7,974, as a result of the increase in the value of their Commercial Federal common stock after the public announcement.

3. The defendant, unless restrained and enjoined, will continue to engage in transactions, acts, practices, and courses of business as set forth in this Complaint, or in similar illegal acts and practices.

4. The Commission requests that this Court permanently enjoin Powell Calder from violating the federal securities laws, order Calder to disgorge all his profits from insider trading in the securities of Commercial Federal, as well as the profits of his tippee, order him to pay prejudgment interest on those profits, impose a civil money penalty, and order such other and further relief as the Court may deem appropriate.

JURISDICTION

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

6. In connection with the transactions, acts, practices, and courses of business described in this Complaint, the defendant, directly and 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.

DEFENDANT

7. **Powell Calder**, age 61, resides in Florence, Texas. During the relevant time period, Calder was self-employed as a farmer and a ranch owner.

RELEVANT ENTITIES

8. **Commercial Federal Corporation** was a savings and loan holding company incorporated in Nebraska. Its corporate headquarters were located in Omaha, Nebraska. Its common stock, Shareholder Rights Plan, and 7.95% Subordinated Notes due December 2006 were all registered pursuant to Section 12(b) of the Exchange Act, and its common stock traded on the New York Stock Exchange.

9. **BancWest Corporation** is a regional financial services company incorporated in Delaware and headquartered in Honolulu, Hawaii. BancWest Corporation (“BancWest”) is a wholly owned subsidiary of BNP Paribas, a French financial institution. BancWest acquired Commercial Federal on December 2, 2005, for \$34 per share of Commercial Federal common stock.

FACTS

10. Between March 7, 2005, and June 13, 2005, BancWest engaged in confidential efforts to acquire Commercial Federal. Prior to the public announcement on June 13, 2005, of BancWest’s intent to acquire Commercial Federal, Commercial Federal engaged in confidential and nonpublic internal discussions, meetings, and analyses regarding the possible acquisition.

11. On June 13, 2005, Commercial Federal and BancWest jointly announced that they had entered into a merger agreement pursuant to which Commercial Federal would be merged into Bank of the West, a wholly owned subsidiary of BancWest, and each share of Commercial Federal common stock would be converted into the right to receive \$34 in cash. Following the public announcement, the market price of Commercial Federal common stock rose substantially, from a closing price of \$25.94 per share on the day prior to the announcement to a closing price of \$33.95 per share on the day of the announcement.

12. Prior to the public announcement of the proposed acquisition of Commercial Federal, Commercial Federal's information relating to the acquisition was considered confidential by Commercial Federal and was to be used solely for its corporate purposes.

13. By reason of her employment at Commercial Federal, Calder's sister-in-law had access to confidential information of the company. On April 19, 2005, during the course of her employment, she saw a letter from the Chief Executive Officer ("CEO") of BancWest Corporation addressed to the CEO of Commercial Federal indicating that BancWest had engaged an investment banking firm to help in a possible acquisition of Commercial Federal. During the course of her employment she also had a conversation with Commercial Federal's CEO about BancWest's interest in acquiring Commercial Federal. She subsequently assisted Commercial Federal's CEO by typing documents and arranging meetings concerning the possible acquisition.

14. Sometime between April 19, 2005, and May 31, 2005, Calder's sister-in-law told her husband, Calder's brother, that she was afraid that Commercial Federal might be sold and that she was worried about the jobs of the bank's employees. She also told him that the information was confidential.

15. In a subsequent telephone call during the same time period, Calder's brother told Calder that his wife thought she might lose her job because she was afraid that Commercial Federal was going to be sold. Calder's brother expected that Calder would keep this information confidential. Calder and his brother had a history and practice of sharing and maintaining confidences.

16. On May 31, 2005, Calder purchased a total of 3,500 shares of Commercial Federal common stock, in two separate transactions.

17. Calder subsequently recommended Commercial Federal to a friend as an acquisition possibility, and the friend purchased Commercial Federal common stock on the basis of that recommendation.

18. After the June 13, 2005, public announcement of the proposed acquisition of Commercial Federal, Calder realized profits of \$31,150 and his friend realized profits of \$7,974.

**VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT
[15 U.S.C. § 78(b)] AND RULE 10b-5 [17 C.F. R. § 240.10b-5]**

19. Paragraphs 1 through 18 are realleged and incorporated herein by reference.

20. At all relevant times, Calder knew or was reckless in not knowing that the information he received from his brother concerning the possible acquisition of Commercial Federal was material and nonpublic.

21. At all relevant times herein, Calder's brother expected that Calder would keep confidential any nonpublic information he learned, directly or indirectly, from him about the possible acquisition of Commercial Federal.

22. Calder knew, or was reckless in not knowing, that he violated his duty of trust and confidence to his brother by trading in Commercial Federal common stock before the June 13, 2005, announcement on the basis of the material nonpublic information he had received from his brother, and by tipping his friend concerning Commercial Federal.

23. Calder knew, or was reckless in not knowing, that his friend could reasonably be expected to purchase Commercial Federal securities on the basis of Calder's recommendation.

24. By reason of the foregoing, Powell Calder 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 Powell Calder, and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him, 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 the defendant to account for and disgorge all profits, and prejudgment interest thereon, that he obtained or caused others to obtain as a result of the conduct described above.

III.

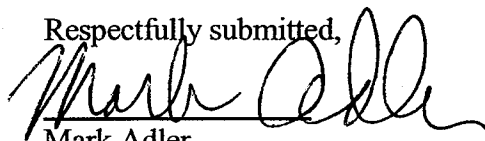
Order the defendant to pay a civil penalty under Section 21A(a) of the Exchange Act [15 U.S.C. § 78u-1(a)].

IV.

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

Dated: October 4, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark Adler", written over a horizontal line.

Mark Adler

(Deputy Chief Litigation Counsel)

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