10 CV 777

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Judge Hellerstein

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. JOSHUA Z. LEVINBERG, Defendant.	C.A. No. __-__

RECEIVED
FEB - 2 2010
U.S.D.C. S.D. N.Y.
CASHIERS

COMPLAINT

Plaintiff Securities and Exchange Commission (the "SEC" or "Commission"), for its Complaint alleges as follows:

SUMMARY

1. This is an action against Defendant involving purchases of the common stock of Scopus Video Networks Ltd ("Scopus") while he was in possession of material non-public information. These transactions in Scopus, a stock which was traded on the NASDAQ, were done through an account carried by a brokerage firm that is located in New York and were executed and cleared in the United States. These transactions resulted in profit to Defendant of $187,996.48. In October, November and December 2008, Defendant purchased a net total of 102,172 shares of Scopus, including a purchase of 71,000 shares on December 17, 2008. On December 23, 2008, Scopus announced that it had entered into an agreement to be acquired by Harmonic Inc. ("Harmonic") at a substantial premium.

JURISDICTION AND VENUE

2. This Court possesses jurisdiction over this matter pursuant to Sections 21(e), 21A, and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(e), 78u-1, and 78aa]. Defendant has directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, practices, transactions, and courses of business alleged in this Complaint.

3. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts, practices, transactions and courses of business constituting the violations occurred in the Southern District of New York.

DEFENDANT

4. Defendant, **Joshua Zelig Levinberg**, 55, is Executive Vice President of Corporate Development & Business Strategy of Gilat Satellite Networks Ltd. ("Gilat"), a provider of products and services for satellite-based communications networks. He is a citizen and resident of Israel who maintains a brokerage account carried by a brokerage firm located in Manhattan.

RELEVANT ENTITIES

5. **Scopus Video Networks Ltd** has its principal executive offices in Israel. Scopus is a company organized under the laws of Israel. Scopus develops, markets, and supports digital video networking products for customers that include satellite operators, cable television operators, and terrestrial broadcasters. Scopus has a U.S. subsidiary, Scopus Video Networks,

Inc. Until the closing of the Scopus acquisition by Harmonic in March 2009, Scopus' common stock was registered with the Commission pursuant to Exchange Act Section 12(b) and its shares traded on the NASDAQ under the symbol "SCOP." Since March 2009, Scopus has been a wholly-owned subsidiary of Harmonic.

FACTUAL ALLEGATIONS

Scopus Approaches Gilat

6. In September 2008, Gilat was approached by a senior officer of Scopus (the "Scopus Officer"). The Scopus Officer attempted to persuade Gilat to purchase Scopus. As part of his efforts, the Scopus Officer provided Defendant with material non-public information about Scopus and its status as a takeover target, including Scopus' desired price of approximately $6 to $6.50 per share. The Scopus Officer was not successful in persuading Gilat to make an offer to purchase Scopus.

7. Contacts between the Scopus Officer and Gilat continued in meetings, phone conversations, and e-mails through December 2008. Through these contacts, Defendant learned information relating to the Scopus Officer's continued desire to sell Scopus, the requested pricing of a potential sale of Scopus, and information impacting the timing of the sale.

8. Consistent with the material non-public nature of these discussions, written materials provided to Gilat (including Defendant) were marked as proprietary and as Scopus information not to be disclosed or reprinted without Scopus' prior written permission.

9. In his capacity as an officer of Gilat, Defendant owed a fiduciary duty to Gilat. Furthermore, as an employee of Gilat, Defendant was subject to Gilat's insider trading policy, which prohibited him from engaging in any action to take advantage of material non-public

information relating to any other company obtained in the course of his employment with Gilat. Thus, Defendant knew or was reckless in not knowing that he could not trade the securities of Scopus.

The Purchase of Scopus Common Stock by Defendant

10. Between October 31, 2008 and November 31, 2008 inclusive, Defendant purchased a net amount of 22,343 shares of Scopus on margin in lots ranging in size from 100 to 6,558 shares. The purchase prices ranged from $3.55 to $4.30 per share.

11. Between December 1, 2008 and December 17, 2008 inclusive, Defendant purchased a net amount of 79,829 shares of Scopus on margin. The purchase prices ranged from $3.40 to $3.79 per share.

12. Included in Defendant's December 2008 purchases of Scopus stock was a purchase of a block of 71,000 shares on margin at a price of $3.45 on December 17 for a total cost of $245,562.38. Total trading volume in Scopus stock on that day was 80,845 shares. The 71,000 share purchase thus represented 87.8 percent of all volume in Scopus stock on December 17, 2008.

13. In sum, Defendant purchased a net total amount of 102,172 shares of Scopus in the period from October 31-December 17, 2008. His average cost per share for his purchases was $3.56, for a total cost basis of $363,732.32. All of the purchases of Scopus stock by Defendant were through a brokerage account carried by a brokerage firm in Manhattan for its wholly-owned Israeli subsidiary. The U.S. parent brokerage firm maintained possession of funds and securities in Defendant's account (or utilized a U.S.-based custodian for that purpose) and executed and cleared trades in U.S.-listed securities for that account.

14. Defendant made his purchases of Scopus stock while in possession of material non-public information about Scopus and in breach of his duty of confidence to Gilat.

Harmonic's Acquisition of Scopus

15. On December 22, 2008, Harmonic and Scopus entered into a definitive Agreement and Plan of Merger under which Harmonic would acquire Scopus for payment of $5.62 in cash for each share of Scopus.

16. The closing price of Scopus' stock on December 22, 2008 was $3.84. Trading volume in Scopus' stock on that day was 2,622 shares.

17. On December 23, 2008, before trading began, Harmonic and Scopus jointly announced that they had entered into the definitive Agreement and Plan of Merger under which Harmonic would acquire Scopus. They further announced that the Agreement and Plan of Merger had been approved by the boards of directors of both companies.

18. On December 23, 2008 the price of Scopus stock opened at $5.38 per share, and it traded in a range of $5.02 to $5.42 for the remainder of the day. Trading volume in Scopus' stock was 364,781 shares that day, and the price of Scopus' stock closed at $5.40 per share, approximately 41 percent above its closing price of $3.84 on December 22, 2008.

Defendant's Profits from Sale Of Scopus Common Stock

19. Based on the closing price of $5.40 on the day of the announcement of the Harmonic acquisition of Scopus, Defendant's illegal profits on his purchases of Scopus stock were $187,996.48 ($5.40 times 102,172 shares, less the cost basis of $363,732.32).

CLAIM FOR RELIEF

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

20. Paragraphs 1 through 19 are realleged and incorporated by reference.

21. At the time Defendant purchased Scopus common stock as set forth above, he was in possession of material, nonpublic information about the sale of Scopus. Defendant knew or recklessly disregarded the fact that his trading was in breach of a fiduciary duty or similar duty of trust and confidence owed to the shareholders of Gilat or to the source from whom he received the material, nonpublic information.

22. By reason of the conduct described above, Defendant, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, directly or indirectly (a) employed devices, schemes, or artifices to defraud; (b) 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 (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any persons, including purchasers or sellers of the securities.

23. By reason of the foregoing, Defendant 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].

24. Defendant may, unless restrained and enjoined, continue to engage in the acts, practices, transactions, and courses of business alleged in this Complaint, or in acts, practices, transactions, and courses of business of similar purport and object.

REQUESTED RELIEF

WHEREFORE, the Commission requests that the Court enter judgment:

(a) permanently enjoining Defendant 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];

(b) ordering Defendant to disgorge all illicit trading profits resulting from conduct alleged in this Complaint, along with prejudgment interest;

(c) ordering Defendant to pay civil monetary penalties pursuant to Exchange Act Section 21A [15 U.S.C. § 78u-1]; and

(d) granting such other and further relief as the Court deems just and appropriate.

Dated: Washington, D.C.
February 2, 2010

Respectfully submitted,

Of Counsel:
Laura B. Josephs
Jennifer S. Leete
Rachael E. Schwartz

Richard E. Simpson (RS5859)
100 F Street N.E.
Washington, D.C. 20549-4010
202-551-4492 (Simpson)
202-772-9246 (FAX)
simpsonr@sec.gov

Attorneys for Plaintiff
Securities and Exchange Commission