

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

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CASE NO.:

CLARENCE HANCOCK  
CLERK U.S. DIST. CT.  
S.D. OF FL.-MIAMI

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ERNESTO TAPANES,

Defendant.

08-60064

CIV-DIMITROULEAS

/ROSENBAUM

COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

I. SUMMARY

1. This case involves insider trading in the securities of Odyssey Marine Exploration, Inc. ("Odyssey Marine"), a publicly-traded, deep-ocean shipwreck exploration company, by Defendant Ernesto Tapanes, one of Odyssey Marine's oceanographic surveying consultants.

2. Throughout April and the first half of May 2007, prior to Odyssey Marine's public announcement of its discovery of a shipwreck valued at more than \$500 million dollars, Tapanes, while possessing material, nonpublic information about the discovery, purchased Odyssey Marine stock in breach of the duty of trust and confidence he owed to Odyssey Marine. Soon after Odyssey Marine announced its discovery on May 18, 2007, Tapanes sold his entire Odyssey Marine position for a profit of more than \$107,000.

3. By engaging in the conduct described above, and described more fully below,

Tapanes violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5. The Commission requests the Court to enter (1) a permanent injunction restraining and enjoining Tapanes from future violations of Section 10(b) of the Exchange Act and Rule 10b-5, (2) an order directing Tapanes to disgorge his trading profits, with prejudgment interest, and (3) an order directing Tapanes to pay a civil money penalty.

## **II. JURISDICTION AND VENUE**

4. 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.

5. This Court has subject matter jurisdiction over this action pursuant to Sections 21(e), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e), 78u-1, and 78aa.

6. Personal jurisdiction over Tapanes and venue in the Southern District of Florida are proper because Tapanes resides in this District and because he committed many of the acts complained of in this District.

7. In connection with the conduct alleged in this Complaint, Tapanes, directly or indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange.

## **III. DEFENDANT**

8. Tapanes, 39, is a Canadian citizen with residences in Ontario, Canada and Fort Lauderdale, Florida. Tapanes is an independent oceanographic surveying consultant who has worked exclusively for Odyssey Marine since 2002.

## **IV. RELEVANT ENTITY**

9. Odyssey Marine is a deep-ocean shipwreck exploration and excavation company founded in 1986, incorporated in Nevada, and headquartered in Tampa, Florida. It locates and

excavates treasure-laden shipwrecks. Since July 10, 2007, Odyssey Marine's stock has traded on NASDAQ under the symbol "OMEX." It previously traded on AMEX under the symbol "OMR." It is also quoted on the Over-the-Counter Bulletin Board, also under the symbol "OMEX."

## **V. FACTS**

### **A. Odyssey Marine's Discovery of the Black Swan**

10. On March 30, 2007, Tapanes was aboard the Ocean Alert, an Odyssey Marine ship surveying the ocean floor off the coast of Gibraltar. On that day, Tapanes identified and photographed an anomaly on the ocean floor, which ultimately turned out to be a treasure-laden shipwreck in the Atlantic Ocean.

11. Within days of the discovery, Odyssey Marine halted the Ocean Alert's survey operations and sent its excavation ship, the Odyssey Explorer, to excavate the site using remotely operated vehicles. Odyssey Marine code-named its discovery the "Black Swan."

12. In the first week of April 2007, the Odyssey Explorer confirmed the Black Swan, which Tapanes had located, was a late 18th-century ship that contained more than 500,000 silver and gold coins, as well as other valuable artifacts.

13. By April 11, 2007, the Odyssey Explorer had excavated more than 17 tons of coins and other artifacts from the site. The recovery constituted the largest collection of coins ever excavated from a historical shipwreck site.

14. Tapanes was updated on the progress of the excavation every few days through written and oral summaries.

### **B. Odyssey Marine Keeps the Black Swan Discovery a Closely Guarded Secret**

15. Odyssey Marine kept its discovery of the Black Swan and its excavation activities a closely guarded secret until May 18, 2007, requiring its employees and consultants with

knowledge of the Black Swan discovery to sign a confidentiality agreement agreeing to keep the discovery confidential and not to trade in Odyssey Marine stock.

16. On April 4, 2007, Tapanes signed a confidentiality agreement with Odyssey Marine regarding the find, in which he expressly agreed to keep information regarding discovery of the Black Swan confidential. He further agreed not to trade in Odyssey Marine stock. This was the first time in Tapanes' career with Odyssey Marine that he had signed a confidentiality agreement related to a specific project. His consultant agreement with Odyssey Marine already contained a general confidentiality clause.

**C. Tapanes' Purchase of Odyssey Marine Stock Prior to Odyssey Marine's  
Public Announcement of the Black Swan Discovery**

17. In violation of the confidentiality agreement he signed on April 4, 2007, Tapanes purchased Odyssey Marine stock prior to Odyssey Marine's public announcement of the Black Swan discovery. On April 4, the same day Tapanes signed the confidentiality agreement agreeing explicitly not to trade in Odyssey Marine stock, he began buying small increments of Odyssey Marine stock through his individual brokerage account at E\*Trade Securities.

18. On April 9, 2007, in order to continue purchasing Odyssey Marine stock, Tapanes transferred almost \$150,000 from his savings account, accumulated over ten years, to his E\*Trade Securities account.

19. In total, from April 4, 2007 to May 15, 2007, Tapanes purchased 42,000 shares of Odyssey Marine stock.

20. During that time, Tapanes possessed material, non-public information about the potentially unique nature and high value of the Black Swan discovery to Odyssey Marine that he had a duty to the company not to trade on.

**D. Odyssey Marine's Public Announcement of the Black Swan Discovery  
and Tapanes' Sale of Odyssey Marine Stock**

21. On May 18, 2007, after excavating 17 tons of coins and other artifacts from the Black Swan, Odyssey Marine issued a press release publicly disclosing its discovery. News reports that same day widely estimated the find to be worth more than \$500 million and proclaimed the shipwreck to be the largest find of its kind in history.

22. On the day of the announcement, Odyssey Marine's stock closed at \$8.32, a jump of almost 81 percent from its closing price of \$4.60 the day before. Three days later, the stock traded at \$9.45, its highest price ever, and closed at \$8.10.

23. Starting three days after Odyssey Marine's May 18, 2007 public announcement of the Black Swan find, and continuing until June 26, 2007, Tapanes sold his entire Odyssey Marine position, reaping a profit of \$107,101.92.

**VI. VIOLATIONS**

**Fraud in Violation 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**

24. The Commission repeats and incorporates by reference Paragraphs 1 through 23.

25. At all relevant times, Tapanes knew or was extremely reckless in not knowing the information concerning discovery of the Black Swan was material, confidential, and nonpublic. In breach of the duty of trust and confidence he owed to Odyssey Marine, and while in possession of this information, he purchased shares of Odyssey Marine stock.

26. By the conduct described above, Tapanes, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly, (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order 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. By reason of the foregoing, Tapanes violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

### **I.**

Permanently restrain and enjoin Tapanes and his agents, servants, employees, representatives, attorneys-in-fact, and assigns 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 Rule 10b-5, 17 C.F.R. § 240.10b-5.

### **II.**

Order Tapanes to disgorge his ill-gotten trading profits from each illegal trade, and order him to pay prejudgment interest on those profits.

### **III.**

Order Tapanes to pay a civil penalty pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

### **IV.**

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

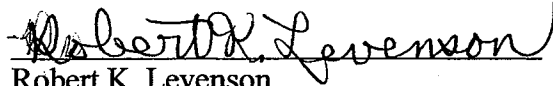
### **V.**

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or

to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: January 17, 2008

Respectfully submitted,



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