Published on *The National Law Review* https://natlawreview.com

"Oh, Baloney!" SEC Sues Father, Son, and Friend for Manipulating the Stock of a New Jersey Deli

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Paulsboro, New Jersey, is a small (2020 census: 6,196 residents) borough in Gloucester County, created in 1904 when the New Jersey Legislature carved it out of Greenwich Township. It was named after Samuel Philip Paul, a settler of the area, and is the site of the Tinicum Island Rear Range Lighthouse, as it sits on the Delaware River. Paulsboro is 2.63 square miles in size of which 0.71 sq. miles is water. It is the home of the Port of Paulsboro on the Delaware River and also the home of the newly created Atlantic Wind Connection, providing land-based support services for a "farm" of Atlantic Ocean-based wind turbines. It is also the site of a critical bridge on the north-south freight rail line that runs from outside of New York, a bridge that collapsed in 2012 in an accident resulting in a significant disruption to freight traffic. The median family income as of 2010 was $61,147. Politically, 51.3% of the populace are registered Democrats, 6.9% are Republicans, and 41.7% are unaffiliated, but the town has regularly voted for Democrat candidates, including the Congressman for their District, although the New Jersey legislators from the district that includes Paulsboro are Republican. The town was for many years the home of a major oil refinery and continues to be fundamentally an "old" industrial town on the river. It is also, as is particularly relevant to this case, the home of one of the best and most successful high school wrestling programs in New Jersey, if not the United States.

Delicatessens

A "Delicatessen" (or in the German "Delikatessen") is a store that sells a collection of fine and foreign prepared meals. Such stores originated in Germany in the 18th century and spread to the U.S. along with the wave of German immigrants in the 19th century after the European uprisings of 1848. These stores were particularly popular among the Ashkenazi Jewish immigrants who settled in American cities (think Zabars, etc.). It is estimated that by the 1930's there were some 1500 delicatessens in New York City alone, although that number has declined of late to fewer than 20. With the typical American penchant for shortening words, "delicatessen" became "deli" by the end of World War II. Delis are stores where one can buy sliced meats and cheeses ("cold cuts") with which to make sandwiches.

The Morinas and The Defendants

Paul Morina, a Paulsboro resident in his early 60's, was (and remains) both the Principal and the Coach of the Paulsboro High School's "successful" (in the words of the Sept. 26, 2022 article in The

Philadelphia Inquirer) wrestling team. Mr. Morina's girlfriend, Christine Lindenmuth, is a math teacher at the high school. In 2014 Mr. Morina and Ms. Lindenmuth (the "Morinas") decided to open a deli in town (literally, as they named it "Your Hometown Deli"), notionally to provide them with income after retiring from employment at the high school. In setting up the business, the Morinas were assisted by one of Paul Morina's teammates on the 1970 New Jersey State Champion Paulsboro High School wrestling team, James T. Patten ("Patten"). Patten, 63, of Winston Salem, North Carolina, had a long history as a registered representative with several firms, until he was barred from associating with any broker/dealer by the Financial Industry Regulatory Authority ("FINRA") in 2006. He was employed by Tryon Capital LLC, an entity controlled by Peter L. Coker Sr. ("Senior"), now 80, of Chapel Hill, North Carolina. Senior also controls Europa Capital Investments LLC ("Europa"), where Patten is Vice President. Senior's checkered past included being sued for many crimes such as fraud, election finance violations, and prostitution. Senior's son, Peter L. Coker Jr. ("Junior"), 53, is a resident of Hong Kong and has served on the boards of private and public companies in Hong Kong and New Zealand.

Patten persuaded his old wrestling team colleague to incorporate Hometown International ("INC") in May 2014 as the holding company owner of the Morinas' Your Hometown Deli before the Deli finally opened in 2015. During the period from July 2014 to June 2015, Patten and Senior distributed shares of INC common stock to a number of persons affiliated with them. The Morinas were named President and Vice President of INC, but (according to the Sept. 26, 2022 Complaint filed by the U.S. Securities and Exchange Commission ["SEC"] in the Federal Court for the District of New Jersey charging the Pattens, Senior and Junior, with fraudulent manipulation of INC and another company's stock) the Morinas "were responsible only for running the day-to-day business of the deli." Patten and Senior caused INC to take "the necessary steps to become a public company"; the Morinas "were only minimally involved."

"Trading" INC Stock

The stock of INC began trading on Oct. 20, 2022, on the Pink Open Market maintained by the OTC Market Group Limited ("OTC"). For a detailed explanation of the Pink platform as opposed to other, more restrictive trading platforms maintained by the OTC, see my Oct. 29, 2020 blog "Keeping Securities Disclosures in the Pink: Amendments to SEC Rule 15d2-11." According to the Complaint, about two months after trading began, the three Defendants "began to take control of the outstanding shares." On Dec. 31, 2019, Patten orchestrated the sale of 2 million shares by the Morinas of the 2.5 million they had been issued in May 2014. Those 2 million shares, which totaled roughly 38% of the total number of outstanding shares, were sold to Junior for $3000. On Feb. 1, 2020, Ms. Lindenmuth granted Junior an option to purchase her remaining 1.5 million shares (some 28% of the total outstanding) at a price the Complaint describes as "a steep discount to the market price" at the time of the option exercise on March 19, 2019. In February 2019 Junior was "appointed" Chairman of the Board of INC. As described in a March 20, 2019 e-mail to Senior, Junior planned to transfer shares out of his name "in order to disguise his control over a significant percentage of" INC stock, and he did so in April 2019 to four nominees in Macau, China, which Junior controlled, at prices far below the then $4.00 market price. On March 19, 2019, Senior transferred stock to Europa in cancellation of a $100,000 debt. Europa in turn gifted blocks of between 100 and 500 shares of INC stock to 21 known individuals.

By gifting INC shares to associates and nominees controlled by the Defendants, INC was able to meet the 50-shareholder requirement to be "uplisted" to the OTC's OTCQB platform, a trading platform that has significantly more customer participation than the Pink market. Once again, my Oct. 29, 2020 blog "Keeping Securities in the Pink" explains in detail the requirements and possibilities offered by this higher-level platform. At this point Defendants filed a Registration Statement on Form S-1 with the SEC registering 2.7 million shares of INC stock, including shares owned by two of Junior's nominees, Senior, Europa, and "at least 17 individuals related to or affiliated with the Defendants." This filing fraudulently satisfied the OTCQB requirement that more than 10% of the outstanding stock of the company be available for public trading, as the S-1 falsely stated that "'[n]one of the Selling Shareholders nor any of their respective affiliates have held any position or office, or had any other material relationship'" with INC or any predecessor or affiliates. The SEC registration of INC shares took effect on Oct. 15, 2019, and public trading began. The S-1 had capped the maximum share price at $6.50 until the shares were quoted for trading on a recognized exchange, which the OTCQB platform is, so that cap was lifted. Of course, the "uplisting" also gave INC's stock what the Complaint claims was "a veneer of apparent legitimacy," as INC asserted that it was looking to merge into a larger enterprise.

By 2020 the Defendants engaged in a series of transactions laid out in the Complaint to transfer INC stock for sale and to sell INC stock netting some $2.5 million in INC's bank account, over which Patten had control (as the Morinas had given him online account information and passwords), so that he could siphon out cash, which he did. In addition, Senior was paid $15,000 a month as a consultant, and Junior received $25,000 a month, in each case through controlled entities. As one might expect at this point, the Complaint asserts that no consulting services were either needed or performed. By April of 2020, the Defendants had instigated trading activities that caused the market price of INC stock to rise to $14.00 per share, which resulted in a market capitalization of over $100 million ($113 million on Feb. 8, 2021) for a business with one deli and combined sales in the last two years of $35,748.

The Einhorn Revelation

This extraordinary situation caught someone's eye, and that person brought it to the attention of David Einhorn, the founder and operator of the hedge fund Greenlight Capital. Einhorn was concerned about market integrity after the early 2021 explosion of the so-called meme stocks, including GameStop, and the major market price explosions led by the so-called Reddit Raiders (now frequently termed APEMEN) and the extraordinary "deals" offered by the use of Special Purpose Acquisition Companies ("SPAC"s) to go public. In relation to the first of these phenomena see my Feb. 2, 2021 blog "Rupture Rapture: Should the GameStop?" for a description of the rocketing rise in market prices with no relation to the value of the underlying enterprise. Accordingly, Einhorn published a letter to his investors after Feb. 8, 2021, calling out the price of INC stock and its meager business operations, which included the now much-quoted observation: "The pastrami must be amazing."

Following his letter, Einhorn was a guest on CNBC, where he repeated his concerns about INC's stock price, using it as an example to warn retail investors of the dangers he saw in the market. That publicity led to a series of news articles including an item in The New Yorker, in which Ron Ferreira, a 40-year veteran of the Italian food industry in New Jersey, evaluated four Hometown Deli sandwiches and gave them positive reviews. Victor Fiorillo, a senior reporter for Philadelphia Magazine, in an April 20, 2021 article stated the food was good value for its cost. (His write up noted that four police officers were stationed outside to deter journalists and photographers from bothering customers.) Then on April 22, 2022, OTC "delisted" INC from OTCQB and placed a skull and crossbones icon next to its stock symbol on the Pink Market, as well as marking it as "CE" standing for the Latin "caveat emptor" (buyer beware). On May 12, 2021, after the Morinas had raised serious questions with Patten about all the news concerning INC stock values and trading, they were (in the words of the Complaint) "removed as officers of …[INC], and …[Junior] became Chief Executive Officer of the company."

The Makamer Merger

On March 31, 2022, INC filed a Current Report on Form 8-K, signed by Junior, with the SEC announcing that INC had entered into a reverse merger agreement with a private Delaware company, Makamer Holdings, Inc. ("Makamer"). On April 1, 2022, the reverse merger closed with INC acquiring Makamer, but also changing its name to Makamer. Makamer shareholders exchanged their Makamer stock for INC stock, so the Defendants retained the INC shares they had already fraudulently obtained. In August, FINRA issued a deficiency letter denying INC's request to change its name from INC to Makamer and its ticker symbol, thus partially preventing trading by unsuspecting buyers. In fact, Hometown Deli closed on June 19, 2022, and Makamer sold the Deli inventory on July 1 and the "deli business" on Aug. 9, 2022. Thus ended the Morinas' plan for a "Hometown" business to own and operate as they moved towards retirement. The September 26 story in The Philadelphia Inquirer, cited above, quotes Prof. Francine McKenna of the Wharton School of the University of Pennsylvania as follows:

> "Don't be a stooge for your childhood friend who makes you sign stuff you don't understand, takes control of your business checking account, and takes your New Jersey deli public."

E-Waste Corp., The Second Act

Prof. McKenna's words of advice would appear a fitting conclusive remark to a sad story of exploitation. **But NO**. The Defendants were not yet done. E-Waste Corp. ("Waste"), with headquarters in Kent, Washington, was incorporated in Nevada in January 2012 to develop an e-waste recycling business but was unable to raise sufficient capital privately to carry out its business plan. In August 2012, FINRA processed an application to have its common stock quoted on the OTC Link, an open trading platform without any special qualifications for participation.

In early 2020, Patten became involved with Waste. The Complaint does not explain the delay, but Waste finally began trading on the OTC Pink Market in July 2020. Then in September 2020, a person described in the Complaint as "a long-time friend of Patten, was appointed Chief Executive Officer of [Waste]" and served as a front for Patten, who controlled the company, which was in fact a "shell company." Following the blueprint they had used with INC, the Defendants caused the transfer of "millions of [Waste] shares into their own names and the names of affiliates and nominee entities." The Complaint identifies some examples of these transactions, noting "[a]s with …[INC], Defendants took control of the outstanding stock of …[Waste], transferred assets from the company to themselves, and artificially inflated the price of the stock through manipulative trading." Patten and Junior again used consulting agreements to "milk" Waste's funds, as detailed in the Complaint. They also brought in $2.5 million from the same three entities that had invested in INC, via a private placement under an investment agreement dated April 12, 2021. The money went into Waste's bank account, which Patten controlled. Then Patten transferred $266,000 to Senior for the "good of the order."

Patten controlled quite a number of brokerage accounts "of numerous individuals, friends and relatives of Defendants including accounts of [Senior, Senior's daughter, and Senior's grandchildren]. He used the accounts to engage in wash sales using limit orders "to artificially inflate the price of…[Waste] stock" without changing the beneficial ownership of that stock. This trading activity (with examples set out in the Complaint) caused the market price of Waste stock to increase from $0.10 per share in July 2020 to $10 per share in April 2021, resulting in a market capitalization of $120 million of Waste when it was a shell company with no revenue at all, not even the proceeds from the sale of a salami sandwich. The revelations about INC in April 2021 also noted the "suspiciously high stock price of …[Waste] stock and the shell company's relationship to …[INC], including loans provided by …[INC] and…[Senior] to… [Waste], and the two companies' common shareholders and consultants."

In the face of those revelations, Defendants found a private company with which to do a reverse merger. In September 2021, Waste merged with EZRaider Global, Inc.("Raider"), a Nevada corporation "that purports to import and distribute electric-powered vehicles and changed its name to EZRaider Co ("EZ"). Once again, Waste issued its stock to the shareholders of Raider in return for Raider shares, and Raider's founder was appointed Chief Executive Officer of EZ. The stock of EZ was trading at $9.00 per share on the date of the merger, but EZ did not file a registration statement with the SEC, so the stock held by Defendants and their nominees remained restricted from public sale.

The Legal Consequences

In the Complaint, the SEC charges the Defendants with:

i. violation of Sections 17(a)(1) and (3) of the Securities Act of 1933, as amended (the "33 Act"), for using interstate communication to employ schemes to defraud and/or engaging in transactions which operate as a fraud on the purchasers of securities; and

ii. violation of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "34 Act"), and Rule 10b-5 thereunder for employing schemes to defraud in connection with the sale of securities.

Patten is charged with violating Section 9(a)(1) of the 34 Act for creating misleading impressions with respect to the market of a security, including engaging in transactions with no change in beneficial ownership, placing orders to purchase securities knowing that a sale order of like size was being placed at the same time and/or preparing to enter into such transactions, where Patten knowingly engaged in manipulative trading in INC stock and in Waste stock.

Senior and Junior were charged with violating Section 9(a)(1) of the 34 Act by providing substantial assistance to Patten in connection with his alleged violations of Section 9(a)(1). The Commission requests that the Court permanently enjoin the Defendants from future violations of the cited securities laws, order disgorgement of their gains plus prejudgment interest, order payment of civil money penalties, and bar them from participating in any penny stock offerings. In addition, the Commission requests that the Court bar Junior from serving as an officer or director of a public company.

In a parallel action on Monday, Sept. 26, 2022, the U.S. Attorney's Office for the District of New Jersey filed a 12-count indictment against each of the three Defendants. Each Count carries a maximum penalty of 20 years in prison and a $5 million fine. In addition, Patten was charged with four counts of manipulation of securities, four counts of wire fraud, and one count of money laundering. Each of the four-wire fraud counts and the money laundering count also carry a maximum punishment of 20 years in prison and a $250,000 fine. Patten and Senior were arrested on that same

Monday in North Carolina and, according to The Philadelphia Inquirer article, were scheduled to appear in federal court in that state and then to appear in the Federal Court for the District of New Jersey at a later date. Junior "remains at large," according to reports published in September 2022. One might wonder (given the state of U.S. – China relations) whether Junior would escape both criminal prosecution and the civil money penalty sought by the SEC. But Junior decided to visit Thailand and took a hotel room in the resort district of Thalang in Thailand's Phuket province. On Wednesday, Jan. 11th, 2023, Junior was arrested (according to reports in The Bangkok Post cited in the Jan. 19th, 2023, edition of The Philadelphia Inquirer) "at the request of U.S. authorities." Junior was extradited to the U.S. on Wednesday March 15th, 2023, according to a 16 March item on CNBC.

Concluding Observations

Whatever one may think of the crookedness of the Defendants, and perhaps particularly Patten's abuse of his high school wrestling buddy, the apparent greed of at least a significant portion of the "investing" public is what made possible the frauds perpetrated by the Defendants. David Einhorn's concerns about market integrity are well-founded and his actions are to be commended; he knew right away that INC had to be "full of baloney."

National Law Review, Volume XIII, Number 86