

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

R. BROOKE DUNN
and NICHOLAS P. HOWEY,

Defendants.

Case No.

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

JURISDICTION AND VENUE

1. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)].

2. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

3. In connection with the transactions, acts, practices, and courses of business described in this Complaint, R. Brooke Dunn (“Dunn”) and Nicholas P. Howey (“Howey”),

directly and indirectly, have made use of the means, instruments, or instrumentalities of transportation or communication in interstate commerce, or of the mails.

4. Certain of the transactions, acts, practices, and courses of business constituting the violations of the federal securities laws occurred within this district. Moreover, at the time of the acts alleged in this Complaint, Dunn resided in this district and Howey owned a home in this district.

PARTIES AND RELATED PERSONS

5. **Shuffle Master, Inc.** (“Shuffle Master”) is a Las Vegas based gaming supply company that provides casinos with products such as automatic card shufflers, roulette chip sorters, and video slot machines. Its stock is quoted on the Nasdaq, and its options trade publicly on the Chicago Board Options Exchange and elsewhere.

6. **Defendant R. Brooke Dunn** is a resident of Henderson, Nevada. Dunn joined Shuffle Master in 1996. From 2001 to 2008, Dunn was a senior vice president, a corporate officer, and a member of Shuffle Master’s senior management team. He reported directly to Shuffle Master’s chief executive officer.

7. **Defendant Nicholas Howey** is a resident of Darnestown, Maryland. During the relevant time, Howey owned a home in Nevada. Howey is the chief executive officer of a privately held company that produces musicals and other shows.

FACTS

A. Background

8. Dunn and Howey first met professionally in the early 1990s and subsequently became friends. On occasion, Howey, through his connections in the entertainment industry, gave Dunn opportunities to purchase “house tickets” at face value to theatre productions in New York and Las Vegas. Those tickets were usually for high quality seats and frequently for shows for which tickets would otherwise be difficult to acquire. Dunn and Howey also played golf and had dinner together when Howey was staying at his winter home in Las Vegas.

B. Dunn Provides Information to Howey That Causes Howey to Buy Shuffle Master Stock and Calls

9. In or around November 2006, Shuffle Master and International Game Technology, Inc. (“IGT”) began discussing a possible joint venture, called “Project Blue Sky,” to exploit one of Shuffle Master’s products called E-Tables. Shuffle Master senior management viewed the anticipated joint venture as very advantageous to Shuffle Master and Dunn was privy to information about Project Blue Sky. The discussions progressed into negotiations and, on February 14, 2007, Shuffle Master and IGT executed a non-binding term sheet. The deal did not close. No public announcement was ever made concerning Project Blue Sky.

10. On January 16, 2007, Dunn and Howey had dinner in Las Vegas and discussed Shuffle Master.

11. On January 19, three days later, Howey wrote in an email that “Brook [sic] thinks it [Shuffle Master] will go to 31 in 2 weeks.” The next day, on January 20, Howey wrote in his personal trading journal: “Put all eggs in SHFL.” Finally, on January 29, approximately two weeks before Shuffle Master and IGT signed the non-binding Project Blue Sky term sheet,

Howey wrote in his trading journal: “Stocking up on SHFL pending their IGT announcement (Vegas tip).”

12. During this time, and consistent with the entries in his trading journal, Howey bought substantial amounts of Shuffle Master stock and “calls.” A call is an option that gives the holder the right to buy a stock at a specified price (the “strike price”) at any time up to a specified date (the “expiration date”). Calls are purchased when the buyer expects the price of the underlying stock to increase.

13. On January 24, 2007, Howey sold substantially all of the Shuffle Master calls, which had varying expiration dates, that he had purchased over the previous eight days. He retained 280 shares of stock (a \$7,218 position) that he had purchased on January 17 and 18. With the proceeds from those sales, Howey then purchased large quantities of March 25 calls (calls that expired in March and had a strike price of \$25.00), acquiring a position of 653 March 25 calls (for \$158,985) between January 24 and February 21, 2007.

14. The price of Howey’s Shuffle Master calls began declining significantly around February 9. In particular, between February 8 and 15, the closing price of those calls declined nearly 40% from \$2.55 to \$1.55. At a February 15 dinner, Howey told Dunn that he was “losing money on Shuffle Master” and asked Dunn what was “going on.”

C. Dunn Discloses Material Nonpublic Information about Shuffle Master’s Planned Announcement of Preliminary Financial Results

15. On February 26, 2007, commencing at 9:00 a.m., Dunn attended Shuffle Master’s weekly executive team meeting where he learned that the company would issue a press release announcing disappointing preliminary financial results (i.e., results based on current, but not yet complete, information) for its quarter that ended January 31, 2007.

16. Dunn left the meeting at 9:20 and at 9:26, called Howey and spoke to him. Upon information and belief, Dunn disclosed during that call material nonpublic information relating to Shuffle Master's anticipated announcement, in breach of his fiduciary duty to Shuffle Master and its shareholders.

17. Howey knew that Dunn was an executive at Shuffle Master and knew or should have known that Dunn disclosed material nonpublic information in breach of his fiduciary duty to Shuffle Master and its shareholders.

D. Howey Immediately Trades Shuffle Master Securities after Receiving Material Nonpublic Information about Shuffle Master

18. At 9:29 a.m. Howey logged in to his personal E-Trade account and immediately sold all of his previously-purchased Shuffle Master calls.

19. Approximately three hours later, Howey began buying Shuffle Master March 25 "puts." A "put" is an option that gives the holder the right to sell a stock at a specified strike price at any time up to a specified expiration date. Notably, March puts were the earliest expiring puts that Howey could buy at that time, a fact that is consistent with a belief that Shuffle Master's stock price would decline soon. In a short span of minutes, Howey bought 570 such puts at a cost of \$57,185. According to Howey's brokerage account records, this was the only time between September 1, 2006 and May 30, 2007 that Howey bought puts valued at more than \$16,570 on any single stock on any single day. Indeed, Howey only bought approximately \$47,000 of puts during that entire period. Around that same time, Howey also sold his remaining 280 shares of Shuffle Master stock for \$6,905.

20. On the morning of February 27, before the markets opened, Shuffle Master issued its press release announcing disappointing preliminary results for the fiscal quarter ended

January 31. The announcement stated that the company expected revenue for its fiscal quarter that ended January 31 to be approximately \$35 to \$38 million, significantly lower than the consensus analyst estimate of \$49.6 million, with net income and earnings per share to be significantly lower than the same prior year period. The announcement also stated that, as a result of near-term uncertainty, management had decided to suspend guidance temporarily for fiscal 2007.

21. After the announcement, the price of Shuffle Master stock and calls declined dramatically, while the price of Shuffle Master puts increased dramatically.

22. Later that morning, Howey sold all of the 570 Shuffle Master March 25 puts that he had bought the day before.

23. Howey's profits and losses avoided from the foregoing transactions were at least \$237,000.

24. Dunn benefited from the foregoing by conferring a gift of confidential information on his friend Howey. That gift allowed Howey to turn a losing investment – an investment in which Dunn had played a role in Howey's decision to invest – into a profitable one.

FIRST CLAIM FOR RELIEF

(Violations of Section 17(a)(1) of the Securities Act)
[15 U.S.C. § 77q(a)(1)]

25. Paragraphs 1 through 24 are hereby realleged and incorporated by reference.

26. Dunn and Howey, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, with scienter, employed a device, scheme, or artifice to defraud.

27. By reason of the foregoing, Dunn and Howey violated and unless restrained and enjoined will violate Section 17(a)(1) of the Securities Act.

SECOND CLAIM FOR RELIEF

(Violations of Section 17(a)(2) and (3) of the Securities Act)
[15 U.S.C. §§ 77q(a)(2) and (3)]

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

29. Dunn and Howey, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

30. Dunn and Howey, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities.

31. By reason of the foregoing, Dunn and Howey violated and unless restrained and enjoined will violate Sections 17(a)(2) and (3) of the Securities Act.

THIRD CLAIM FOR RELIEF

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

32. Paragraphs 1 through 31 are hereby realleged and incorporated by reference.

33. Dunn and Howey, directly or indirectly, with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of Shuffle Master securities, have employed devices, schemes, or artifices to defraud; have 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 have engaged in acts, practices, or courses of business which have been and are operating as a fraud or deceit upon the purchasers or sellers of such securities.

34. By reason of the foregoing, Dunn and Howey violated and unless restrained and enjoined will violate Section 10(b) of the Exchange Act and Rule 10b-5.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

- 1) Find that Dunn and Howey committed the violations alleged;
- 2) Enter injunctions, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Dunn and Howey, their agents, representatives, and all persons in active concert or participation with them, from violating, directly or indirectly, the provisions of law and rules alleged in this Complaint;
- 3) Order that Dunn and Howey disgorge all ill-gotten gains, with prejudgment interest;

- 4) Order that Dunn and Howey pay civil penalties;
- 5) Order that Dunn be prohibited from serving as an officer or director of any public company; and
- 6) Grant such other relief as this Court may deem just or appropriate.

Dated: November 19, 2009

Respectfully submitted,

/s/ Nancy J. Gegenheimer
Nancy J. Gegenheimer
Attorney for Plaintiff
Securities and Exchange Commission
1801 California Street, Suite 1500
Denver, Colorado 80202
Telephone: (303) 844-1050
Facsimile: (303) 844-1063