

JUDGE PRESKA

05 CV 10622

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

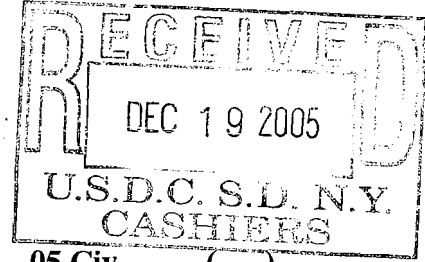
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GARY D. HERWITZ, and
TRACEY A. STANYER,

Defendants.
-----X



COMPLAINT

Plaintiff Securities and Exchange Commission, for its Complaint against defendants Gary D. Herwitz and Tracey A. Stanyer, alleges:

PRELIMINARY STATEMENT

1. The Commission charges Herwitz, former president of Mahoney Cohen & Company Inc., and Stanyer, a former executive vice president of Sirius Satellite Radio Inc., with committing securities fraud by engaging in illegal insider trading in Sirius stock. Illegal insider trading undermines the integrity of the nation's securities markets. Investors expect and deserve

a level playing field on which corporate officers do not exploit their positions of trust to trade illegally on the basis of material nonpublic information.

2. Herwitz and Stanyer engaged in illegal insider trading in advance of the October 6, 2004 announcement that Sirius had signed an agreement with radio broadcaster Howard Stern.

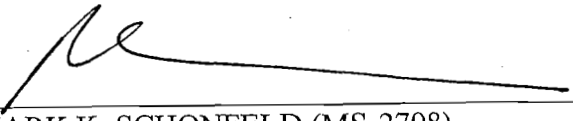
3. Herwitz purchased stock in Sirius after learning material, nonpublic information about the negotiations between Stern and Sirius. Stern was a client of Mahoney Cohen, which was counseling him in connection with his negotiations with Sirius. On or about September 21, 2004, Herwitz learned from Mahoney Cohen's chief executive officer, who also was Stern's longtime personal accountant, that Sirius and Stern were in negotiations and that Stern had received an offer from Sirius to begin broadcasting on the Sirius radio network. Herwitz was advised by his colleague to keep the information confidential. After learning this material nonpublic information, and in breach of his fiduciary or other duty arising out of a relationship of trust and confidence owed to the source of the information, and in violation of Mahoney Cohen's confidentiality policy, Herwitz purchased 25,000 shares of Sirius stock on September 30, 2004 on the basis of the information. Herwitz sold 22,500 of these shares between November 2004 and January 2005 for a profit.

4. Stanyer purchased stock in Sirius after learning material, nonpublic information about the agreement between Stern and Sirius. On or about October 5, 2004, a senior Sirius executive informed Stanyer that Stern had signed an agreement with Sirius. Stanyer was advised by the senior Sirius executive to keep the information confidential. Stanyer was aware that this information was confidential and nonpublic. After learning that Stern had signed an agreement

V.

Granting such other relief as the Court shall deem just and proper.

Dated: New York, New York
December 19, 2005



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