

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. SECURITIES AND EXCHANGE COMMISSION, :
100 F Street, NE :
Washington, D.C. 20549 :

Plaintiff, :

v. :

BOBBY J. ELKIN, JR., BAXTER J. MYERS :
THOMAS G. REYNOLDS, AND :
TOMMY LYNN WILLIAMS, :

Defendants. :

Case: 1:10-cv-00661
Assigned To : Urbina, Ricardo M.
Assign. Date : 4/28/2010
Description: General Civil

Plaintiff, Securities and Exchange Commission ("Commission"), alleges:

SUMMARY

1. This matter involves multiple payments of bribes to foreign officials in Kyrgyzstan and Thailand by senior executives and employees of Dimon, Inc. ("Dimon") and Standard Commercial Corporation ("Standard"), predecessor companies of Alliance One International, Inc. ("Alliance One"), during the period from 1996 through 2004 in violation of the Foreign Corrupt Practices Act of 1977 ("FCPA").
2. Alliance One was formed by a merger between Dimon and Standard in May 2005.
3. From 1996 through 2004, Dimon International Kyrgyzstan ("DIK"), a wholly-owned subsidiary of Dimon, paid more than \$3 million in bribes to Kyrgyzstan government officials in order to purchase Kyrgyz tobacco for resale to Dimon's largest customers. These payments were made to various government officials, including officials of the JSC GAK

Kyrgyztamekisi (“Tamekisi”) and local public officials (“Akims”). DIK also made improper payments to Kyrgyzstan tax officials.

4. Defendant Bobby J. Elkin, Jr. (“Elkin”), Dimon’s Country Manager, authorized, directed, and made these bribes in Kyrgyzstan through a DIK bank account held under his name (the “Special Account”). Defendant Baxter J. Myers (“Myers”), Dimon’s Regional Financial Director, authorized all fund transfers from a Dimon subsidiary’s bank account to the Special Account. Defendant Thomas G. Reynolds (“Reynolds”), Dimon’s International Controller, formalized the accounting methodology used to record the payments made from the Special Account for purposes of internal reporting by Dimon.

5. From 2000 to 2003, Dimon paid bribes of approximately \$542,590 to government officials of the Thailand Tobacco Monopoly (“TTM”) in exchange for obtaining approximately \$9.4 million in sales contracts.

6. Defendant Tommy Lynn Williams (“Williams”), Dimon’s Senior Vice President of Sales, directed the sales of tobacco from Brazil and Malawi to the TTM through Dimon’s agent in Thailand. He authorized the payment of bribes to TTM officials and characterized the payments as commissions paid to Dimon’s agent in Thailand.

7. By their conduct, defendants Elkin, Myers, Reynolds, and Williams violated the anti-bribery provision of the FCPA. In addition, defendants Elkin, Myers, Reynolds, and Williams aided and abetted violations of the internal controls and books and records provisions of the federal securities laws. Unless restrained and enjoined by the Court, defendants Elkin, Myers, Reynolds, and Williams will continue to engage in acts and practices that constitute, or will constitute, violations of Section 30A [15 U.S.C. § 78dd-1] of the Securities Exchange Act of 1934 (“Exchange Act”), and that aid and abet violations of Sections 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] of the Exchange Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

9. Venue in the District of Columbia is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

10. In connection with the conduct described herein, defendants Elkin, Myers, Reynolds, and Williams, directly or indirectly, made use of the mails or the means or instrumentalities of interstate commerce in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

DEFENDANTS

11. Elkin, 49, was the country manager for DIK between 1996 and 2004.

12. Myers, 65, was Dimon's Regional Financial Director for the European and Asian Region from 1994 to 1997. He moved to the United Kingdom in late 1997 or early 1998 to become the Regional Financial Director of Asia, a position that he retained until April 1, 2004.

13. Reynolds, 54, was Dimon's International Controller from 1997 to 2001 based in the United Kingdom. From 2001 to 2008, he was Dimon's Corporate Controller in the United States.

14. Williams, 55, was Dimon's Senior Vice President of Sales from 1995 to 2005 based in the United States. He was responsible for the sales of tobacco from Brazil and Malawi to the TTM from 2000 to 2004.

OTHER RELEVANT ENTITIES

15. Alliance One is a Virginia corporation headquartered in Morrisville, North Carolina. Alliance One's common stock is registered with the Commission pursuant to Section

12(b) of the Exchange Act and listed on the New York Stock Exchange (NYSE: AOI). Alliance One was formed in May 2005 by a merger between tobacco merchants Dimon and Standard.

16. Dimon was formed in 1995 through a merger. Dimon purchased and shipped tobacco to manufacturers of cigarettes and other consumer tobacco products in approximately 90 countries around the world, including Kyrgyzstan and Thailand. Dimon's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange (NYSE: DMN).

17. DIK was a wholly-owned subsidiary of Dimon, with its headquarters in Osh, Kyrgyzstan. DIK was a tobacco procurement and sales center.

18. Tamekisi is an entity established by the government of the Kyrgyz Republic (Kyrgyzstan) to regulate the sale and export of Kyrgyz tobacco. The Tamekisi had the authority to issue and control licenses for the fermentation and export of tobacco.

19. TTM is a tobacco monopoly owned by the government of Thailand. The TTM came into being in 1939 and, after the government enacted the Tobacco Act of 1943, became a state tobacco monopoly.

FACTS

A. Bribes Paid To Kyrgyzstan Government Officials

20. In August 1994, Dimon began business operations in Osh, Kyrgyzstan, under the name of DIK, a wholly-owned Kyrgyzstan corporation involved in the purchase and fermentation of oriental tobacco. DIK primarily sold Kyrgyz tobacco to Dimon's largest customers.

21. On September 1, 1996, the Kyrgyzstan government imposed a requirement that all exporters of fermented tobacco have an export license. The Tamekisi acted as the issuing authority and controlled the issuance of export licenses, thus effectively controlling all tobacco

purchases in Kyrgyzstan. A high-ranking Tamekisi official had the authority to sign export licenses. A Tamekisi official informed DIK that the export licensing requirement would result in greater competition for DIK from other companies and that "Tamekisi will share in any profit [Dimon] makes." Under Presidential Order, the Tamekisi was responsible for overseeing the fermentation of tobacco. It operated state-controlled tobacco fermentation plants throughout Kyrgyzstan and made it illegal for any private fermentation plant to operate in Kyrgyzstan.

22. On October 22, 1996, Dimon International Inc. (USA), Dimon's wholly-owned subsidiary, signed an agreement with the Tamekisi stating, among other things, "The cost of services for tobacco fermentation at tobacco plants shall be set up in the amount of \$0.18 U.S. per kg. Apart from that, DIMON shall pay \$0.05 U.S. per kg. on the settlement account of the Kyrgyz party for financial assistance." The payments for "financial assistance" were made by defendant Elkin in cash to a high-ranking Tamekisi official and had no legitimate business purpose.

23. Defendant Elkin received periodic calls from a high-ranking Tamekisi official regarding the cash payments. Defendant Elkin periodically delivered bags filled with \$100 bills to a high-ranking Tamekisi official at the Tamekisi's office in Bishkek, Kyrgyzstan. From 1996 to 2004, defendant Elkin, on behalf of Dimon, paid more than \$2.6 million to a high-ranking Tamekisi official from the Special Account.

24. Defendant Elkin also paid bribes to local government officials in Kyrgyzstan known as the Akims, who controlled the tobacco regions. DIK needed the support and consent from each local Akim in order to continue to purchase tobacco from local growers or agricultural collectives. As governors, Akims had the power and influence to prevent the purchase of tobacco in the region, even if a company had an export license. Akims could also send the police to block the entrance to buying stations or install a lock box to prevent the transfer of tobacco.

25. Akims were paid approximately \$0.01 per kilogram of tobacco purchased by DIK from growers in each province. From 1996 to 2004, defendant Elkin authorized and paid more than \$260,000 to the Akims from the Special Account.

26. DIK was frequently subjected to audits by Kyrgyz tax officials. The tax inspections generally lasted about seven weeks and DIK personnel devoted most of their work hours to responding to queries from the tax officials. Upon completion of one audit, the Kyrgyz tax officials would begin performing yet another inspection. During one audit, the tax officials determined that DIK failed to submit two reports to the tax office. As a result, the tax officials imposed a fine of 2.2 million soms (about \$171,741) against DIK. The tax authorities also threatened to seize DIK's bank accounts and tobacco inventory for tax violations. The tax authorities later offered to reduce the tax penalties levied against DIK in exchange for a cash payment. At that point, defendant Elkin made a cash payment to the tax authorities from the Special Account. From 1996 through 2004, Dimon through defendant Elkin paid approximately \$82,850 to Kyrgyz tax officials.

27. Defendant Myers knew about the Special Account and authorized multiple fund transfers from a wholly-owned Dimon subsidiary to the Special Account from August 1999 through January 2004. In or about May 2001, defendant Myers traveled to Kyrgyzstan to discuss, among other things, the Tamekisi and the recordkeeping associated with the Special Account. Defendant Myers regularly received documents reflecting the activities in the Special Account and performed certain accounting functions relating to the Special Account.

28. Defendant Reynolds knew about the Special Account. Financial information relating to the Special Account was reported to defendant Reynolds, who formalized the methodology for recording payments from the Special Account for purposes of DIK's internal financial reporting.

29. Defendant Reynolds received an internal audit report relating to DIK dated July 23, 2002, which stated that DIK management continued to be challenged by a “cash environment” and cited corruption in Kyrgyzstan as a financial risk. The internal auditors noted that DIK had a potential control issue with cash.

30. Defendant Reynolds knew that the Special Account was unusual, in that the account was held under the name of a DIK employee. He also knew from discussions with defendants Myers and Elkin that the Special Account was used to make cash payments, *i.e.*, commissions to purchase tobacco, but did not ask additional questions about the Special Account.

31. Although the Special Account was funded by a Dimon subsidiary in the United Kingdom, the financial reporting on the Special Account by that subsidiary, and all other consolidated subsidiaries, went directly to Dimon’s corporate headquarters in the United States, including during the period that defendant Reynolds served as Dimon’s Corporate Controller.

B. Bribes Paid to Government Officials Of Thailand

32. From 2000 to 2003, Dimon colluded with two of its competitors to pay bribes of approximately \$542,590 to government officials of the TTM, a tobacco monopoly owned by the government of Thailand, in exchange for securing more than \$9 million in sales contracts with the TTM. These sales were made through Dimon’s subsidiary in Brazil, Dimon do Brasil Tabacos Ltda. The payments were falsely recorded as commissions and included in Dimon’s financial statements that were incorporated in filings made with the Commission.

33. A portion of Dimon’s selling price to the TTM was designated on a per kilogram basis as “special expenses” or “special commissions,” which were kickbacks paid as commissions through Dimon’s agent to certain members of the TTM in exchange for the sales contracts.

34. These bribes to the TTM were authorized by Dimon's U.S. and Brazilian personnel. In particular, defendant Williams, Dimon's Senior Vice President of Sales, directed the sales of Brazilian and Malawi tobacco to the TTM through Dimon's agent in Thailand. He also authorized the payment of the bribes, through Dimon's agent, to the TTM.

35. In 2000, defendant Williams arranged for TTM officials to receive a bribe of approximately \$100,000, or \$0.3018 per kilogram on sales of 326,600 kilograms of tobacco to the TTM. The total value of the tobacco sold to the TTM was more than \$1.6 million. In contemporaneous documents, defendant Williams characterized the bribe as a "retainer" or a "first time sale special commission." In an email dated May 18, 2000, defendant Williams told Dimon personnel to make payments to Dimon's agent in five separate wire transfers over several days. Defendant Williams stated that the total amount to be paid to Dimon's agent was \$120,000 plus 2%. The amount would be divided such that \$120,000 would be paid to the TTM (\$100,000 plus \$20,000 for taxes) and 2% of the sales price would be paid to the agent as a commission.

36. Defendant Williams also knew about a purported business trip to Brazil that was actually a sightseeing trip arranged by Dimon and others for TTM officials. The sightseeing trip occurred in May 2000 and included, among other things, trekking in the Amazon jungle, piranha fishing, and visits to Argentina and various Brazilian waterfalls.

37. In 2001, defendant Williams arranged for TTM officials to receive 5% of the price of tobacco it purchased on a per kilo basis. The TTM purchased 914,400 kilograms of tobacco valued at more than \$1.3 million. A payment of approximately \$241,950 was earmarked to be paid to the TTM as a "special commission," which was approximately \$0.2646 per kilogram, and \$187,603 to be paid to Dimon's agent. Approximately 5% of the sales price was to be paid to the TTM and 3% of the sales price to Dimon's agent. In an email dated June 1, 2001, defendant Williams and a Dimon employee in Brazil discussed the "special commission"

on TTM sales. Defendant Williams added, "It might be worthwhile to discuss ... what should be said regarding the special commission. It would be better if I did not have to answer too many questions about it here in the States. I'm sure you understand!" On August 15, 2001, defendant Williams instructed Dimon personnel to make commission payments to Dimon's agent in Thailand in \$20,000 increments transferred over several weeks to five bank accounts controlled by Dimon's agent. The next day, defendant Williams approved a "commission" payment of \$411,137.28 to Dimon's agent for the 2001 TTM sales. This payment amounted to 8% (5% to the TTM and 3% for Dimon's agent) of the value of tobacco sold to the TTM.

38. In 2002, defendant Williams arranged for TTM officials to receive \$0.45 per kilo on TTM tobacco purchases. In or about April 2002, Dimon offered to sell tobacco to the TTM valued at more than \$1.2 million at a price of \$5.60/kg., which included \$0.45/kg. in "special commissions" to be paid to TTM officials. A sales order dated August 1, 2002, indicated that the price per kilo for tobacco was \$5.60/kg. and that "Special Commissions" of \$0.45/kg. were to be paid based on a net kilo amount of 211,200 (\$95,040) plus an agent commission of \$0.165/kg. In six installments made over a two-week period, Dimon wired the payments to three separate bank accounts in Thailand controlled by Dimon's agent in Thailand.

39. In addition to the bribes paid to TTM officials, Dimon and its competitors arranged and paid for at least one sightseeing trip for TTM officials in 2002. From April 1, 2002 to April 14, 2002, in a trip arranged by defendant Williams, the TTM delegation traveled from Bangkok to Brazil purportedly to look at tobacco blends and samples. The return portion of the TTM delegation's trip included a one-week stay in Madrid and Rome that was unrelated to the inspection or purchase of tobacco by the TTM.

40. Finally, in June 2003, defendant Williams authorized the payment of "special commissions" to TTM officials of approximately \$118,800, or \$0.50 per kilogram on the sale of

237,600 kilograms of tobacco valued at more than \$1.3 million. Dimon recorded the payment as commissions paid to Dimon's sales agent. The total amount of the payment was approximately \$160,142.40 (\$118,800 plus the agent's commission of \$41,342.40), or 11.444% of the sales amount (0.674/kg.). Defendant Williams instructed company personnel responsible for transmitting the payment to Dimon's agent to make eight separate payments of less than \$20,000 each to four different bank accounts over several days.

41. Defendant Williams knew the payments made to Dimon's agent in the form of "commissions" were excessive but authorized the payments as bona fide commissions. He also knew these "commission" payments were going to be transmitted to TTM officials. Defendant Williams stopped authorizing these payments in 2004 because, among other things, the special commission Dimon's agent requested to be paid to TTM officials was a much higher commission than the previous year. As a result of defendant Williams's refusal to pay a "special commission" to TTM officials in 2004, Dimon did not make any sales to the TTM that year.

CLAIMS FOR RELIEF

FIRST CLAIM

Defendants Elkin, Myers, Reynolds, and Williams Violated Section 30A of the Exchange Act

42. Paragraphs 1 through 41 are re-alleged and incorporated by reference.

43. Section 30A(a)(3) of the Exchange Act prohibits any issuer, or any officer, director, employee, or agent of such issuer to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any

foreign official for the purposes of influencing their acts or decisions in their official capacity, inducing them to do or omit to do actions in violation of their lawful duties, securing any improper advantage, or inducing such foreign officials to use their influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

44. By reason of the foregoing, defendants Elkin, Myers, Reynolds, and Williams violated, and unless enjoined will continue to violate, the anti-bribery provisions of the FCPA, as codified at Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].

SECOND CLAIM

Defendants Elkin, Myers, Reynolds, and Williams Aided and Abetted Violations of Section 13(b)(2)(A) of the Exchange Act

45. Paragraphs 1 through 41 are re-alleged and incorporated by reference.

46. Through their conduct, as described above, defendants Elkin, Myers, Reynolds, and Williams knowingly provided substantial assistance to Dimon, now Alliance One, in connection with its violations of Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)] of the Exchange Act.

47. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act, defendants Elkin, Myers, Reynolds, and Williams aided and abetted, and unless enjoined will continue to aid and abet, violations of Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)] of the Exchange Act.

THIRD CLAIM

Defendants Elkin, Myers, Reynolds, and Williams Aided and Abetted Violations of Section 13(b)(2)(B) of the Exchange Act

48. Paragraphs 1 through 41 are re-alleged and incorporated by reference.

49. Through their conduct, as described above, defendants Elkin, Myers, Reynolds, and Williams knowingly provided substantial assistance to Dimon, now Alliance One, in connection with its violations of Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)] of the Exchange Act.

50. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act, defendants Elkin, Myers, Reynolds, and Williams aided and abetted, and unless enjoined will continue to aid and abet, violations of Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)] of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

A. Permanently restraining and enjoining defendants Elkin, Myers, Reynolds, and Williams from violating Section 30A of the Exchange Act [15 U.S.C. §§ 78dd-1] and aiding and abetting violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)];

B. Ordering defendants Myers and Reynolds to pay a civil penalty pursuant to Sections 21(d)(3) and 32(c) of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78ff(c)]; and

C. Granting such further relief as the Court may deem just and appropriate.

* * * * *

Dated: April 28, 2010

Respectfully Submitted,

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