

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101179 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22195

In the Matter of

**Grays Peak Ventures LLC,
Scott B. Stevens, and Michael
Winterhalter**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Grays Peak Ventures LLC (“Grays Peak”), Scott B. Stevens (“Stevens”), and Michael Winterhalter (“Winterhalter”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the jurisdiction over it and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 13(d) of the Exchange Act and Rule 13d-1 thereunder together require that any person who directly or indirectly acquires beneficial ownership of more than five percent of a voting class of any equity security registered under Section 12 of the Exchange Act file a statement with the Commission. During the relevant time, beneficial owners could comply with this requirement by filing a Schedule 13D with the Commission within 10 days after acquiring the requisite amount of beneficial ownership. Whenever a material change occurred to the facts set forth in any Schedule 13D so filed, the disclosure statement was required to have been truthfully amended to reflect that material change and filed promptly.

2. Section 16(a) of the Exchange Act requires officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class of equity security, to file certain reports of securities holdings and transactions. Enactment of Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of insider information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). The obligation to make Section 16 filings applies irrespective of profits or the filer's reasons for engaging in the transactions.

3. Respondents were officers, directors, or significant shareholders of Agentix Corp. ("Agentix"). While subject to the reporting requirements above, Respondents failed to file timely, or amend timely, reports of their positions and certain transactions in Agentix securities. As a result, Respondents violated Sections 13(d) and 16(a) and related rules.

Respondents

4. Winterhalter, age 63, and a resident of Dana Point, California, served as an officer and director of Agentix from April 18, 2013, until July 10, 2019, and then again from May 8, 2020, until December 2, 2020. Prior to July 3, 2019, Agentix was known as Fairwind Energy Inc. ("Fairwind").

5. Stevens, age 48, and a resident of Bedford, New York, served as an officer and director of Agentix from June 10, 2019, to May 8, 2020, and then served as a director from July 2, 2020, through June 4, 2021. Stevens is the managing member of Grays Peak.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. Grays Peak is an investment vehicle with a principal business address in New York, New York, whose managing member is Stevens.

Legal Framework

7. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) thereunder together require any person who has directly or indirectly acquired beneficial ownership of more than five percent of any voting class of equity security registered under Section 12 of the Exchange Act to file a statement with the Commission disclosing certain information specified in a Schedule 13D. During the relevant time, individuals or entities could comply with this requirement by filing a Schedule 13D with the Commission within ten days after they acquired the requisite amount of beneficial ownership.² Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings.³

8. During the time period relevant to this matter, Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder required a person who had filed a Schedule 13D to file an amendment “promptly”⁴ if any material change occurred in the facts set forth in that filing, including but not limited to, any material increase or decrease in the percentage of the class beneficially owned. An acquisition or disposition of beneficial ownership in an amount equal to one percent or more of a class of equity securities is deemed material by Rule 13d-2(a).

9. Section 16(a) of the Exchange Act and Rule 16a-3 apply to every officer, director, and greater than ten percent beneficial owner⁵ of any class of equity security registered pursuant to Exchange Act Section 12 (collectively referred to herein as “insiders”). Pursuant to Rule 16a-3(a), insiders are required to file initial statements of holdings on Form 3 and keep this information

² On October 10, 2023, the Commission adopted amendments to the rules governing beneficial ownership reporting under Sections 13(d) and 13(g) to update and shorten certain filing deadlines (the “2023 Amendments”). *Modernization of Beneficial Ownership Reporting*, SEC Release No. 34-98704 (Oct. 10, 2023), 88 Fed. Reg. 76896 (Nov. 7, 2023). Among other provisions, the 2023 Amendments shortened the deadline for filing the initial statement on Schedule 13D from 10 days to five business days, which became effective on February 5, 2024. *Id.* at 76897, 76906.

³ See generally *GAF Corp. v. Milstein*, 453 F.2d 709, 717 (2d Cir. 1971) *cert. denied*, 406 U.S. 910 (1972); see also *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1167 (D.C. Cir. 1978) *cert. denied*, 440 U.S. 913 (1979), *citing*, S. Rep. No. 550, 90th Cong., 1st Sess. 1 (1967) and H.R. Rep. No. 1711, 90th Cong., 2d Sess. 2 (1968) (“The purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time.”).

⁴ Although the term “promptly” was not defined under the rules in effect at the time of the violation, any delay in filing beyond the date the filing reasonably could have been made may not have been prompt. *Amendments to Beneficial Ownership Reporting Requirements*, SEC Rel. No. 34-39538, 1998 WL 7449, at *3 n.14 (Jan. 12, 1998).

⁵ For purposes of determining who is a greater than 10% beneficial owner required to report under Section 16(a), Rule 16a-1(a)(1) incorporates the standards in Exchange Act Rule 13d-3, which specifies that a “beneficial owner” includes any person who directly or indirectly has or shares voting or investment power, regardless of whether they have any economic interest in the securities. More than one person may be a beneficial owner of the same securities.

current by reporting transactions on Forms 4 and 5. Specifically, Section 16(a)(2) of the Exchange Act and Rule 16a-3 thereunder require that within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. These same provisions require that insiders must also file Form 4 reports disclosing certain transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction. Pursuant to Rule 16a-3(g)(1), transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, according to Rule 16a-3(f)(1), insiders are required to file a Form 5 report within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

10. There is no state of mind requirement for violations of Sections 13(d) and 16(a) and the rules thereunder.⁶ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁷

Facts

Grays Peak and Stevens

11. On June 11, 2019, Stevens timely filed a Form 3 indicating that he was a director and officer of Fairwind but that he did not beneficially own any shares in the company.

12. On October 30, 2019, Grays Peak filed a Form 3 reporting that it was a 10% owner of Agentix. The form represented that the date of event that required the filing ("Event Date") was October 9, 2019. The Form 3 was due within 10 days of the Event Date and was therefore filed late.

13. Stevens filed a Form 4 on October 31, 2019, reporting that he was a director, officer and 10% owner. The form represented that the Event Date was October 9, 2019. This Form 4 was required to be filed within two business days of the Event Date and was therefore filed late.

⁶ See, e.g., *Savoy Indus.*, 587 F.2d at 1167 ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons."); *SEC v. e-Smart Technologies, Inc.*, 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act).

⁷ Cf. *Oppenheimer & Co., Inc.*, 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) (Commission opinion) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"); *Herbert Moskowitz*, 77 SEC 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) ("evidence of both motive for non-disclosure and actual market impact . . . is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

14. According to its Form 10-Q filed on April 27, 2020, Agentix issued 767,000 shares of stock to Grays Peak on March 29, 2020. The Form 10-Q represented the shares “amounted to approximately 30% of the issued and outstanding shares of common stock of the Company on the date of issuance.” Grays Peak should have filed a Form 4 reflecting this transaction within two business days of March 29, 2020, but did not file the form until May 21, 2020. That filing was late.

15. As the managing member of Grays Peak, Stevens had an indirect pecuniary interest in the 767,000 Agentix shares acquired by Grays Peak and was obligated to report this transaction on his own behalf. Although Stevens signed the May 21, 2020 Form 4 on behalf of Grays Peak, he failed to file his own Form 4. Moreover, since Stevens should have, but did not, report the transaction on Form 4, he was required to report the transaction on Form 5, but he failed to do so.

16. Stevens and Grays Peak filed a Schedule 13D on May 26, 2020, reporting an Event Date of March 29, 2020. Stevens and Grays Peak both signed as reporting persons. The Schedule 13D represented that Stevens and Grays Peak had beneficial ownership of 2,188,070 shares of Agentix common stock, representing 57.4% of outstanding shares. This Schedule 13D should have been filed within 10 days of the Event Date, and thus was filed late.

Winterhalter

17. Winterhalter filed a Schedule 13D and a Form 3 on April 7, 2015, reflecting his beneficial ownership of Fairwind common stock. Winterhalter did not make any Form 4 filings until November 5, 2019, and he did not file any amendments to his Schedule 13D until May 26, 2020.

18. On November 5, 2019, Winterhalter timely filed a Form 4 reflecting a sale of 8,433 shares of Agentix common stock on November 4, 2019. The Form 4 reported that Winterhalter beneficially owned 10,035 shares of Agentix common stock following the transaction. At the time, Agentix had reported approximately 25,000 outstanding shares of common stock. Thus, the 8,433 shares of stock sold by Winterhalter on November 4, 2019, constituted about 33% of the outstanding shares of Agentix. As a result, Winterhalter should have promptly filed an amendment to his Schedule 13D, but he failed to make a timely filing.

19. On November 22, 2019, Winterhalter sold 10,015 shares of Agentix stock. On May 21, 2020, Winterhalter filed a Form 4 to reflect that sale. The Form 4 showed that Winterhalter beneficially owned zero shares of Agentix common stock following the sale. This Form 4 should have been filed within two business days of the transaction and thus was filed late.

20. The 10,015 shares Winterhalter sold on November 22, 2019, constituted 39% of the roughly 25,000 outstanding shares of Agentix. As a result, Winterhalter should have promptly filed another amendment to his Schedule 13D. However, Winterhalter did not file an amendment until May 26, 2020, which was late. At the staff's request, Winterhalter undertook a review of other Schedule 13D filings and voluntarily reported his failure to file this amendment timely.

21. The May 26, 2020 Schedule 13D amendment also reported that Agentix issued 150,000 shares of common stock to Winterhalter in March 2020 as compensation. Winterhalter filed a Form 4 on May 21, 2020 regarding this acquisition. The Form 4 was due within two business days of acquiring the shares and was filed late.

Violations

22. As a result of the conduct described above, Grays Peak and Stevens violated Sections 13(d)(1) and 16(a) of the Exchange Act and Rules 13d-1 and 16a-3 thereunder.

23. As a result of the conduct described above, Winterhalter violated Sections 13(d)(2) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 thereunder.

Cooperation

24. In determining to accept the Offers, the Commission considered cooperation by the Respondents afforded to the Commission staff. Moreover, the Commission considered steps undertaken by Winterhalter after being approached by Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Grays Peak's, Stevens' and Winterhalter's Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents Grays Peak Ventures LLC and Scott B. Stevens cease and desist from committing or causing any violations and any future violations of Sections 13(d)(1) and 16(a) of the Exchange Act and Rules 13d-1 and 16a-3 thereunder.

B. Pursuant to Section 21C of the Exchange Act, Respondent Michael Winterhalter cease and desist from committing or causing any violations and any future violations of Sections 13(d)(2) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 thereunder.

C. Respondent Stevens shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

D. Respondent Winterhalter shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

E. Respondent Grays Peak shall pay civil penalties of \$65,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be made in the following installments: \$20,000 within 14 days after the entry of this Order; \$15,000 within 120 days after the entry of this Order; \$15,000 within 240 days after the entry of this Order; and \$15,000 within 360 days after the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent Grays Peak shall contact the staff of the Commission for the amount due. If Respondent Grays Peak fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Grays Peak, Stevens and Winterhalter as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letters and checks or money orders must be sent to D. Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a

Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

G. Respondent Winterhalter acknowledges that the Commission is not imposing a civil penalty in excess of \$20,000, based upon his cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent Winterhalter knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to Respondent Winterhalter, petition the Commission to reopen this matter and seek an order directing that Respondent Winterhalter pay an additional civil penalty. Respondent Winterhalter may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondents Stevens and Winterhalter, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Stevens and Winterhalter under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Stevens and Winterhalter of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary