



*United States Attorney
Southern District of New York*

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FORMER CEO AND CFO OF DUANE READE
CHARGED WITH SECURITIES FRAUD

LEV L. DASSIN, the Acting United States Attorney for the Southern District of New York, and MARK J. MERSHON, the Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation ("FBI"), announced that ANTHONY CUTI, the former Chief Executive Officer ("CEO"), Chairman of the Board, and President of Duane Reade, Inc. ("Duane Reade"), and WILLIAM TENNANT, the former Chief Financial Officer ("CFO") and Senior Vice-President of Duane Reade, were indicted today for allegedly perpetrating a scheme to falsely inflate the income and reduce the expenses that Duane Reade reported to the investing public and others. CUTI was also charged with making false filings with the Securities and Exchange Commission ("SEC"). According to the Indictment filed in Manhattan federal court:

From December 2000 through June 2005, CUTI and TENNANT engaged in a scheme to misrepresent Duane Reade's financial performance in order to meet its own projections and the expectations of professional securities analysts. The scheme involved: 1) the reporting of inflated income from fraudulent real estate transactions; and 2) the artificial reduction of expenses through fictitious credits from vendors who did work for Duane Reade.

Real Estate Transactions

With respect to the real estate transactions, CUTI and TENNANT engaged in fraudulent "Real Estate Concession Transactions." Pursuant to these transactions, Duane Reade sold

to various brokers, real estate developers, and landlords certain real estate rights, including remaining time on leases and options on retail locations. The rights being sold, however, were largely worthless for various reasons, including that there was little or no time left on the leases, the property subject to the transactions was unusable, or Duane Reade had already sold the right previously.

In order to convince various third parties -- brokers, developers and landlords -- to participate in these fraudulent transactions, CUTI promised, through various side agreements, to pay the third parties back the cost of doing the transactions. TENNANT and CUTI carried out these promises by engaging in additional fraudulent transactions that were merely vehicles to return money to the third parties.

In order to inflate reported income, CUTI and TENNANT generally structured the fraudulent Real Estate Concession Transactions so that Duane Reade could report income on them immediately in the financial quarter in which Duane Reade faced a shortfall on its own projections or analysts' expectations. Meanwhile, CUTI and TENNANT structured the fraudulent return payments to the third parties so they would be treated as capital expenditures, enabling Duane Reade to stretch those costs over a long period of time.

CUTI and TENNANT misled Duane Reade's auditors about the Real Estate Concession Transactions by failing to disclose that the real estate rights being sold were largely worthless and by failing to inform the auditors that they were reimbursing the brokers, developers, and landlords for participating in the deals.

Fictitious Credits

CUTI also falsely inflated the income that Duane Reade reported to the investing public in a second way, by engaging in fraudulent "Credit-Rebilling Transactions." In these transactions, CUTI directed a co-conspirator not named in the Indictment ("CC-1"), who was an employee of Duane Reade, to seek fictitious credits from vendors who did work for Duane Reade. At the same time, CUTI directed CC-1 to tell the vendors that they could recover the money from the fictitious credits by rebilling Duane Reade for the same amounts in later quarters without doing any additional work. CUTI further told CC-1 that the vendors should use language on the false rebillings that would allow Duane Reade to treat the rebillings as capital expenditures. In this way, Duane Reade could record the credits immediately but stretch the cost of the rebillings over time.

These credits and rebillings were false because, as CUTI knew, they did not reflect the true reasons for the credits and the side agreements Duane Reade had struck with the vendors. The false credits were used to decrease Duane Reade's expenses, which had the effect of increasing the net income reported to the public.

As a result of both aspects of the scheme, materially false and misleading information was provided to the investing public, Duane Reade shareholders and auditors, and the SEC about the company's true income, expenses, earnings per share, and other financial results. This information was contained in Annual and Quarterly Reports filed with the SEC, in press releases, and on conference calls held with securities analysts. In addition, in July 2004, the private equity firm Oak Hill Capital Partners, L.P. ("Oak Hill"), purchased all the publicly traded stock of Duane Reade. Materially false and misleading information was provided to Oak Hill during the negotiation of this purchase. CUTI participated directly in those negotiations.

Through this scheme, CUTI and TENNANT caused Duane Reade to report income that was inflated in a false and misleading manner by approximately 10-15 percent between the last quarter of its fiscal year in 2000 and Oak Hill's acquisition in July 2004.

CUTI and TENNANT achieved significant financial gain in part pursuant to this scheme. CUTI negotiated lucrative compensation packages with Duane Reade and Oak Hill. From 2000 through 2005, CUTI received more than \$50 million in compensation from Duane Reade and Oak Hill, including a pay-out of more than \$25 million in connection with Oak Hill's acquisition. TENNANT, from June through November 2001, after participating in numerous fraudulent Real Estate Concession Transactions, exercised his options to buy Duane Reade stock and received in excess of \$2.8 million in gain.

The case is assigned to United States District Judge DEBORAH A. BATTIS. CUTI is expected to surrender and be arraigned on the charges tomorrow. TENNANT is expected to surrender at a later date.

The Indictment charges CUTI and TENNANT with one count of conspiracy to commit securities fraud, make false statements in annual and quarterly SEC reports, make false statements to auditors, and make false entries in books and records; and one count of securities fraud. It also charges CUTI with three counts of making false filings with the SEC. The conspiracy

count carries a maximum sentence of 5 years in prison and a fine of \$250,000 or twice the gross gain or gross loss from the offense. The securities fraud count and the false SEC filing counts each carry maximum sentences of 20 years in prison and fines of \$5 million.

CUTI, 63, lives in Saddle River, New Jersey.

TENNANT, 61, lives in Richmond, Virginia.

Mr. DASSIN praised the investigative work of the FBI, and thanked the SEC for their assistance.

"The defendants are alleged to have deceived the investing public by providing false and misleading information about Duane Reade's financial condition while lining their own pockets with millions of dollars in compensation," said Acting United States Attorney LEV L. DASSIN. "Corporate executives who profit through fraud do so at the expense of public confidence in our financial markets."

"The FBI is committed to aggressively investigating corporate fraud wherein self-dealing corporate executives design schemes to deceive investors, auditors, and analysts about the true financial condition of the corporation," said Assistant Director-in-Charge MARK J. MERSHON.

Assistant United States Attorneys JONATHAN R. STREETER and JOAN M. LOUGHNANE are in charge of the prosecution.

The charges and allegations contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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