

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE HEALTHSOUTH CORPORATION	§	No. 22, 2004
SHAREHOLDERS LITIGATION,	§	
	§	
RICHARD M. SCRUSHY,	§	Court Below – Court of
	§	Chancery, in and for New
Defendant Below,	§	Castle County
Appellant,	§	C.A. No. 19896
	§	
v.	§	
	§	
EDWARD R. BIONDI, individually and	§	
derivatively on behalf of	§	
HEALTHSOUTH CORPORATION, and	§	
JAMES BACHAND, derivatively on behalf	§	
of HEALTHSOUTH CORPORATION,	§	
	§	
Plaintiffs Below,	§	
Appellees,	§	
	§	
and	§	
	§	
HEALTHSOUTH CORPORATION, a	§	
Delaware Corporation,	§	
	§	
Nominal Defendant Below,	§	
Appellee.	§	

Submitted: April 7, 2004
Decided: April 14, 2004

Before **HOLLAND, BERGER** and **STEELE**, Justices.

ORDER

This 14th day of April 2004, it appears to the Court that:

1) This is a derivative suit in which the plaintiffs seek relief from a transaction (the “Buyback”) whereby the defendant Richard M. Scrushy, HealthSouth Corporation’s former Chairman and Chief Executive Officer, extinguished a loan of over \$25 million that he owed to HealthSouth. In the Buyback, Scrushy paid HealthSouth with shares he owned in HealthSouth that were valued in the stock market at the dollar amount of the principal balance then needed to extinguish his obligations regarding the loan in full.

2) The underlying premise of the Buyback was that the stock market price was a reliable indicator of the value of Scrushy’s stock in HealthSouth. The market value had been established, in large measure, in reliance upon HealthSouth’s certified financial statements and other public releases regarding its financial condition.

3) The record reflects that shortly after Scrushy transferred enough of his shares to HealthSouth to retire his debt in full, based upon their market value, the first public revelations of financial problems at HealthSouth occurred. Those disclosures and subsequent public revelations indicated that the financial information upon which the market was relying when HealthSouth accepted Scrushy’s shares to retire his debt was materially misleading. As a result of that inaccurate information, HealthSouth received shares worth less than the value of the loan Scrushy was retiring.

4) The plaintiffs filed a motion for summary judgment. For purposes of their motion, the plaintiffs assumed that Scrushy was not aware that HealthSouth's financial statements and prior public releases about its financial condition were materially inaccurate. The plaintiffs proceeded on this basis because they contended that Scrushy's actual knowledge of the material inaccuracy of HealthSouth's financial documents was irrelevant to their claims of unjust enrichment and equitable fraud.

5) The Court of Chancery agreed with the plaintiffs' assertion that neither of those claims require that Scrushy have actual knowledge that the HealthSouth financial statements were materially inaccurate. Following briefing and argument, the Court of Chancery issued an opinion on November 24, 2003 that granted the plaintiffs' motion for summary judgment. It held that the Buyback unjustly enriched Scrushy and also held for the plaintiffs on the claim of equitable fraud. The remedy of rescission was granted.

6) On December 22, 2003, the Court of Chancery entered a Final Judgment Order under Rule 54(b) (the "Judgment Order"), setting a closing date of January 2, 2004 to effect the rescission of the Buyback. Scrushy did not attend the closing and did not comply with the rescission order. Instead,

on January 2, 2004, Scrushy filed a Motion to Alter or Amend the Judgment Order. The Court of Chancery denied that motion with prejudice.

7) Scrushy filed an appeal with this Court from the Judgment Order and from denial of his Motion to Alter or Amend the Judgment Order.

8) This Court has determined that the Judgment Order of the Court of Chancery should be affirmed on the basis of and for the reasons assigned in its written opinion dated November 24, 2003 and that the Court of Chancery's denial of Scrushy's Motion to Alter or Amend the Judgment Order should be affirmed for the reasons stated in its transcribed verbal rulings during a telephone conference on January 6, 2004.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Court of Chancery be, and the same hereby are, AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice