

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54049 / June 27, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2448 / June 27, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12344

In the Matter of

DOUGLAS R. BAUER,

Respondent.

**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 Douglas R. Bauer (“Bauer” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), 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 Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents 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 Respondent's Offer, the Commission finds¹ that:

Respondent

Douglas R. Bauer, age 44, of St. Petersburg, Florida, is the chief financial officer, secretary, and treasurer of PowerLinx, Inc. ("PowerLinx"). He joined PowerLinx's management team in early 2001 and shortly thereafter became chief financial officer.

Other Relevant Entity

PowerLinx is a Nevada corporation based in St. Petersburg, Florida. The company, formerly known as SeaView Video Technology, Inc., manufactures security video cameras, underwater cameras, and accessories. PowerLinx's stock is quoted on the OTC Bulletin Board under the symbol "PWNX."

Summary

Bauer joined PowerLinx's management team in early 2001. Prior to Bauer's arrival, PowerLinx had fraudulently recognized nearly ninety percent of its reported revenues during fiscal year 2000 based on fictitious sales.² During his initial review of the company's financial records, Bauer concluded that PowerLinx had materially overstated revenues and accounts receivable during 2000. In April 2001, largely at Bauer's impetus, PowerLinx restated its second- and third-quarter revenues as part of its fiscal year 2000 annual report on Form 10-K. In April 2002, PowerLinx again restated its financial statements, in its 2001 annual report on Form 10-K, to write down improperly recorded deferred tax assets. At the time of that restatement, Bauer was aware of material information that should have been disclosed, but did not cause that information to be included in the restatement. Accordingly, Bauer was a cause of PowerLinx's violations of Section 15(d) of the Exchange Act and Rules 15d-1 and 12b-20 thereunder with regard to its April 2002 restatement.

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

² In a related action, PowerLinx and two of its former officers and directors, George S. Bernardich III and James R. Cox, have consented to the entry of final judgments enjoining them from violating the antifraud, periodic reporting, and recordkeeping provisions and imposing various sanctions. *See Securities and Exchange Commission v. PowerLinx, Inc., et al.*, Civ. Action No. 1172 (D.D.C. filed June 27, 2006).

Background

PowerLinx's Improper Revenue Recognition

From 1999 through 2001 (the “relevant period”), PowerLinx’s business consisted of manufacturing and selling underwater video cameras and accessories, and it sold and shipped its products directly to consumers, primarily at boat shows.³ During fiscal year 2000, PowerLinx utilized a sales program known as “dealer floor plans,” which were, in essence, consignment arrangements whereby dealers agreed to display PowerLinx’s underwater camera products without actually purchasing them (*i.e.*, without accepting title and the risks and rewards of ownership). In a departure from both Generally Accepted Accounting Principles (“GAAP”) and the company’s stated revenue recognition policy, which provided for recognition “at the time of product shipment,” PowerLinx recorded revenues from dealer orders placed pursuant to the dealer floor plans before any cameras were shipped to dealers or sold by the dealer-consignees to consumers.⁴ Most of the cameras in question were not shipped, or even manufactured, during the relevant period. However, even if PowerLinx had shipped the cameras on time, the company could not have recognized revenue on those shipments in accordance with GAAP because the cameras would have been shipped pursuant to consignment arrangements.

PowerLinx’s dealer floor plan program for underwater cameras continued until September 2000, when the company began soliciting orders for its new SecureView video surveillance product, which was still under development at that time. As the terms of the dealer floor plan agreement made clear,⁵ dealers who submitted orders to participate in SecureView dealer floor plans merely were agreeing to display cameras on PowerLinx’s behalf, but were not purchasing the cameras. Consequently, the dealer floor plan orders that PowerLinx received did not reflect actual demand for the company’s products. From September through at least December 2000, PowerLinx devoted virtually all of its marketing and sales efforts toward generating dealer floor plan orders

³ In late 1999, PowerLinx began developing a video surveillance product known as “SecureView,” which used a “camera in a light bulb” technology to transmit video signals through electrical wiring to a television monitor. During the relevant period, PowerLinx only produced approximately two dozen functioning SecureView cameras, primarily prototypes for testing purposes.

⁴ Under GAAP, revenue recognition is inappropriate on products delivered pursuant to a consignment arrangement, but not yet sold by the consignee, because the consignor retains the risks and rewards of ownership of the product and title has not passed to the consignee. *See* Statements of Financial Accounting Standards (“SFAS”) 48, *Revenue Recognition When Right of Return Exists*; Statement of Position (“SOP”) 97-2, *Software Revenue Recognition*, ¶ 25; Statements of Financial Accounting Concepts (“SFAC”) 5, *Recognition and Measurement in Financial Statements of Business Enterprises*, ¶¶ 83-84. Financial statements filed as part of an issuer’s periodic reports under Sections 13(a) and 15(d) of the Exchange Act must be prepared in accordance with GAAP. *See* Regulation S-X §§ 210.4-01, 210.1-01(a)(2).

⁵ The consignment agreement that PowerLinx used in connection with its SecureView dealer floor plan offered dealers the following terms: “ZERO down...ZERO interest...ZERO risk.” The consignment agreement further provided that “[t]he Goods shipped shall remain [PowerLinx]’s property until sold to Consignee’s customers,” and also that the “Consignee shall make payment to [PowerLinx] for Goods sold as soon as practical after the sale of each unit on consignment.”

for SecureView cameras. As it had done with the underwater camera dealer floor plans, PowerLinx improperly recorded the SecureView orders as sales prior to shipping any cameras and before dealers had sold any cameras to customers. In fact, PowerLinx only manufactured approximately two dozen prototype SecureViews in all of 2000 and did not produce commercially viable models until May 2001 or later.

PowerLinx's 2000 Annual Report and Restatement

Bauer joined PowerLinx's management team in early 2001. During his initial review of the company's financial records, Bauer concluded that PowerLinx had materially overstated revenues and accounts receivable during 2000. Bauer immediately conveyed his findings to other members of PowerLinx's senior management. In April 2001, PowerLinx filed its annual report on Form 10-K for fiscal year 2000. In that report, PowerLinx restated its financial results for the second and third quarters of 2000, but failed to disclose that its accounting errors stemmed from having improperly recorded consignment (or dealer floor plan) orders as revenue.

In addition, PowerLinx asserted in its Form 10-K that "[a]ggressive selling efforts [had] achieved approximately \$9 million in SecureView product orders from independent retailers and individual customers." (Emphasis added.) This purported \$9 million SecureView backlog was also discussed in a December 2000 press release, in which PowerLinx stated, "[t]he Company will roll into 2001 with a backlog of orders totaling over \$9 million." In fact, the "orders" comprising the purported \$9 million backlog were consignment orders and not actual product sales. By representing its dealer floor plan orders as "product orders from independent retailers and individual customers," PowerLinx created the impression that there was actual demand for SecureView cameras and that such demand would translate into future revenue as soon as PowerLinx could begin filling the orders. In fact, there was little, if any, demand for SecureView cameras at the time PowerLinx filed its Form 10-K. As PowerLinx's senior accounting officer, Bauer had a role in preparing PowerLinx's annual report for fiscal year 2000 and was aware of this disclosure concerning the \$9 million order backlog.

Bauer Was a Cause of PowerLinx's Issuance of a Restatement in 2002 That Omitted Material Facts Regarding the Improper Recording of a Deferred Tax Asset

Under GAAP, a company may record a deferred tax asset based on a reasonable expectation that current net tax operating losses will, in future years, offset expected future profits, thereby reducing the company's future income tax liability.⁶ However, GAAP requires that the deferred tax asset be reduced by a "valuation allowance" to account for the possibility that the company will fail to be profitable as expected.

PowerLinx improperly recorded on its fiscal year 2000 balance sheet a deferred tax asset of \$1,439,322 without any valuation allowance. The tax asset was material, representing almost forty percent of PowerLinx's total assets of \$3,841,944. PowerLinx also recorded deferred tax

⁶ See SFAS 109, *Accounting for Income Taxes*.

assets of \$180,613, \$72,907, and \$44,921, respectively, in its financial statements for the first three quarters of 2000.

PowerLinx did not have a proper basis for recording the deferred tax assets. The company had accumulated significant losses in 2000 and had no historical operating basis from which to conclude that it would be profitable in future years. Underwater camera sales had declined significantly and the company had devoted most of its resources to developing its SecureView product. The sole basis for PowerLinx's "expectation" of future profitability was the purported \$9 million backlog of SecureView orders, which management assumed would generate taxable income; however, this purported backlog, which predated Bauer's hiring, did not reflect actual demand for SecureView cameras and, consequently, was not a reasonable or reliable indicator of future profitability.

In late 2001, Bauer determined that virtually all of the orders comprising the purported \$9 million backlog contained consignment terms and, therefore, were unlikely to produce taxable income. In April 2002, after hiring a new audit firm, PowerLinx restated its 2000 financial results, reducing the value of the deferred tax asset on its balance sheet from \$1,439,322 to zero. In its restatement, PowerLinx explained that the action was necessary because "projections of future taxable income d[id] not rise to the 'more likely than not' criteria established in Financial Accounting Standard No. 109." However, PowerLinx failed to disclose the material underlying reason for the restatement, which was, as Bauer himself had concluded in an internal memorandum, that "[i]n no cases did these orders [comprising the backlog] constitute firm, contracted future business" and, for that reason, they should not have been relied upon as evidence of future taxable income.

Although Bauer had become aware, after PowerLinx had filed its fiscal year 2000 annual report, that the purported backlog consisted of orders for consignment arrangements (rather than orders to purchase product), he failed to ensure that PowerLinx disclosed this information as part of the 2002 restatement. As chief financial officer, Bauer should have caused PowerLinx to disclose that the sole basis for having recorded the deferred tax asset, the purported \$9 million order backlog, had been determined to be invalid, but he failed to do so.

Legal Analysis

As a result of the conduct described above, PowerLinx violated, among other provisions, Section 15(d) of the Exchange Act and Rules 15d-1 and 12b-20 thereunder, which require Exchange Act reporting companies to file accurate annual reports on Forms 10-K and include in such reports material information necessary to ensure that statements in the reports are not misleading. In April 2002, PowerLinx filed an annual report with the Commission that omitted material facts.

As a further result of the conduct described above, Bauer was a cause of PowerLinx's violations of Section 15(d) of the Exchange Act and Rules 15d-1 and 12b-20 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that Respondent Bauer cease and desist from causing any violations and any future violations of Sections 15(d) of the Exchange Act and Rules 15d-1 and 12b-20 promulgated thereunder.

By the Commission.

Nancy M. Morris
Secretary