

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51488 / April 6, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2224 / April 6, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11884

In the Matter of

JOHN D. CLUTTEN,

Respondent.

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

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 John D. Clutten (“Clutten” 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, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Facts

Team Communications Group, Inc. ("Team"), is a California corporation which had a principal place of business in Los Angeles and operations in the United Kingdom (Team Dandelion) and Germany. The company produced and distributed movies and television shows. It was a publicly-held company with securities registered with the Commission pursuant to Section 12(g) of the Exchange Act. Team shares traded on the NASDAQ until it was de-listed after the disclosure of the accounting fraud. Team is currently in Chapter 7 liquidation proceedings.

John D. Clutten, age 49, is, and was at all relevant times, a citizen and resident of the United Kingdom. From the fall of 1999 through January 2001, he was Sales Director for Team Dandelion ("Dandelion"), Team's wholly owned UK subsidiary. Clutten worked at Dandelion's office in London, where his responsibilities involved the buying and selling of film and television programming rights, held or owned by Dandelion, to broadcasters and distributors in the United Kingdom, Europe, and Africa. Clutten's job responsibilities did not include accounting or financial reporting.

Team materially misstated figures reported for its revenue, operating income and net income in its financial statements for the year ended December 31, 1999 and the first three quarters of 2000. Team included its misleading financial results in press releases and its filings with the Commission relating to these periods.

Team issued a press release in February, 2001 disclosing that it had begun an internal investigation. Ultimately, Team restated results for 1999. Team reported a \$4.3 million loss; it had previously reported a \$1.8 million net profit for 1999. Team also reported that it had restated more than \$20 million in previously reported revenue for 2000, which, in addition to other charges and reserves for doubtful accounts receivable, resulted in a loss of \$42.7 million for the year on revenue of approximately \$13 million.

By the second quarter of 1999, Team was not meeting its sales targets. Senior executives, in order to conceal the actual performance of the company, devised a scheme improperly to inflate Team's reported revenues and income. One part of the scheme during 2000 was for Team to enter into a series of fraudulent sales contracts. The fraudulent sales contracts were known as "guaranteed minimum distribution contracts". Each such contract described below had a contemporaneous side-letter which negated the terms of the contract. Team recognized revenue based on the guaranteed contract payments, which guarantee was voided by the side letter.

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.

Substantially all of Team's reported revenues for the second and third quarters of 2000 were based on "guaranteed minimum" distribution contracts, whereby Team licensed distribution rights to various films to third parties. Team recorded \$6,690,000 in revenue from these contracts in the second quarter and \$12,200,000 in revenue in the third quarter. These falsely inflated results were included in statements to the public and in Team's filings with the Commission.

Clutten was involved in the negotiation or execution of five minimum guarantee contracts between Dandelion and certain independent film distributors. The contracts were negotiated and executed at various times in or about August 2000, but the contracts were back-dated to June 2000. The contracts were falsely back-dated at the instruction of senior Team executives so that they could be included in Team's reported second quarter results.

Clutten was involved in negotiating or executing the following contracts which were included in Team's second quarter 2000 results:

- a. a contract for distribution of certain films in the Middle East, dated June 9, 2000, with a stated guarantee of \$500,000 to be paid within one year;
- b. a contract for distribution of certain films in Australia and Southeast Asia, dated June 15, 2000, with a stated guarantee of \$1,940,000 to be paid within one year;
- c. a contract for distribution of certain film rights in the U.S., dated June 15, 2000, with a stated guarantee of \$2,000,000 to be paid within one year;
- d. a contract for distribution of certain film rights in Eastern Europe, dated June 23, 2000, with a stated guarantee of \$800,000 to be paid within one year;
- e. a contract for distribution of certain film rights in Africa, dated June 27, 2000, with a stated guarantee of \$1,450,000 to be paid within one year.

Each contract described above was modified by a contemporaneous side agreement which cancelled the minimum guarantee obligation. If disclosed, the side agreements would have prevented Team from immediately recognizing revenue from the distribution contracts. The side agreements were not disclosed to Team's independent auditors. Nor was it disclosed that the contracts had been negotiated and executed in August 2000, well after the end of the second quarter.

Senior Team executives, in order to inflate revenue in the third quarter 2000, again resorted to the use of deferred minimum guarantee contracts, with undisclosed side agreements, that were negotiated and executed well after the end of the quarter. As in the second quarter, these contracts were used falsely to inflate Team's reported interim financial results in press releases and in filings with the Commission.

In November 2000, Clutten was aware of two additional contracts:

- a. a contract for distribution of certain film rights in Eastern Europe, dated September 21, 2000, with a stated guarantee of \$2,000,000;

- b. a contract for distribution of certain film rights in Africa, dated September 22, 2000, with a stated guarantee of \$600,000.

Clutten knew or was reckless in not knowing that these contracts were to be included in Team's reported second and third quarter results and used by senior Team executives to falsely inflate financial results and to mislead the company's independent auditors into believing that Team's reported interim results were materially correct and in conformity with Generally Accepted Accounting Principles.

Violations

As a result of the conduct described above, Clutten caused violations of Sections 10(b), 13(a), 13(b)(2)(A) and (B), and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-1, 13a-13, 13b2-1 and 13b2-2 thereunder.

Section 10(b) and Rule 10b-5 thereunder prohibit fraudulent conduct in connection with the purchase or sale of securities. Section 13(b)(5) provides that no person shall knowingly circumvent or knowingly fail to implement a system of internal controls or knowingly falsify any book, record, or account [required to be made and kept pursuant to Section 13(b)(2) of the Exchange Act]. Rule 13b2-1 provides that no person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act. Clutten knew or was reckless in not knowing that the contracts he negotiated or executed that were to be included in Team's reported second and third quarter results and used by senior Team executives to falsely inflate financial results. Such conduct was a cause of violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder.

Section 13(a) and Rules 13a-1 and 13a-13 require that issuers with securities registered under Section 12 of the Exchange Act file annual and quarterly reports with the Commission and keep this information current. The obligation to file such reports embodies the requirement that they be true and correct. Clutten's conduct was a cause of Team's false filings.

Section 13(b)(2)(A) requires every issuer which has a class of securities registered pursuant to Section 12 of [the Exchange Act] to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer. Section 13(b)(2)(B) requires that such issuers devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that – (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Clutten caused Team's books and records to contain inaccurate and incomplete descriptions of the contracts for which he was responsible, which prevented Team from preparing financial statements in conformity with generally accepted accounting principles.

Rule 13b2-2 prohibits officers and directors of an issuer from (i) making or causing to be made materially false or misleading statements, or (ii) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with any audit or examination of the financial statements of the issuer or the preparation or filing of any document or report required to be filed with the Commission. Clutten helped Team officers and directors to make false and misleading statements to its auditor and he thereby was a cause of such officers' and directors' violations of Rule 13b2-2.

IV.

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

Accordingly, it is hereby ORDERED that: Respondent John D. Clutten cease and desist from (1) committing or causing any violations and any future violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1 and 13b2-2 thereunder and (2) causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

By the Commission.

Jonathan G. Katz
Secretary