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ADMINISTRATIVE PROCEEDING
FILE NO. 3-11471

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
August 4, 2004

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FIRST CLASS

In the Matter of :
: POST HEARING ORDER
KEITH M. ROBERTS :
:
:

The Securities and Exchange Commission ("Commission") initiated this cease-and-desist proceeding pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") on April 30, 2004. The Order Instituting Proceedings ("OIP") alleges that Keith M. Roberts caused QuadraMed Corporation ("QuadraMed"), a publicly traded health-care technology company, to violate Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, and that Respondent Roberts violated Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2. I held a public hearing from July 19, through July 22, 2004. Two issues remain following the hearing.

Continued Hearing on August 19, 2004

At the telephonic prehearing conference on May 19, 2004, Respondent Roberts was concerned about the availability of witnesses at a July hearing. In a June 24, 2004, letter, Respondent Roberts indicated that Jim Durham, John Cracchiolo, and Christopher Bolash, three witnesses Respondent Roberts wanted to call, would not be available the week the hearing was scheduled. At the conclusion of his direct case, I allowed Respondent Roberts to indicate by the close of business on August 2, 2004, whether he wanted to introduce testimony from these three people at a later date. The Division of Enforcement ("Division") did not object to my ruling. By cover letter dated August 2, 2004, Respondent Roberts submitted a subpoena to Christopher Bolash to testify on August 19, 2004, in this proceeding.

Ruling

I GRANT Respondent's request and ORDER a continued hearing on August 19, 2004, at 9:00 a.m. in Courtroom Three of the United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, California, for the testimony of Christopher Bolash.

Respondent Roberts's Motion In Limine To Exclude Evidence

On July 19, Respondent Roberts submitted a Motion In Limine To Exclude Evidence ("Motion"). Respondent Roberts argues that the Division's Pre-Hearing Brief improperly alleges new primary violations by QuadraMed; specifically "that QuadraMed's filings were materially misleading because the Management Discussion & Analysis [{"MD&A"}] did not disclose that the licenses to [Health+Cast LLC ("Healthcast")] were 'materially different from other licensing revenues.'"¹ (Motion at 2.)

Respondent Roberts maintains that the Division's Pre-Hearing Brief goes beyond the facts alleged in the OIP by charging that QuadraMed should have disclosed that:

The Healthcast license was a "source code license to a development partner" rather than a software license to a health care provider;

The "source code 'payments' were materially different from QuadraMed's other licensing revenue" because they did not produce recurring revenue;

Healthcast would potentially compete with QuadraMed; and

QuadraMed "had to license back [the improved software] through royalty payments to prevent being at a competitive disadvantage."

(Motion at 3.)

According to Respondent Roberts, "the SEC's new theory implicates different facts, different obligations, and different sections of QuadraMed's filings," and he has been prejudiced by lack of notice in preparing his defense. (Motion at 2, 4.) Respondent alleges that if he had known that the Division's "theory of nondisclosure was not limited to related party issues," his defense would have been considerably different. (Motion at 4.) Respondent cites Jaffee & Co. v. SEC, 446 F.2d 387, 394 (2d Cir. 1971); Philip L. Pascale, 2004 SEC Lexis 1015, at *85-87 (May 17, 2004); and H.J. Meyers & Co., 2002 SEC Lexis 2075, at *158-59 (Aug. 9, 2002).

Respondent Roberts would bar evidence concerning: (1) the characteristics of QuadraMed's license revenues from Healthcast as "different" from other sources of revenue; (2) the alleged inadequacy of QuadraMed's MD&A; (3) the alleged importance of recurring revenue to analysts' evaluations; (4) the supposed falsity of QuadraMed's representations about the recurring nature of its licensing revenues; (5) the "competitive" nature of QuadraMed and Healthcast to the extent it implicates disclosure issues; and (6) attempts to establish that QuadraMed's representations about the strength of its sales were misleading. (Motion at 5.)

¹ Respondent's counsel referred to the Division's Pre-Hearing Brief at pages 2, 3, 9-11, 13-14, and 18-20, as places where the Division claimed that disclosure in the MD&A was inadequate.

Alternatively, Respondent Roberts would ask to provide additional evidence, including expert testimony.

Division's Opposition To Motion In Limine

The Division's Opposition To Motion In Limine ("Opposition") filed July 22, 2004, argues that Respondent Roberts advances an artificially narrow and distorted description of the OIP. The Division ties the OIP's allegations that: (1) Healthcast was functioning as a development arm for QuadraMed and that QuadraMed provided the cash for Healthcast to buy QuadraMed software; (2) QuadraMed failed to disclose in public filings the full extent of its relationship and agreements with Healthcast; and (3) QuadraMed failed to disclose it was booking investment from a "customer" in which it had essentially become an investor, to the Division's argument that QuadraMed was obligated to disclose the full extent of its agreements and relationships with Healthcast because issues existed about the source and quality of that revenue. (Opposition at 1-2.)

The Division contends that in light of the applicable materiality standard (cited cases omitted), "a significant issue in this proceeding is what other information or disclosures have been rendered misleading by virtue of QuadraMed's decision to include Healthcast source code fees in its licensing and total revenues." (Opposition at 3.) The Division contends that to address this issue, its Pre-Hearing Brief identified the location in QuadraMed's quarterly and annual reports where QuadraMed described its customers as being hospitals and health care providers and where it represented the type of license revenues that it received. The Division also points to analysts' stated perceptions in assessing QuadraMed. (Opposition at 4.)

Despite its vigorous opposition to the Motion, the Division "might not have any objection" to holding the record open "for [Respondent] Roberts to present additional evidence on this point" and "might not have any objection once it receives concrete information about what additional testimony or expert work is contemplated." (Opposition at 4-5.)

Ruling

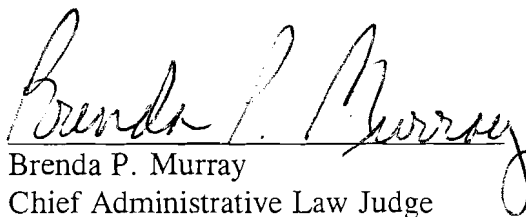
The OIP details certain facts about one transaction with Healthcast in September 1998 and one transaction with Healthcast in March 1999 that allegedly caused revenue recognition and disclosure violations. In its Pre-Hearing Brief, the Division put forth additional facts about the transactions, which it argued were material and should have been disclosed. The issue here is whether the specificity in the OIP misled Respondent so that he was not sufficiently informed to be adequately able to defend himself at the hearing.

I DENY the Motion because the OIP put Respondent Roberts on notice that, among other things, the Division charged him with causing his employer's failure to adequately disclose material information in Commission filings about two transactions with Healthcast. Rule 200(b)(3) requires that the OIP contain "a short and plain statement of the matters of fact and law to be considered and determined." 17 C.F.R. § 201.200(b)(3). The case law on the subject holds that the OIP should sufficiently inform a respondent of the charges so that he or

she may adequately prepare a defense, but that a respondent is not entitled in advance of the hearing to disclosure of the evidence upon which the Division intends to rely. J. Logan & Co., 38 S.E.C. 827 (1959); M.J. Reiter Co., 39 S.E.C. 484 (1959); Charles M. Weber, 35 S.E.C. 79 (1953). In addition, Jaffee and H.J. Meyers & Co., relied on by Respondent Roberts, are clearly distinguishable on their facts. Jaffee involved a complicated factual situation where the court found that the OIP did not give notice to the broker-dealer respondent that it could be subject to derivative liability under Section 15(b)(5) of the Exchange Act. H.J. Meyers & Co involved a situation where an administrative law judge found that manipulation had not occurred but then opined that even if manipulation had occurred, the Division could not contend that one respondent was liable for violations that the OIP attributed to others. The Commission granted a petition for review of the Initial Decision in Philip L. Pascale on June 14, 2004, where an administrative law judge ruled that the issue was limited to whether the companies were under common control, not whether the Respondent failed to account for a minority interest.²

Finally, Respondent Roberts's position that the Division cannot argue that additional facts about the transaction should also have been disclosed is too restrictive. Respondent Roberts was on notice that disclosure concerning two relatively straightforward transactions was at issue. Interestingly, during the witnesses' testimony there were no objections raised based on claims that the testimony went beyond the allegations in the OIP.

Given Respondent's position that his defense would have been considerably different had he known of what he considers the Division's "new allegations," and the Division's failure to object to additional evidence from Respondent, I GRANT Respondent's request and will allow Respondent Roberts to present no more than two additional witnesses at the continued hearing on August 19, 2004. The testimony of this witness or witnesses shall only cover the subjects that Respondent Roberts claims are new allegations. Testimony by any expert witness must be pre-circulated to the Division by the close of business on Friday, August 13, 2004. The parties shall schedule Respondent's additional witnesses and the Division's rebuttal case, if any, so that the hearing is concluded by 6:00 p.m. on August 20, 2004, at the latest.


Brenda P. Murray
Chief Administrative Law Judge

² H.J. Meyers & Co. and Philip L. Pascale are administrative law judges' Initial Decisions, which are subject to de novo review by the Commission under the terms of the Administrative Procedure Act and are of no precedential value. See 5 U.S.C. § 557(b).