

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64320 / April 21, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14350

In the Matter of

**SOUTHPEAK INTERACTIVE
CORPORATION and**

PATRICE K. STRACHAN,

Respondents.

**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
AND A CIVIL PENALTY**

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 SouthPeak Interactive Corporation (“SouthPeak”) and Patrice K. Strachan (“Strachan”) (collectively, “the Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers 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 them and the subject matter of these proceedings, which are admitted, the Respondents consent 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 and a Civil Penalty (“Order”), as set forth below.

III.

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

A. RESPONDENTS

1. SouthPeak is a video game publisher headquartered in Midlothian, Virginia. SouthPeak's stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is listed on the OTC Bulletin Board under the symbol "SOPK."

2. Patrice K. Strachan, age 53, was at all relevant times SouthPeak's vice president of operations.

B. OTHER RELEVANT PERSON

1. Terry M. Phillips, age 52, is the chairman of SouthPeak's board of directors.

C. SUMMARY

This matter involves an undisclosed related party transaction in which Terry M. Phillips, the chairman of the board of directors of SouthPeak, used personal funds to pay for the purchase of inventory for SouthPeak in February 2009. In violation of SouthPeak's internal policy, Phillips failed to obtain prior approval of the Audit Committee of SouthPeak's board of directors for this related party transaction. Due to the actions of Patrice Strachan, SouthPeak's vice president of operations, SouthPeak's chief financial officer ("CFO") was not informed of this payment and the transaction was not properly recorded on SouthPeak's books and records. As a result, SouthPeak failed to disclose the related party transaction in its quarterly report on Form 10-Q for the quarter ended March 31, 2009, and thereby omitted material facts regarding a decrease in the company's liquidity. Further, in connection with SouthPeak's restatement of its quarterly report, Strachan made false material statements in an interview with SouthPeak's auditor.

D. FACTS

SouthPeak develops and publishes video games for a number of video game platforms, including the PlayStation, xBox, and Wii devices. SouthPeak provides software specifications to hardware vendors that manufacture the video game cartridges that SouthPeak subsequently distributes for retail sale.

In February 2009, SouthPeak ordered additional units of a popular video game from a video game manufacturer (the "Manufacturer"). Given that SouthPeak lacked sufficient funds for

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.

the purchase at that time, Phillips advanced funds for the purchase of the units from his personal funds. On February 13, 2009, Phillips' assistant sent a wire transfer of \$307,440 from Phillips' personal account to the Manufacturer as payment for 50,400 units of the video game.

After making the wire transfer, Phillips' assistant informed Strachan of the payment from Phillips' personal account. Strachan was responsible for ensuring the proper recording of accounts payable in SouthPeak's books and records. Strachan, however, not only failed to take steps to ensure that the payment was properly recorded, but, after questions were raised internally at SouthPeak concerning the payment, Strachan also instructed her subordinate not to inform the CFO that Phillips had made the payment with his personal funds.

SouthPeak's internal accounting policy, which was in effect during the relevant time, requires that the Audit Committee of SouthPeak's board of directors review and approve all related party transactions. Although Phillips was aware of this policy, he did not bring his proposed payment to the attention of the Audit Committee prior to the transaction. Nor did Phillips ensure that the related party transaction was properly and accurately recorded in SouthPeak's books and records and disclosed in the relevant periodic report.

Despite this, Phillips signed a management letter to SouthPeak's outside auditor representing that all related party transactions had been disclosed for the quarter ended March 31, 2009. Phillips' payment from his personal funds, however, had not been disclosed to the auditor.

SouthPeak's Form 10-Q for the quarter ended March 31, 2009 did not disclose Phillips' payment as a related party transaction. By failing to disclose that SouthPeak utilized Phillips' funds to pay for inventory because of a material change in its financial position, SouthPeak omitted material facts from its Form 10-Q for the quarter ended March 31, 2009.

SouthPeak subsequently determined to file an amended quarterly report on Form 10-Q for the quarter ended March 31, 2009. In connection with that restatement, SouthPeak's auditor conducted an interview of Strachan. Strachan falsely claimed during that interview that she never directed her subordinate to conceal information from SouthPeak's CFO.

E. VIOLATIONS

Section 13(a) of the Exchange Act and Rule 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file quarterly reports with the Commission on Form 10-Q. These reports must be complete and accurate in all material respects. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied sub nom. Zimmerman v. SEC*, 440 U.S. 913 (1979). No showing of scienter is necessary to establish a violation of Section 13(a). *Savoy Indus., Inc.*, 587 F.2d at 1167. Exchange Act Rule 12b-20 requires an issuer to include in its periodic reports any "material information . . . necessary to make the required statements, in the light of the circumstances under which they were made[,] not misleading."

Exchange Act Rule 13a-13 requires issuers' quarterly reports to comply with the disclosure requirements of Regulation S-K Item 303. Item 303 requires issuers to include a "Management's Discussion and Analysis of Financial Condition and Results of Operations" (MD&A) section in their periodic public filings. Item 303(b) requires issuers' filings to discuss material changes in the items enumerated in Item 303(a). Item 303(a)(1) requires issuers to "identify and separately

describe internal and external sources of liquidity . . .” in the MD&A sections of their public filings. Rule 13a-13 of the Exchange Act further requires issuers’ quarterly reports to comply with Regulation S-X. Moreover, Item 4-08(k) of Regulation S-X, titled “Related Party Transactions Which Affect the Financial Statements,” provides that “[r]elated party transactions should be identified and the amounts stated on the face of the balance sheet, income statement, or statement of cash flows.” Further, Statement of Financial Accounting Standards No. 57 (“SFAS 57”)² provides that material related party transactions should be disclosed in financial statements, including the nature of the relationships involved, a description of the transactions, and such other information deemed necessary to an understanding of the effects of the transactions on the financial statements. In addition, Rule 10-01(a)(5) of Regulation S-X requires that “interim financial information shall include disclosures either on the face of the financial statements or in the accompanying footnotes sufficient so as to make the interim information presented not misleading.”

SouthPeak violated Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder, when it omitted material facts from its Form 10-Q for the quarter ended March 31, 2009 by failing to disclose that it utilized Phillips’ funds to pay for inventory because of a material change in its financial position. SouthPeak should have disclosed the related party transaction (1) pursuant to Item 303 of Regulation S-K because it would have revealed a material decrease in the company’s liquidity and (2) pursuant to Item 4-08(k) of Regulation S-X and SFAS 57 because it was material to SouthPeak and the information regarding the transaction, and the reason for it, was necessary to an understanding of the effect of the transaction on SouthPeak’s financial statements. Additionally, because the related party disclosure in the Form 10-Q disclosed all related party transactions except for Phillips’ payment, including related party transactions of lesser amounts than Phillips’ payment, the related party disclosure was misleading in violation of Rule 10-01(a)(5) of Regulation S-X.

By failing to accurately record Phillips’ payment from his personal funds, SouthPeak failed to make and keep books and records “which, in reasonable detail, accurately and fairly reflect[ed] the transactions and dispositions of the assets of the issuer,” and thereby violated Section 13(b)(2)(A) of the Exchange Act.

Further, SouthPeak violated Exchange Act Section 13(b)(2)(B), by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles or any other criteria applicable to such statements.

As a result of the conduct described above, Strachan committed or caused a violation of Rule 13b2-2 under the Exchange Act, which prohibits a director or officer from, directly or indirectly, making materially false or misleading statements, or omitting to state, or causing another person to omit to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading to an accountant in connection with any audit, review, or examination of the financial statements of an issuer required to be made

² SFAS 57 was in effect at the time of the conduct in question. Subsequently, the provision was codified as Accounting Standards Codification 850.

pursuant to the Exchange Act, or in connection with the preparation or filing of any document required to be filed with the Commission.

Also as a result of the conduct described above, Strachan was a cause of SouthPeak's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 21B(a)(2) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent SouthPeak Interactive Corporation cease and desist from committing or 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 12b-20 and 13a-13 thereunder.

B. Respondent Patrice K. Strachan cease and desist from 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 12b-20 and 13a-13 thereunder, and committing or causing any violations and any future violations of Rule 13b2-2 thereunder.

C. Respondent Patrice K. Strachan shall, within thirty (30) days of the entry of this Order, pay a civil penalty in the amount of \$10,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F St., N.E., Stop 6042, Washington, DC 20549-6042; and (D) submitted under cover letter that identifies Strachan as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Yuri B. Zelinsky, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Stop 5041, Washington, DC 20549-5041.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the 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 and a Civil Penalty ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Yuri B. Zelinsky, Esq.
Division of Enforcement
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5041

SouthPeak Interactive Corporation
c/o Michael R. Sklaire, Esq.
Greenberg Traurig LLP
1750 Tysons Boulevard, Suite 1200
McLean, VA 22102

Ms. Patrice K. Strachan
c/o Joseph C. Lombard, Esq.
Murphy & McGonigle
555-13th Street, N.W.
Washington, DC 20004

Michael R. Sklaire, Esq.
Greenberg Traurig LLP
1750 Tysons Boulevard, Suite 1200
McLean, VA 22102
(Counsel for SouthPeak Interactive Corporation)

Joseph C. Lombard, Esq.
Murphy & McGonigle

555-13th Street, N.W.
Washington, DC 20004
(Counsel for Patrice K. Strachan)