

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

**SECURITIES AND EXCHANGE
COMMISSION**

Plaintiff,

v.

ROBERT ALLEN DIEHL,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

SUMMARY

1. In September 2003, Defendant Robert Diehl (“Diehl”), in his capacity as President of MicroStar, Inc. (“MicroStar”), a privately-owned software provider, purportedly “purchased” three software licenses from Quovadx, Inc. (“Quovadx”), a Colorado-based software company. In fact, these purported sales were part of a parking arrangement designed to accelerate revenue recognition for Quovadx. Diehl engaged in these transactions knowing that they were part of an attempt by Quovadx to accelerate revenue recognition. He knew that his company had neither the ability nor the intent to pay for the licenses unless and until Quovadx found customers to buy the licenses. Quovadx fraudulently recognized approximately \$380,000 in software licensing revenue from these purported sales in the third quarter of 2003.

2. By his conduct, Diehl aided and abetted Quovadx’s violations of the antifraud and reporting provisions of the federal securities laws. The Commission seeks an order permanently

enjoining Diehl from further securities laws violations and imposing civil monetary penalties against him.

JURISDICTION

3. This Court has jurisdiction pursuant to Sections 21 and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u and 78aa].

4. Diehl, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business described in this Complaint, certain of which have occurred within this judicial district.

THE DEFENDANT

5. Robert Diehl, age 56, resides in Cincinnati, Ohio. He has been president of MicroStar since he founded the company in 2002. MicroStar is an information technology company specializing in healthcare software programming services. Diehl is the company’s sole stockholder.

RELATED ENTITY

6. Quovadx, a Delaware corporation based in Englewood, Colorado, is a software company that licenses software and sells related services to the health care industry. Quovadx’s stock was registered with the Commission under Section 12(g) of the Exchange Act and traded on the NASDAQ National Market. During 2002 and 2003, Quovadx derived about one-third of its reported revenue from software licensing fees with the rest coming from software maintenance and service contracts. Quovadx separately reported its software licensing revenue, which included sales of both software and licenses.

RELEVANT ACCOUNTING STANDARDS

7. Public companies such as Quovadx are required to file their quarterly and annual reports with the Commission that present their financial results in conformity with Generally Accepted Accounting Principles (“GAAP”). The American Institute of Certified Public Accountants’ Statement of Position 97-2, *Software Revenue Recognition* (“SOP 97-2”) and related interpretations are the principal GAAP provisions governing the recognition of revenue for sales of software and software licenses.

8. Under SOP 97-2, a company may not recognize revenue from a software license sale unless and until there is: persuasive evidence of an arrangement; delivery of the software; a fixed or determinable seller’s fee; and a reasonable probability of collecting the accounts receivable. Further, if payment is substantially contingent on the buyer’s success in distributing the product to the customer, either due to the terms of the deal or because the buyer is so undercapitalized that it cannot pay until it sells the product, the seller may not recognize the software license revenue at the time of sale. In its financial reports filed with the Commission, Quovadx claimed that it had recognized revenue in accordance with GAAP.

FACTUAL ALLEGATIONS

9. Diehl’s first transaction with Quovadx occurred in July 2003, when MicroStar purchased software from Quovadx and resold it to a healthcare provider. There were no further transactions with Quovadx until late September 2003. At that time, Quovadx had been unable to finalize sales to several customers before the end of the third quarter. Therefore, Quovadx contacted Diehl and asked him if he would be willing to take software in the third quarter if Quovadx would deliver purchasers to him in the fourth quarter.

10. Diehl agreed to the parking arrangement knowing that he was adding no economic substance to the deal. In fact, Diehl understood that the sole purpose of the transaction was to accommodate Quovadx's revenue goals by accelerating anticipated revenue into the third quarter. Diehl understood that all he was doing was "passing paper." He agreed to hold the inventory and upon Quovadx's instructions, take purchase orders from Quovadx's customers and ship the merchandise and, in return, MicroStar would receive a twenty-percent share of the purchase price. Diehl and Quovadx reached a verbal side-agreement to the effect that Quovadx would not get paid unless and until Quovadx delivered customers who would buy the software licenses. The written sales contracts between the parties did not disclose this verbal side-agreement.

11. Quovadx treated these contracts as bona fide sales agreements and shipped the software at the end of the third quarter of 2003. Quovadx also recorded approximately \$380,000 in revenue in the third quarter based on these contracts. Quovadx issued a preliminary earnings release and a quarterly report for the third quarter of 2003 that included the revenue from this parking arrangement.

12. By late November 2003, Quovadx had not delivered any of the promised customers. Therefore, consistent with the verbal side-agreement, Quovadx received no payments from MicroStar even though payments were due. Quovadx, for its part, did not demand payment from MicroStar but instead searched for alternate customers who would purchase the parked software.

13. In December 2003, one of the three anticipated customers purchased *different* software licenses for approximately \$257,000 from a Quovadx subsidiary in the United Kingdom. In February 2004, when the customer made payment to Quovadx's U.K. subsidiary,

Quovadx coordinated with Diehl to wire the payment to him with the instruction that he would wire the payment back to Quovadx, less \$10,000 as compensation for having held the licenses for Quovadx. Diehl agreed to Quovadx's plan and executed his part, keeping the \$10,000. Diehl understood that by channeling the payment in this manner, Quovadx created the false appearance that Quovadx received payment from MicroStar for a significant portion of what MicroStar owed. Diehl never resold the software he received from Quovadx and Quovadx never asked for it back.

FIRST CLAIM FOR RELIEF

**Aiding and Abetting Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)],
and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

14. The Commission realleges and incorporates herein by reference paragraphs 1 through 13 above.

15. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit materially false or misleading statements or omissions made in connection with the purchase or sale of securities. A person violates these provisions by knowingly or recklessly making material misstatements or omitting to state material information in Commission filings or in other statements disseminated to investors.

16. Quovadx fraudulently recognized approximately \$380,000 of revenue on the MicroStar transactions. As a result, Quovadx violated Section 10(b) and Rule 10b-5 thereunder. By entering into the parking arrangement with Quovadx and participating in Quovadx's plan to channel an unrelated payment to make it appear that MicroStar had paid for part of what it "owed" Quovadx, Diehl knowingly provided substantial assistance to Quovadx in its fraud.

17. By reason of the foregoing, Diehl aided and abetted Quovadx's violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

SECOND CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-11 and 13a-13 [17 C.F.R. §§240.12b-20, 13a-11 and 13a-13]

18. The Commission realleges and incorporates herein by reference paragraphs 1 through 17 above.
19. Section 13(a) of the Exchange Act and Rules 13a-11 and 13a-13 thereunder require that issuers with securities registered under Section 12 of the Exchange Act, such as Quovadx, file periodic reports with the Commission that are complete and accurate in all material respects. Exchange Act Rule 12b-20 requires that, in addition to the information expressly required to be included in a statement or report, an issuer must add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.
20. Quovadx materially overstated its software licensing revenue in the third quarter of 2003 by fraudulently recognizing revenue from the three purported sales of software licenses to MicroStar. As a result, Quovadx's quarterly report for the third quarter of 2003, the earnings release attached to its Form 8-K for that quarter, and Quovadx's Form 10-K for 2003, contained materially inaccurate and misleading statements. As a result, Quovadx violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13.
21. By entering into the fraudulent parking arrangement and side-agreement with Quovadx, and participating in Quovadx's plan to channel an unrelated payment to make it appear that MicroStar had paid for part of what it "owed" Quovadx, Diehl knowingly provided substantial assistance to Quovadx in its reporting violations.
22. By reason of the foregoing, Diehl aided and abetted Quovadx's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 thereunder.

PRAYER FOR RELIEF

The Commission respectfully requests that this Court enter a final judgment against Defendant Diehl:

- A. finding that Defendant Diehl committed the violations alleged above;
- B. permanently enjoining Defendant Diehl from violating or aiding and abetting violations of Sections 10(b) and 13(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(a)] and Rules 10b-5, 12b-20, 13a-11 and 13a-13 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-11 and 240.13a-13] thereunder;
- C. ordering Diehl to pay disgorgement in the amount of \$10,000, representing the illegal gain received for aiding and abetting the fraudulent scheme of Quovadx to accelerate revenue recognition, and to pay prejudgment interest thereon in the amount of \$962.79;
- D. ordering Diehl to pay an appropriate civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 78(u)(d)(3)];
- E. retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and
- F. granting such other and additional relief as this Court deems just and proper.

Dated: July 17, 2007


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