

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION :
450 Fifth Street, N.W. :
Washington, DC 20549-0708, :

Plaintiff,

Case No. _____

v.

NANCY R. GAZZIGLI :
2736 Foothill Boulevard :
Redding, California 96001, :

Defendant.

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows
against the above-named defendant:

SUMMARY

1. This case involves fraudulent conduct by a former vice president of BroadVision, Inc. (“BroadVision”) resulting in improper revenue recognition by BroadVision during the third quarter of 2001. Nancy Gazzigli (“Gazzigli” or “defendant”), the former Executive Vice President and General Manager of Worldwide Products and Services at BroadVision, was responsible for the improper revenue recognition. Gazzigli gave the company’s accountants false information concerning the sale of bundled software and engineering services to a large national retail chain store (the “Customer”) and later gave forged documents to the company’s auditors to cover up the misrepresentations that she had made. As a result, BroadVision improperly

recognized approximately \$3.75 million of revenue from the transaction, overstating its quarterly software license revenue by 23.5% and its total revenue by 7.9%. In April 2002, BroadVision discovered Gazzigli's misconduct and issued a press release announcing that the company was restating its third quarter 2001 financial results. The following day, BroadVision's share price declined nearly 15%.

JURISDICTION

2. The Court has jurisdiction of this action pursuant to Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) & (e) and 78aa].

3. The defendant made use of the means and instrumentalities of interstate commerce or of the mails in connection with the acts, practices, and courses of business alleged herein.

THE PARTIES

4. The plaintiff is the Securities and Exchange Commission, which brings this case pursuant to authority conferred on it by Section 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and (e)].

5. Defendant, age 52, is a resident of Redding, California, and was the Executive Vice President and General Manager of Worldwide Products and Services at BroadVision until January 2002. BroadVision develops and sells business software applications and services.

FACTS

6. BroadVision is a Delaware corporation with its headquarters in Redwood City, California. Its common stock is registered with the Commission pursuant to

Section 12(g) of the Exchange Act and is traded on the NASDAQ National Market under the symbol BVSN. BroadVision develops and sells business software applications.

7. In 2000, BroadVision began efforts to sell its application software to the Customer. As part of the negotiations, the Customer requested that BroadVision provide on-site engineering support, and BroadVision agreed to do so. At BroadVision's request, the parties split the transaction into two contracts and assigned the majority of the purchase price to the licenses.

8. On December 29, 2000, BroadVision and its Customer signed an agreement, called the Software License and Services Agreement ("SLSA"), pursuant to which the Customer agreed to pay \$4 million for two four-year software licenses and an annual maintenance fee of \$720,000 per year for four years.

9. Subsequently, on March 29, 2001, BroadVision its Customer signed a second agreement, called the Statement of Work ("SOW"), which required BroadVision to have two of its engineers work on-site at the Customer's headquarters, at a total price of \$420,000 (\$280,000 for the first year, \$140,000 for the second year and nothing thereafter).

10. On April 3, 2001, BroadVision was paid \$5.33 million pursuant to the SLSA and the SOW. The payment consisted of \$4 million for the licenses, \$720,000 for the first year's maintenance fee, \$280,000 for the first payment under the SOW, and \$330,000 in taxes.

11. Gazzigli was the senior BroadVision officer responsible for managing the business relationship with this Customer, and she led the negotiations on behalf of BroadVision.

12. Revenue recognition for software and related services is governed by Statement of Position (“SOP”) 97-2, Software Revenue Recognition (October 1997). Generally, license revenue is recognized on delivery, while customer support and consulting revenue is recognized as the services are performed. When a single transaction involves both licensing and services, the two elements must be examined separately to determine the amount of revenue allocable to each, based on vendor-specific objective evidence of fair value (“VSOE”). VSOE is determined by the amount that a company typically charges for a license or service, rather than the price stated in any particular contract.

13. In addition, in a transaction that includes both licenses and services, license revenue may be recognized on delivery only if the sale of the license is separable from the sale of services, and the price of the services is deducted from the amount of the contract. If the sale of the software license and services are inseparable, license revenue cannot be recognized upon delivery. Instead, contract accounting applies, which typically requires the recognition of revenue ratably over the term of the contract. See SOP 97-2, ¶¶ 7, 13, 31 and 65.

14. After the agreements were signed with the Customer, BroadVision’s external auditors, Arthur Andersen, questioned the company’s ability to recognize revenue from the transaction. The auditors had indications that the SLSA and the SOW were not separable and, because the on-site support was a new service, evidence of its value was lacking. Moreover, the contract price assigned in the SOW (\$420,000 over four years) appeared to be inadequate. Finally, the auditors did not believe they had sufficient information concerning the pricing of the option for future software that was

included in the SLSA. These issues prevented BroadVision from recognizing any of the license revenue in the first quarter of 2001.

15. During April 2001, Gazzigli concocted a scheme to have the license revenue from this transaction booked improperly. She sent three phony change orders relating to the SOW to the company's finance department, pursuant to which the Customer purportedly agreed to pay an extra \$3.55 million for the two BroadVision engineers and certain additional consulting services.

16. However, Gazzigli's scheme did not work as planned because the revenue from the transaction could not be recognized until BroadVision received purchase orders from its Customer. When the purchase orders did not arrive in the normal course of business, the finance department contacted several lower level employees who were working on the transaction to request their help in obtaining the necessary documentation. After that proved to be unsuccessful, the finance department asked Gazzigli to get the purchase orders from the Customer. Apparently realizing that her scheme had failed, and that it would be exposed if she had to contact the Customer to request purchase orders for the non-existent change orders, Gazzigli told other BroadVision employees that the Customer had cancelled the SOW and the change orders because it had lost funding for them.

17. By the end of September 2001, BroadVision had established a price list for the licenses optioned to the Customer in the SLSA. This was sufficient to satisfy Arthur Andersen as to this aspect of the revenue recognition issue, leaving the cancellation of the SOW as the only issue to be resolved.

18. On September 21, Gazzigli was asked to provide written proof that the Customer had cancelled the SOW. She responded by forwarding an internal e-mail that she had purportedly written on March 21, 2001, which suggested that the agreement was being canceled by the Customer due to budget issues. When this was rejected by the auditors (because it did not come from Customer), Gazzigli submitted a copy of an e-mail that she claimed she received from an employee of the Customer, which stated:

My best recollection is that effective March 21, 2001 [the SOW and the three change orders] were canceled and no work has been expected to be performed by BroadVision with respect to these documents after that date.

19. Arthur Andersen rejected this, too, because it was too indefinite. Thereafter, on September 28, Gazzigli obtained a blank fax coversheet on Customer's letterhead from one of the BroadVision employees who was working on-site at the Customer's headquarters. Several hours later, Gazzigli had her secretary deliver a fax purportedly signed by an employee of the Customer, which contained cancellation language that had been approved by the auditors.

20. The signature on the document was forged by Gazzigli. The Customer was not aware of her scheme, and none of its employees was involved in the misconduct.

21. After the document was forwarded to Arthur Andersen, the firm withdrew its objection and BroadVision recognized \$4 million of license revenue for the September 2001 quarter.

22. Shortly after Gazzigli left BroadVision in January 2002, the Customer requested that the company issue an invoice for the 2002 maintenance fee of \$720,000 under the SLSA and the remaining payment of \$140,000 for the two engineers under the SOW. On February 20, a finance department employee told the on-site BroadVision

personnel that she understood that the Customer had canceled the SOW and the change orders in September 2001. On February 21, one of the on-site employees responded that neither he nor the service manager and account team assigned to the Customer "were notified by [the Customer] that the SOW had been cancelled. So this comes somewhat as a surprise to me. In fact, [the Customer] is the one asking to be invoiced for the services that we are continuing to provide under the SOW."

23. This exchange led to an internal investigation by BroadVision's outside counsel and Arthur Andersen. After completing the investigation, Arthur Andersen determined that BroadVision should not have recognized all of the software license revenue from the transaction in the third quarter of 2001. Accordingly, on April 1, 2002, BroadVision restated its financial results for the third quarter and filed an amended Form 10-Q with the Commission. The restatement reduced BroadVision's revenue for the third quarter of 2001 by approximately \$3.5 million. When the restatement was publicly announced, BroadVision's share price declined nearly 15%.

FIRST CLAIM

Gazzigli Violated Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

24. The Commission realleges and reincorporates herein paragraphs 1 through 23 above.

25. Gazzigli, directly and indirectly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not

misleading; and/or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers or sellers securities.

26. Gazzigli knowingly or recklessly gave false and misleading information to BroadVision's accountants and outside auditors so that BroadVision could improperly recognize approximately \$3.75 million in revenue in the third quarter of 2001.

27. Based on the foregoing, Gazzigli violated 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].

SECOND CLAIM

Gazzigli Violated Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 Thereunder

28. The Commission realleges and reincorporates herein paragraphs 1 through 27 above.

29. As described above, Gazzigli knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly falsified a book, record, or account which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

30. Gazzigli knowingly falsified and/or forged certain documents provided to BroadVision's independent auditors so that BroadVision could improperly recognize approximately \$3.75 million in license revenue in the third quarter of 2001 as reflected in BroadVision's Form 10-Q for the same quarter.

31. Based on the foregoing, Gazzigli violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2].

THIRD CLAIM

Gazzigli Aided and Abetted Violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 Thereunder

32. The Commission realleges and reincorporates herein paragraphs 1 through 31 above.

33. 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, and the obligation to file such reports includes the requirement that they be true and correct. Rule 12b-20 further requires that such reports contain any additional information necessary to ensure that the required statements in the reports are not, under the circumstances, materially misleading. Financial statements in Commission filings that do not comply with GAAP are presumed to be misleading. Regulation S-X, 17 C.F.R. § 210.4-01(a)(1).

34. As described above, BroadVision filed with the Commission materially false and misleading financial statements for the third quarter of 2001. Therefore, BroadVision violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

35. Gazzigli knowingly provided substantial assistance to BroadVision in connection with BroadVision's quarterly report for the third quarter of 2001 that materially overstated its revenue by approximately \$3.75 million.

36. Based on the foregoing, Gazzigli aided and abetted BroadVision's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-13].

FOURTH CLAIM

Gazzigli Aided and Abetted Violation of Section 13(b)(2)(A) of the Exchange Act

37. The Commission realleges and reincorporates herein paragraphs 1 through 36 above.

38. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect their transactions and the dispositions of their assets.

39. As described above, BroadVision improperly recorded approximately \$3.75 million in revenue on its books in the third quarter of 2001 and thus violated Section 13(b)(2)(A) of the Exchange Act.

40. Gazzigli knowingly provided substantial assistance to BroadVision in connection with its improper recording of approximately \$3.75 million in revenue.

41. Based on the foregoing, Gazzigli aided and abetted BroadVision's violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

FIFTH CLAIM

Gazzigli Aided and Abetted Violation of Section 13(b)(2)(B) of the Exchange Act

42. The Commission realleges and reincorporates herein paragraphs 1 through 41 above.

43. Section 13(b)(2)(B) of the Exchange Act requires such registrants to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to

permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

44. BroadVision lacked sufficient internal accounting controls with respect to the processing of change orders and cancellation of statements of work. In each instance, BroadVision did not require original documentation and therefore Gazzigli succeeded in submitting fraudulent documents to BroadVision's finance department. BroadVision violated Section 13(b)(2)(B) of the Exchange Act

45. As described above, Gazzigli knowingly provided substantial assistance to BroadVision in connection with its failure to maintain adequate accounting controls.

46. Based on the foregoing, Gazzigli aided and abetted BroadVision's violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enter judgment in favor of the Commission finding that Gazzigli violated Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2], and aided and abetted violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-13].

II.

Permanently enjoin Gazzigli from violating Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2

thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2], and further enjoin her from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-13].

III.

Order Gazzigli to pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

Grant such other relief as this Court may deem just and proper.

Dated: January 6, 2005

Respectfully submitted,

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