

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

SECURITIES AND EXCHANGE COMMISSION,)
)
) **Plaintiff,**)
) **v.**) **Civil Action No.**
)
PATRICK T. CHEW,)
)
) **Defendant.**)

COMPLAINT

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

SUMMARY

1. This is an action against Patrick T. Chew (“Chew” or “Defendant”) for violations of the federal securities laws and for aiding and abetting SmartForce PLC’s (“SmartForce” or the “Company”) violations of the reporting, record-keeping, and internal controls provisions of the federal securities laws. From January 1, 1999 to June 30, 2002 (the “Restatement Period”), SmartForce, now known as SkillSoft PLC (“SkillSoft”), engaged in various improper accounting practices, including premature recognition of revenue from multi-element arrangements, improper recognition of revenue from reciprocal transactions, and premature recognition of revenue from reseller agreements. As a result of these accounting practices, SmartForce overstated its revenue by \$113.6 million and net income by approximately \$127 million during the Restatement Period.

2. At all times relevant to the violations charged in this Complaint, Defendant was a certified public accountant and the controller of SmartForce's subsidiary in the United States ("SmartForce US"), which generated 70 percent of SmartForce's business. As the controller of SmartForce US, Defendant was responsible for recognizing revenue on standard agreements but did not set or otherwise determine the Company's revenue recognition policy. Among other things, Defendant caused SmartForce to recognize revenue improperly from certain transactions that did not comply with generally accepted accounting principles ("GAAP").

3. By engaging in the transactions and practices set forth herein, Defendant violated Section 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 13b2-2 thereunder, and aided and abetted SmartForce's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

4. Accordingly, the Commission seeks: (a) the entry of a permanent injunction prohibiting Defendant from further violations of the relevant provisions of the federal securities laws; (b) disgorgement of all ill-gotten gains, plus pre-judgment interest; and (c) the imposition of a civil penalty.

JURISDICTION AND VENUE

5. The Commission seeks a permanent injunction and disgorgement pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. The Commission further seeks the imposition of civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

6. This Court has jurisdiction over this action pursuant to Sections 21 and 27 of the Exchange Act [15 U.S.C. §§78u and 78aa]. Venue is proper in this District because SkillSoft maintains its principal executive offices in New Hampshire.

7. In connection with the conduct described in this Complaint, Defendant directly and indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

DEFENDANT

8. Chew, age 40, is a resident of Ontario, Canada.

RELATED PARTY

9. SkillSoft is a corporation organized under the laws of the Republic of Ireland with its principal place of business in New Hampshire. SkillSoft is the product of a September 6, 2002 merger between SkillSoft Corporation ("SkillSoft Corp.") and SmartForce, which was also organized under the laws of Ireland and began trading on NASDAQ in April 1995.

STATEMENT OF FACTS

The Company's Conduct

10. During the Restatement Period, SmartForce engaged in various improper accounting practices, which included recognizing revenue improperly from (i) transactions involving multiple-element arrangements and extended payment terms, (ii) reciprocal transactions, and (iii) reseller agreements. As a result of the improper accounting practices, SmartForce overstated its revenue and net income during the 3.5-year period by approximately \$113.6 million and \$127 million, respectively.

11. The majority of the overstated revenue related to misapplication of the accounting principles regarding vendor-specific objective evidence of fair value and extended payment terms, as required by American Institute of Certified Public Accountants Statement of Position 97-2, as amended, ("SOP 97-2").

12. In addition, during 2001, SmartForce also entered into several reciprocal non-monetary transactions with its customers, whereby the Company both sold and purchased goods or services without sufficient evidence to support the fair value of the goods or services exchanged. SmartForce recognized license revenue upon delivery of the software sold to its customers and recorded the purchases from its customers as if they had been separate, unrelated transactions. Instead, SmartForce should have recorded the sales and purchases as exchanges pursuant to Accounting Principles Board Opinion No. 29, "Accounting for Nonmonetary Transactions" ("APB 29"), which would have resulted in little or no revenue recognition.

13. SmartForce also recognized revenue prematurely from reseller transactions, some of which were non-binding agreements and some of which contained termination clauses that allowed the customer to terminate the agreement prior to its expiration.

14. Consequently, SmartForce's financial statements, which were included in the Company's annual and quarterly reports during the Restatement Period, were materially false and misleading in that they overstated net income and revenue by failing to comply with GAAP.

Defendant's Conduct

15. During the Restatement Period, Defendant signed on behalf of SmartForce two agreements (one in June 2001 for \$2 million, the other in December 2001 for \$3.5 million) between the Company and a reseller whereby the reseller agreed to "endeavor" to sell a total of

\$5.5 million of Smartforce courseware (the "Non-Binding Agreements"). SmartForce improperly recognized the \$2 million as revenue during the second quarter 2001 and the \$3.5 million as revenue during the fourth quarter 2001.

16. In performing the second quarter 2001 review and the 2001 annual audit, an auditor inquired about SmartForce's basis for recognizing revenue from the Non-Binding Agreement in the respective reporting period. On each occasion, Defendant informed the auditor that SmartForce had issued an invoice to the reseller for the total amount of each transaction, and that the reseller was not entitled to a credit. These statements were misleading. On each occasion, Defendant failed to tell the auditor that the receivable for the Non-Binding Agreement had been factored – an arrangement whereby a company sells its receivables to a third party at a discount.

17. As the controller for SmartForce US, Defendant also caused SmartForce to recognize \$600,000 in revenue in the third quarter 2001 from a perpetual license authorizing a customer to use SmartForce's GLMS software (the "Perpetual License"), even though as of September 30, 2001 SmartForce had not delivered the software to the customer.

18. SmartForce included the revenues from the Non-Binding Agreements and the Perpetual License in the periodic reports it filed with the Commission, but did not disclose in those reports that the receivables for the \$2 million and the \$3.5 million had been factored, resulting in a cash flow from a financing activity and not from operations. By improperly recognizing the \$2 million in revenue for the second quarter 2001, the \$600,000 for the third quarter 2001, and the \$3.5 million for the fourth quarter 2001, SmartForce barely met analysts' earnings per share estimates during those respective quarters.

Defendant's Sale of SmartForce Stock at Inflated Prices

19. During the relevant period, Defendant sold 5,709 shares of SmartForce at prices that were inflated because of the Company's improper accounting practices.

20. As a result of such sales, Defendant received \$67,559 in ill-gotten gains.

**FIRST CLAIM
(Section 13(b)(5) of the Exchange Act)**

21. The Commission repeats and incorporates by reference the allegations in paragraphs 1-20 of the Complaint as if set forth fully herein.

22. Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)] prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2).

23. As a result of the conduct described above, Defendant violated Section 13(b)(5) of the Exchange Act.

24. Defendant's conduct justifies the imposition of a civil penalty within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

**SECOND CLAIM
(Exchange Act Rule 13b2-2)**

24. The Commission repeats and incorporates by reference the allegations in paragraphs 1-20 of the Complaint as if set forth fully herein.

25. Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] prohibits an officer or

director of an issuer from, among other things, making or causing to be made a materially false or misleading statement, or omitting to state information necessary to render statements not misleading, to an accountant in connection with any required audit of the issuer's financial statements or the preparation of a report required to be filed with the Commission. Scienter is not required as an element of Rule 13b2-2.

26. As a result of the conduct described above, Defendant violated Exchange Act Rule 13b2-2.

27. Defendant's conduct justifies the imposition of a civil penalty within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

THIRD CLAIM
(Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13)

28. The Commission repeats and incorporates by reference the allegations in paragraphs 1-20 of the Complaint as if set forth fully herein.

29. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-13] require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20] provides that in addition to the information expressly required to be included in a statement or report, there shall be added 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.

30. As set forth herein, one or more of SmartForce's SEC Filings during the Restatement Period contained untrue statements of material fact and omitted to state material

information required to be stated therein or necessary in order to make the required statements made, in the light of the circumstances under which they were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

31. Defendant knew or recklessly disregarded that SmartForce's conduct was improper and knowingly rendered to SmartForce substantial assistance in this conduct by causing the Company to improperly recognize revenue that was included in one or more filings with the Commission during the Restatement Period. As a result, Defendant aided and abetted the Company's violations of Section 13(a) of the Exchange Act, and Rules 12b-20, 13a-1, and 13a-13 thereunder.

32. Defendant's conduct justifies the imposition of a civil penalty within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

FOURTH CLAIM
(Section 13(b)(2)(A) of the Exchange Act)

33. The Commission repeats and incorporates by reference the allegations in paragraphs 1-20 of the Complaint as if set forth fully herein.

34. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets.

35. As set forth herein, SmartForce maintained false and misleading books, records and accounts which, among other things, materially overstated the Company's revenue and net income for fiscal years ended December 31, 1999 through December 31, 2001, and for fiscal quarters ended March 31, 2002 and June 30, 2002.

36. Defendant knew or recklessly disregarded that SmartForce's conduct was improper and knowingly rendered to SmartForce substantial assistance in this conduct by causing the Company to improperly recognize revenue from one or more transactions during the Restatement Period. As a result, Defendant aided and abetted SmartForce violations of Section 13(b)(2)(A) of the Exchange Act.

37. Defendant's conduct justifies the imposition of a civil penalty within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

FIFTH CLAIM
(Section 13(b)(2)(B) of the Exchange Act)

38. The Commission repeats and incorporates by reference the allegations in paragraphs 1-20 of the Complaint as if set forth fully herein.

39. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires Section 12 registrants 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 conformity with GAAP.

40. SmartForce failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the Company's transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") during the fiscal years ended December 31, 1999 through December 31, 2001, and during the fiscal quarters ended March 31, 2002 and June 30, 2002.

41. Defendant knew or recklessly disregarded that SmartForce's conduct was improper and knowingly rendered to SmartForce substantial assistance in this conduct by causing

the Company to improperly recognize revenue from one or more transactions during the Restatement Period. As a result, Defendant aided and abetted SmartForce violations of Section 13(b)(2)(B) of the Exchange Act.

42. Defendant's conduct justifies the imposition of a civil penalty within the meaning of Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Defendant directly, or indirectly through his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from engaging in violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)]; Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§240.12b-20, 240.13a-1, 240.13a-13]; Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)]; Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §78m(b)(2)(B)]; and Rule 13b2-2 [17 C.F.R. § 240.13b2-2];

B. Order Chew to disgorge his ill-gotten gains of \$67,559, plus pre-judgment interest of \$18,326.53;

C. Order Chew to pay a civil penalty of \$25,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered.

Respectfully submitted,

/s/ David P. Bergers

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Dated: July 19, 2007

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

Respectfully submitted,



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