



South Florida BUSINESS JOURNAL

RENTERS' REWARDS:

Landlords offer
sublease deals
to new tenants

P9

Panthers launch development plan

BY DARCIE LUNSFORD AND DANIEL KAPLAN

The scope is immense: 4,800 residential units; 950,000 square feet of retail space; 1,450 hotel rooms, 1.85 million square feet of offices and a Broadway-style theater that's more than three times the size of the Broadway Center for Performing Arts.

Welcome to Oz, the real estate development that owners of the Florida Panthers hockey franchise are now proposing. The plan is to build the mixed-use district on the 139 acres that surround the BankAtlantic Center in Sunrise.

The first details of the plan are emerging as the team's parent com-

pany, Sunrise Sports & Entertainment (SSE), engages in negotiations to merge the team, its arena management company and rights to the real estate surrounding the BankAtlantic Center with Sports Properties Acquisition Corp., a public-stock company formed last year, sources said.

The potential deal values the assets at \$230 million, including debt, with the plum in the talks being the possibility of developing the site around the arena, said sources, who also noted that negotiations have

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Non-compete suit against tech guru intensifies

BY BILL FROGAMENI

Proceedings in the non-compete lawsuit against technology entrepreneur Hank Asher are becoming heated.

Faith Gay, lead counsel for plaintiff Reed Elsevier, stated in an April 23 court hearing that "America's Most Wanted" host John Walsh dangled a business opportunity for Reed Elsevier on behalf of Asher.

"Becoming joint-venture partners in a commercial venture is what [Walsh] was asking us to consider," she said of an encounter after an April 9 hearing.

A court transcript quotes Gay at an April 23 hearing as saying of the encounter: "They said, 'You can get rich off of this, too.' It was said to us right in the hall by Mr. Walsh and others, with these men standing there."

Asher said Walsh is a "dear friend,"

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Dyadic CEO makes a comeback



MARK FREERKS

Dyadic International founded in 1979 by Mark Emalfarb, went public in 2004 and ventured into biotechnology.

Company sues prominent legal, accounting firms

BY BRIAN BANDELL

Dyadic International CEO Mark Emalfarb has turned from the hunted to the hunter.

Two years after an accounting scandal in Hong Kong led to his ouster, the founder of the Jupiter-based company is back in charge and suing former accountants and attorneys.

The defendants in the Palm Beach County Circuit Court lawsuit include national accounting powerhouse Ernst & Young and legal heavyweight Greenberg Traurig, plus its attorney Robert I. Schwimmer. Dyadic also named the Miami law firms of Moscovitz & Moscovitz and Bilzin Sumberg Baena Price & Axelrod, both of whom did work for the company after the accounting problems were discovered.

According to the complaint, Dyadic (Pink Sheets: DYAI) had \$27 million in cash when Emalfarb was ousted at the recommendation of

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Join the staff of SFBJ for breakfast on June 4. Network with the publisher, editors, reporters and sales team at our Fort Lauderdale offices. See Page 12 for registration information.



THIS WEEK in the SFBJ



PROCEEDING IN PROFIT

FPL Group attributes the company's recent profits to the strong performance of its wind and solar power subsidiary. P4



HOPPING WITH SHOPPING

The Palms at Town & Country in western Kendall has had great success with its new open-air space, signing top tenants, despite the area's tough climate for retail businesses. P6



HEALTHY FOR HIRING

British insurer Bupa is growing its Miami-based Latin American division, and says it hopes to add dozens more employees to its staff of 400. P11



BUSINESS OF THE YEAR

The Business Journal honors impressive South Florida companies that are growing in the wake of a tough economy. P15

DYADIC: Company lost out on potential licensing deals, lawsuit alleges

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these attorneys in mid-2007, and just \$3 million in cash when he returned a year later after winning a legal battle that forced a shareholder board election. It also lost out on potential licensing deals for its biotechnology, according to the complaint.

"Dyadic was led to the brink of ruin by the very professionals it relied upon to protect it," the lawsuit states.

The lawsuit charges E&Y, the law firms and the lawyers with breach of fiduciary duty, professional negligence, constructive fraud and civil conspiracy. Greenberg Trau-

'DYADIC was led to the brink of ruin by the very professionals it relied upon to protect it.'

Lawsuit filing | Dyadic International

rig and a spokeswoman for Schwimmer said Dyadic's claims are baseless and they plan to put up a vigorous defense.

Jane Moscovitz also said the claims were baseless and that her firm's investigation was independent, diligent and unbiased.

E&Y and Bilzin Sumberg declined comment.

E&Y and Schwimmer, who was an attorney for co-defendant Jenkins and Gilchrist at the time, should have detected accounting problems in Puridet, Dyadic's Hong Kong-based subsidiary, when they helped Dyadic acquire Puridet in 2003 and go public the following year, the lawsuit complaint says.

E&Y also gave Puridet clean audits in 2003 through 2005, although an investigation Moscovitz conducted in 2007 found improper transactions occurring at the company during those years, the complaint says.

The complaint says Emalfarb had no formal business training or accounting experience, so he relied on his lawyers and accountants for due diligence.

"Jenkins', Schwimmer's and E&Y's advice to include the Asian subsidiaries within the public company was not in Dyadic's best interest or that of its investors, but instead was crafted to further their own financial interest," Dyadic's complaint says. "Their representation of Dyadic as a public company, which included Asian subsidiaries, would produce much higher fees than representing Dyadic without these subsidiaries."

ANONYMOUS WHISTLE-BLOWER E-MAILS

The problems at Puridet were disclosed to investors in April 2007, when Emalfarb received anonymous whistle-blower e-mails about the activities in Hong Kong. After Emalfarb forwarded the e-mails to Dyadic CFO Wayne Moor, the company's board started an investigation under the advisement of Schwimmer and Greenberg Traurig, the complaint says.

The board hired Moscovitz and Moscovitz to conduct the investigation, which featured Greenberg Traurig as special counsel. According to Dyadic's complaint and documentation provided with it, the board told Moscovitz not to investigate E&Y's accounting or auditing of Puridet in exchange for E&Y's cooperation.

Ultimately, the Moscovitz report preceded



MARK FREERKS

Laboratory technicians Rashida Tharpe and Mikol Andrews work with biofuels at Dyadic International's Jupiter headquarters.

KEY PLAYERS

Dyadic International's complaint has allegations about the roles of attorney Robert Schwimmer, accounting firm Ernst & Young and the law firms of Greenberg Traurig, Moscovitz and Moscovitz and Bilzin Sumberg. (Schwimmer, Greenberg Traurig and Moscovitz and Moscovitz say the legal claims are baseless, while Ernst & Young and Bilzin Sumberg declined comment.) According to the complaint:

- In 1979, Mark Emalfarb founded Jupiter-based Dyadic International as a producer of enzymes for industrial and apparel products. It went public in 2004 and ventured into biotechnology.
- Puridet, of Hong Kong, sold Dyadic's enzymes to Asian customers. It was bought by Dyadic in 2003.
- South Dragon Detergent Co. was a large Puridet customer in 2003 and 2004, but when allegations surfaced that Puridet's management controlled its checkbook, Emalfarb told Puridet's management to stop dealing with the company.
- Pui Shing Detergent Co. became Puridet's largest customer in 2005 and 2006, but it eventually became clear after a Dyadic investigation in 2007 that it had the same

address as South Dragon and was also controlled by Puridet's management. This meant Dyadic's publicly filed financials were misstated and Puridet avoided paying some Chinese taxes, an investigation by Moscovitz and Moscovitz concluded.

■ Robert I. Schwimmer, an attorney with Greenberg Traurig in Chicago, helped Dyadic acquire Puridet and go public. He advised the company during its investigation.

■ Ernst & Young was the accountant and auditor for Dyadic as it bought Puridet, went public and made public filings. Its Hong Kong arm audited Puridet's books and gave it a clean bill of health in 2004 and 2005.

■ Miami law firm Moscovitz and Moscovitz (with partners Jane and Norman Moscovitz) conducted an investigation into the accounting issues at Puridet at the request of Dyadic's board. The report placed blame on Emalfarb. (Jane Moscovitz said her firm's investigation on behalf of Dyadic was independent, diligent and unbiased.)

■ Miami law firm Bilzin Sumberg was hired by Dyadic's board to advise it during the investigation, while Emalfarb was on a leave of absence.

the board's firing of Emalfarb, who was the company's largest shareholder.

The report said Emalfarb did not take strong-enough action to stop the accounting violations at Puridet after getting whistle-blower e-mails in 2003 and 2004. It showed an e-mail from Emalfarb, telling Puridet officials

to stop doing business with one of the suspicious companies.

While the report did not present direct evidence that Emalfarb knew suspicious dealings at Puridet continued, it concluded that it was "reasonable to infer" Emalfarb knew about them, based on his frequent contacts

with Puridet management.

Dyadic's lawsuit said the investigation by Greenberg Traurig, E&Y and Moor ignored their roles in supervising Puridet and focused on Emalfarb. It said Greenberg was also representing E&Y in an unrelated banking case.

"Due to this undisclosed conflict and despite its duty to render corporate governance advice to the board as Dyadic's lawyers, Greenberg and Schwimmer did not advise the board to include E&Y, the party most responsible for causing Dyadic's problems with its Asian subsidiaries and the party with the singular ability to correct those same problems, as a focus of the investigation," Dyadic says in its complaint.

The complaint also faulted Schwimmer and Greenberg Traurig for recommending that Dyadic retain E&Y as its accounting firm, even though it would not sign off on the company's financial reports because of the issues at Puridet. Dyadic was delisted from AMEX for not filing its SEC reports. Its share price plummeted from \$5.30 when the accounting scandal was revealed in April 2007 to 50 cents last month.

E&Y resigned as Dyadic's auditor in June 2008 – the same month Emalfarb won back his position as Dyadic's CEO after a proxy and legal fight.

"If Mark Emalfarb didn't sue and get control of Dyadic, they probably would have gotten away with it," said Dyadic's Boca Raton-based attorney, Steven M. Katzman. "Emalfarb will pursue these claims vigorously and hold the responsible parties accountable."