Ex-Peregrine CEO pleads guilty in fraud case

by Bruce V. Bigelow

SAN DIEGO - The former chairman and chief executive of San Diego's Peregrine Systems pleaded guilty Tuesday to conspiring in the massive accounting fraud that forced the business software company into bankruptcy in 2002.

Stephen P. Gardner admitted during a morning hearing that he presided for nearly three years over a corporate campaign of deceit for his personal financial gain - and later lied to federal investigators.

Gardner, 53, a graduate of Harvard Business School, was Peregrine's highest-ranking executive when he was forced to resign almost five years ago. He faces a sentence that could be as much as 20 years in prison and has agreed to forfeit much of the personal fortune he derived from Peregrine stock sales.

Gardner was scheduled to begin trial in four weeks on a 46-count indictment when he appeared Tuesday before San Diego federal Judge Thomas J. Whelan. He pleaded guilty to three specific counts of conspiracy, securities fraud and obstruction of justice.

"You engaged in a series of deceptive practices," Whelan told Gardner as he read the charges.

Gardner, wearing a pinstriped suit, said only, "Yes, your honor" in reply.

Neither Gardner nor his attorney, Reid M. Figel, would discuss the case after the hearing. Federal prosecutors did not respond afterward to telephone calls seeking comment.

In a statement released by U.S. Attorney Karen P. Hewitt, federal prosecutors said Gardner is the 10th person to plead guilty to criminal charges arising from the corporate accounting fraud at Peregrine.

Prosecutors alleged that Gardner's role in the scheme was motivated by his executive compensation, much of which was tied directly to Peregrine's purported financial success. But Peregrine's financial performance was grossly inflated under Gardner, and investors lost billions in the company's collapse.

By the time he left the company in May 2002, Gardner had been paid roughly $4 million in salary and bonuses, and had sold stock options valued at $14 million.

"Former Peregrine shareholders can take some comfort knowing that the CEO who engages in criminal behavior is vulnerable and liable in our justice system," said Mark Israel, a former major stockholder.

"I've been anxious to see this whole thing come to closure," said Sam Melehy, a former Peregrine employee and shareholder. "I think it's a positive step."

Some investors still direct their ire at Padres owner John Moores, who was Peregine's single biggest investor and a longtime board chairman. A shareholder lawsuit alleges that Moores sold or transferred more than $487 million worth of Peregrine shares during a period rife with fraud, but he has not been implicated in the government investigation.

Gardner's guilty plea can only increase the pressure on others who still face charges in the case, said Shaun P. Martin, an expert in criminal law at the University of San Diego Law School.

Six others still face charges, including four who were also preparing for trial before Judge Whelan on April 10. Among them is Daniel F. Stulac, an accountant and partner in Arthur Andersen's San Diego office who was the senior outside auditor for Peregrine's financial statements.

"Gardner is a little unique because he played out his hand out to the very last bet," Martin said. "But when you get close to trial there are huge incentives to the prosecution to get that golden witness. Juries love high-level executives who say they and other high-level executives committed a crime."

Two other ex-Peregrine executives pleaded guilty late last month in the case, prosecutors said in a statement Tuesday.

Andrew V. Cahill, 49, the former executive vice president for worldwide sales, and Berdj Joseph Rassam, the former comptroller, both entered guilty pleas to a single count of securities fraud.

Peregrine specialized in business software used by major corporations and others to keep track of their computers, software and other information-technology assets.

The publicly traded company once ranked as one of San Diego's biggest technology companies, with more than 3,500 employees worldwide and a market valuation of more than $3.3 billion.

By 1999, though, prosecutors say Peregrine's top executives were locked in an elaborate con to make the technology company's quarterly financial results look better than they really were.

During the tech boom of the late 1990s, Peregrine was a fast-growth story. So most of the fraudulent accounting practices focused on pumping up sales revenue.

Some software sales deals were backdated so they could help boost results in a particular quarter. Others deal were falsified with the help of outside consultants who acted as resellers of Peregrine's software.

The accounting charade began to unravel in late 2001 when the Securities and Exchange Commission began investigating a "software swap" deal with Critical Path in the San Francisco Bay Area. Gardner lied to SEC investigators during that probe, according to the plea agreement.

During its bankruptcy reorganization in 2003, Peregrine disclosed that it had overstated its revenue by $509 million and understated its losses by $2.6 billion over a 33-month period that began in April 1999.

The company emerged from bankruptcy in August 2003 and was acquired by Hewlett-Packard in 2005. Gardner remained free on bond after Tuesday's hearing. He now lives in Belfast, Maine, a community of 6,500 along the scenic shore of Penobscot Bay.

As part of his plea, Gardner agreed to forfeit nearly $385,000 in a brokerage account, along with four parcels of real estate in the Belfast area. The property to be forfeited includes the Yankee Trader, a Belfast gift store Gardner has operated in recent years.

The agreement also specifically allows Gardner to keep his Belfast home.

Judge Whelan agreed to delay setting a sentencing date at the request of Assistant U.S. Attorney Eric J. Beste, who said Gardner may cooperate in ongoing criminal proceedings.

The extent of Gardner's cooperation, however, was not apparent in his plea agreement. It was unclear if the former CEO could provide authorities with new information that might expand the case or lead the government to file additional charges.

In contrast, the pleas entered Feb. 27 for Cahill and Rassam outline the agreement that each reached "to provide substantial assistance to the government."

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