

Broadcom ex-CEO cleared but reputation may suffer

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Henry T. Nicholas III, left, and friend Kim Davis, enjoy a light moment outside the Nicholas Academic Center in Santa Ana, Calif. after a federal judge dismissed felony narcotics charges and two civil forfeiture cases against Nicholas Thursday, Jan. 28, 2010. (AP Photo/The Orange County Register, Mark Rightmire) ADDITIONAL INFO: nicholas.fed.0129 - 01/28/10 - Photo by MARK RIGHTMIRE, THE ORANGE COUNTY REGISTER

(AP) -- A federal judge tossed out a raft of felony narcotics charges against Broadcom Corp.'s co-founder and former CEO Thursday, ending an embarrassment for prosecutors that grabbed headlines with allegations of prostitutes and drug stashes but ultimately withered under

the court's critical eye.

Henry T. Nicholas III smiled and hugged his supporters outside court and said he felt vindicated after two years of prosecution on the drug case and a parallel securities fraud case that accused him and his technology company's former chief financial officer of improperly backdating stock options.

"At this juncture, I would simply like to thank all of the many people who stood by me, and never doubted me, during these last several years," Nicholas said during his brief remarks.

U.S. District Judge Cormac J. Carney threw out the fraud case in December, citing what he called prosecutorial misconduct and a lack of evidence. At the time, he also questioned the government's narcotics case against Nicholas and told prosecutors they'll have to explain why it shouldn't also be thrown out.

Prosecutors ended up asking Carney to dismiss the drug charges, and he did so Thursday - but not before chiding Nicholas, 50, for his apparent struggles with drug addiction.

"From the evidence ... as well as what's been attained from the pretrial services, it does seem that you had a serious drug problem," Carney told Nicholas. "You paid dearly for that. You lost your marriage, you lost your job, your reputation has been tarnished, but from what I gather you've been clean and sober for two years and I commend you for that."

The double dismissal is a big embarrassment for the government, which in June 2008 unsealed a salacious indictment that so impressed a magistrate judge that he set Nicholas' bail at \$3.3 million and ordered random drug tests and weapons searches of the billionaire's luxury coastal home.

Court documents alleged that Nicholas hired prostitutes for himself and his customers, drugged business cohorts, kept a warehouse to store illicit drugs and distributed cocaine, methamphetamine and ecstasy to his clients, co-workers and friends. In 2001, the indictment said, Nicholas smoked so much marijuana on his private jet that his pilot was forced to don an oxygen mask.

Prosecutors have said they will appeal the dismissal of the stock options backdating case, and an attorney for the Securities and Exchange Commission said Thursday her agency will refile a civil case against Nicholas and three other former Broadcom executives within a week.

Backdating involves retroactively setting a stock option's exercise price to a low point in the stock's value, boosting profits when the shares are sold. It is legal when properly accounted for, but if not properly disclosed it can allow companies to overstate profits and underpay taxes.

Broadcom was ultimately forced to write down \$2.2 billion in profits after its actions were uncovered. Hundreds of other companies have been forced to make similar adjustments or pay fines to the SEC since authorities began investigating the practice in 2006.

In Broadcom's case, Carney said evidence showed prosecutors tried to influence the testimony of three key witnesses, improperly contacted witnesses' attorneys and leaked information about grand jury proceedings to the media.

The government's lead attorney, Andrew Stolper, has declined to comment outside court, but in a court hearing, he acknowledged leaking information and called it the "stupidest thing I have done in my career."

Larry Rosenthal, a former federal prosecutor, said Stolper was "at best imprudent." But Rosenthal added that the government's decision to drop

the drug case could have been only tangentially related - or not at all linked to the misconduct.

"The fact that the government has voluntarily abandoned it without preserving any appellate rights really leads me to wonder what is going on here," he said. "It suggests that the government itself has lost some sort of confidence in the narcotics case."

A relieved-looking Nicholas hinted Thursday that he has not ruled out a return to Broadcom and said he would throw himself into charitable work and a long-standing commitment to victim's rights legislation.

But experts in business ethics said that the drug allegations, as well as the judge's comments on them in open court, could haunt him more than any lingering legal woes - at Broadcom or anywhere else.

"If someone is taking drugs and it seems like it's a problem, then why would you trust them with your investment? It comes down to a matter of trust," said W. Michael Hoffman, executive director of Center for Business Ethics at Bentley University in Waltham, Mass.

"These accusations and these statements by the judge ... certainly are going to follow this man for the rest of his life," said Hoffman, who had no direct knowledge of the case. "Whether he's guilty or innocent is almost irrelevant."

The government's case against the executives of one of the world's leading chipmakers began to unravel six weeks ago, when Broadcom co-founder Henry Samueli testified under a rare grant of immunity at the securities fraud trial of former Broadcom CFO William Ruehle.

After hearing that testimony, Carney dismissed the entire securities fraud case against Nicholas and Ruehle, just two days before a jury was

to begin deliberations. He also set aside a guilty plea that Samueli, who was never indicted, had entered on one count of lying to SEC investigators.

On Thursday, Carney also dismissed two civil forfeiture cases because the underlying criminal narcotics case against Nicholas had been tossed. Prosecutors had sought to seize Nicholas' 1993 Gulfstream jet and properties in Las Vegas and Newport Beach because they had been involved in the alleged drug crimes.

Nicholas and Samueli started Broadcom in 1991 and took it public in 1998. The company grew to 7,000 employees worldwide and is a leading manufacturer for the chips used in everything from cable TV boxes to cell phones. It had nearly \$5 billion in revenue in 2008.

Broadcom shares fell \$1.30, or 4.5 percent, to \$27.41 on Thursday.

(This version CORRECTS that Broadcom had nearly \$5 billion in revenue in 2008, not last year.)

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