

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 59172 / December 29, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2913 / December 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13320

In the Matter of

**STEWART ENTERPRISES,
INC., KENNETH C. BUDE,
CPA, AND MICHAEL G.
HYMEL, CPA,**

Respondents.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Stewart Enterprises, Inc. (“Stewart”), Kenneth C. Budde (“Budde”), and Michael G. Hymel (“Hymel”) (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

RESPONDENTS

1. Stewart Enterprises, Inc. is a Louisiana corporation headquartered in Jefferson, Louisiana. At all relevant times, Stewart's common stock was registered with the Commission under Section 12(g) of the Exchange Act and was traded publicly on the NASDAQ under the symbol "STEL." Over its last five fiscal years, Stewart's total revenues have averaged approximately \$498 million per year.

2. Kenneth C. Budde, age 60, of Metairie, Louisiana, is Stewart's former chief executive officer ("CEO") and chief financial officer ("CFO"). Budde joined Stewart as a divisional CFO in 1984, was promoted to CFO in 1998, and further promoted to CEO in June 2004. In June 2006, Budde retired. Budde was a CPA, licensed in Louisiana and employed at a major public accounting firm in the late 1970s. Budde allowed his CPA license to lapse in the early 1990s and is currently retired.

3. Michael G. Hymel, age 52, of Harahan, Louisiana, is currently Stewart's vice-president of taxation, budgeting and planning. In 1989, Stewart hired Hymel as a tax manager, and in 1990, Hymel became a divisional controller. In 1998 Budde promoted Hymel to the position of chief accounting officer ("CAO"). In 2006, Hymel assumed his current position at Stewart. Hymel was a CPA licensed in Louisiana and employed by a major public accounting firm from 1978 through 1989. He has remained a licensed CPA current throughout his career at Stewart.

SUMMARY

4. From 2001 through 2005, Stewart's public filings with the Commission repeatedly represented that it utilized a delivery method to recognize cemetery merchandise sold prior to the need for a funeral ("pre-need cemetery merchandise"), pursuant to which, upon delivery, Stewart would recognize as revenue the full contract amount paid by the customer. However, Stewart could not readily identify the actual pre-need contract amount and instead developed an estimate of the amount of revenue to be recognized. Stewart's failure to disclose this methodology of estimating revenues in its public filings with the Commission rendered its financial statements not in conformity with Generally Accepted Accounting Principles ("GAAP"). Errors arising from the assumptions underlying Stewart's methodology for estimating revenues resulted in an overstatement of net revenue from 2001 through 2005 by more than \$72 million, overstated annual net earnings before taxes during this period by amounts ranging from 10.76% to 38.76%, and were the primary basis for a subsequent material restatement of earnings. As a result, Stewart violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13, Budde and Hymel caused such violations, and Budde directly violated Exchange Act Rule 13a-14.

FACTS

Background

5. Stewart is the second largest publicly traded death care services provider in the country. Stewart provides a complete range of death care services, including both funeral operations (memorial services, caskets, cremations) and cemetery operations (cemetery lots, burial vaults, headstones, markers). Stewart's business is further divided between time of death services, called "at need," and advance purchase pre-need services. Pre-need cemetery merchandise revenue represented approximately 10% to 12% of Stewart's total delivered revenue during the relevant time period.

6. Stewart grew rapidly during the 1990s, primarily by acquiring smaller funeral homes and cemeteries. In 1991, Stewart had 43 funeral homes and 29 cemeteries in six states. By 1999, Stewart owned 633 funeral homes and 161 cemeteries, located in 30 states, Puerto Rico and several other countries.

Stewart Changes its Revenue Recognition Policy

7. In December 1999, in an effort to clarify the Commission staff's positions with respect to selected issues of revenue recognition, the Commission's Division of Corporation Finance and Office of the Chief Accountant ("OCA") released Staff Accounting Bulletin 101 ("SAB 101"). SAB 101 reminded issuers that, under GAAP, revenue for the sale of merchandise should typically be recognized upon delivery to the customer. Prior to the issuance of SAB 101, Stewart, along with other public issuers in the death care services industry, recognized revenue from the sale of pre-need cemetery merchandise at the time of sale.

8. In early 2000, Stewart, along with other major industry participants, entered into discussions with OCA regarding whether, with respect to the sale of pre-need cemetery merchandise, revenue could be recognized upon time of sale rather than delivery. OCA clarified that GAAP required Stewart, and other industry participants, to recognize revenue from the sale of pre-need cemetery merchandise at the time of delivery. Stewart reflected the change beginning in its first quarter of fiscal 2001 as a cumulative effect of change in accounting principles.

9. On March 6, 2001, Hymel, on behalf of Stewart, issued a letter to OCA indicating that for pre-need cemetery merchandise revenue, Stewart would defer the recognition of that revenue until the point in time "when the customer takes possession/delivery of the specific item purchased" or when Stewart "has no further obligation or involvement related to the merchandise."

Stewart Delays Implementing an Actual Delivery Method, Instead Developing the "A/P Method"

10. Shortly after announcing its shift to a delivery method to recognize revenue for the sale of pre-need cemetery merchandise, Stewart realized that, because its prior revenue recognition methodology was based on time of sale, it had no effective system in place to fully identify either:

(a) the physical delivery of cemetery merchandise to particular customers; or (b) the specific pre-need contract for which delivery of certain cemetery merchandise was actually being made. These difficulties were heightened by virtue of Stewart's having grown through the acquisition of hundreds of funeral homes and cemeteries throughout the country and abroad. These funeral homes and cemeteries had sold hundreds of thousands of pre-need contracts, and, because prior to SAB 101 Stewart recognized revenue at the time of sale, it was not necessary to input the specific pricing details and original customers amounts paid into Stewart's accounting systems.

11. Stewart quickly realized, though, that the undertaking to create and fully implement an automated delivery system would take a significant amount of time, likely several years, and be highly resource intensive. Stewart notified its outside auditors of these difficulties in implementing such an automated delivery system. Although Stewart undertook efforts to develop an automated delivery system, it did not dedicate, upfront, the full resources necessary to address all of these difficulties. Stewart's accounting department, operating under Budde and Hymel, instead developed a unique methodology for estimating both the physical delivery and amount of revenue to be recorded in its accounting records. This process was intended to be used until the automated delivery system was fully developed and implemented.

12. With respect to identifying the point in time at which the physical delivery of pre-need cemetery merchandise occurred, Stewart determined that it could use the receipt of its own vendor invoices as a proxy for actual physical delivery, as Stewart did not produce any of the pre-need cemetery merchandise itself, and stored very little cemetery merchandise. Stewart assumed that because vendors typically invoiced Stewart for cemetery merchandise after it had been delivered, any vendor invoice for cemetery merchandise that was sold pre-need would likely correspond to the delivery of that merchandise to Stewart's customer. As this system relied on accounts payable invoices as proxies for physical delivery, Stewart referred to this method of revenue recognition internally as the "A/P Method."

13. To quantify the amount of revenue to be recognized, Stewart developed an accounting estimate, called the "mark-up" factor, because it could not readily identify the actual pre-need contract for the delivery of specific cemetery merchandise to specific contracts. In determining the mark-up factor, Stewart calculated the ratio between what it believed to be its vendor costs to acquire cemetery merchandise and the historical prices as sold to customers for this merchandise. Upon receiving a vendor invoice for pre-need cemetery merchandise, Stewart calculated the amount of revenue that should be recognized for that product by multiplying its own vendor invoice cost by the appropriate mark-up factor.

14. Budde and Hymel reviewed the A/P Method and approved the decision to begin utilizing the A/P Method and its underlying estimates to formally book revenue for the first quarter of Stewart's fiscal year ended October 31, 2001. From the outset, Stewart's outside auditor questioned Stewart's use of estimates to record revenue. While conceding in its annual management letter that Stewart's inability to "properly account and track the status and delivery of pre-need cemetery merchandise contracts" required Stewart to estimate revenues, the outside auditor cautioned Stewart that "[c]ontinued use of [the A/P Method] heightens the possibility of misstatements on the amount of revenue recognized in a period." Starting in 2001, the outside

auditor also recommended that Stewart move to a revenue recognition system based on “actual deliveries of cemetery merchandise and its associated cost without having to be as dependant on estimates.” Despite these comments, the outside auditor issued unqualified audit opinions for each year that Stewart used the A/P Method.

**Stewart’s Deferred Revenue Project Identifies Material Problems
with its Reported Revenue under the A/P Method and Weaknesses in Internal Controls**

15. Over time, Stewart identified and corrected what it determined to be immaterial errors in the A/P Method. Stewart continually reviewed the mark-up factor utilized in the A/P Method and made adjustments to the mark-up accordingly. In 2002, Stewart assigned a former division CFO to review the A/P Method and to accelerate efforts to develop and implement an automated delivery system for recognizing cemetery merchandise revenue.

16. In October 2004, Stewart launched a review of its internal accounting controls and financial reporting in anticipation of the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”). Earlier in 2004, Stewart had begun to roll out and test its automated delivery system for revenue recognition, and had noted revenue recognition discrepancies that it initially attributed to the automated system’s design. The Section 404 undertaking quickly focused on Stewart’s revenue recognition policies and the amounts of deferred revenue on Stewart’s financial statements. As the project progressed, Stewart concluded that it was necessary to devote substantial resources to finding, reviewing, and inputting the pricing details from all pre-need contracts. This was a significant undertaking, ultimately requiring the review of nearly 700,000 pre-need contracts. Stewart referred to this review as the “Deferred Revenue Project.”

17. By October 2005, as a result of the progress of the Deferred Revenue Project, Stewart believed that a restatement of its prior period financial statements could be warranted. On October 21, 2005, Stewart filed a Form 8-K disclosing the existence and purpose of the Deferred Revenue Project and announcing that a restatement was likely to occur, with an estimated impact of \$60 million or less to shareholder equity. No portion of this Form 8-K made any reference or description to Stewart’s use of an estimated methodology to book revenue for pre-need cemetery merchandise.

18. In January 2006, Stewart realized that errors in the A/P Method had likely caused a material overstatement of revenue for fiscal years 2001 through the first three quarters of fiscal year 2005. These errors primarily occurred because Stewart had used incorrect internal vendor costs for its cemetery merchandise in calculating the mark-up factor.

19. On February 17, 2006, Stewart filed its 2005 Form 10-K, which announced the results of both the completion of the Deferred Revenue Project and its Sarbanes-Oxley Section 404 internal controls assessment. The Deferred Revenue Project ultimately resulted in a \$93 million charge against shareholder equity (of which \$72 million was directly attributable to errors in the A/P Method mark-up factor) for fiscal years 2001 through the third quarter of 2005. The chart below illustrates the impact on Stewart’s net earnings before taxes for fiscal years 2001 through 2005 attributable to the errors in the A/P Method.

Fiscal Year	Net Earnings (loss), Before Taxes (“EBT”) (prior to 2005 restatement) (000’s omitted)	Amount of Reported EBT Attributable to Errors within A/P Method (000’s omitted)	Percentage of EBT Improperly Reported due to A/P Method Errors
2001	(\$197,427)	\$21,253	10.76%
2002	\$47,882	\$18,561	38.76%
2003	(\$44,757)	\$12,019	26.85%
2004	\$68,428	\$10,963	16.02%
2005*	\$26,404	\$9,516	36.04%

* These figures only represent the first nine months of Fiscal Year 2005.

20. In addition to disclosing these restatements, Stewart also identified in its 2005 Form 10-K that it “did not maintain effective internal control over financial reporting” and had “material weaknesses relating to ... revenue recognition of pre-need cemetery merchandise and services contracts...” As with the language related to the restatement, however, no portion of the internal controls assessment identified Stewart’s prior use of the A/P Method and its underlying use of estimates.

21. After learning of the problems in the A/P Method uncovered during the Deferred Revenue Project and identifying the corresponding weaknesses in internal controls, Stewart’s outside auditor advised that it would no longer approve the use of the A/P Method. Only at this point in time, when Stewart was completing its compliance obligations under Sarbanes-Oxley Section 404 and its outside auditor indicated it would no longer approve of the use of the A/P Method did Stewart finalize the implementation of and begin booking revenue through an actual delivery system.

Stewart Did Not Disclose its Use of the A/P Method and Misleadingly Described its Revenue Recognition Policies

22. In general, beginning with Stewart’s March 15, 2001 Form 8-K that attached Stewart’s letter to OCA, and continuing through its filing of its Form 10-K for its fiscal year ended October 31, 2004, Stewart’s filings with the Commission contained misleading statements that “for preneed sales of cemetery merchandise, primarily vaults and markers ... the associated revenue and certain costs to acquire the sale are deferred until the merchandise is delivered.”

23. Stewart’s Forms 10-K for fiscal years 2001 through 2003, filed with the Commission between 2002 and 2004, contained additional misleading statements and omissions suggesting that Stewart could identify the actual amount of revenue to be recognized from the sale of its pre-need cemetery merchandise. Specifically, these filings misleadingly stated that, “[w]hen the ... merchandise is delivered, the Company recognizes as revenue the full contract amount.” As Stewart had no systems in place to allow it to identify the underlying contracts on which revenue was being recognized, Stewart was in actuality utilizing the A/P Method to estimate the “full contract amount.” Stewart’s Forms 10-Q for the first quarter of fiscal year 2002, filed March 18, 2002, and for the second quarter of fiscal year 2003, filed June 13, 2003, also referenced this misleading language within the Forms 10-K regarding the “full contract amount” of revenue being recognized upon delivery.

24. Budde and Hymel signed each of the Forms 10-K and Forms 10-Q that contained these misleading descriptions and omissions, while Hymel signed and Budde reviewed the March 2001 Form 8-K. Pursuant to Sarbanes-Oxley Section 302 and Exchange Act Rule 13a-14, Budde also certified Stewart's 2003 Form 10-K and second quarter 2003 Form 10-Q as CFO. In each respective certification, Budde attested that, based on his knowledge, the respective Forms 10-K and 10-Q did not "contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made . . . not misleading."

ACCOUNTING ANALYSIS

25. Under GAAP, revenue from the sale of merchandise should generally be recognized upon delivery of the merchandise to the buyer, even if the sale precedes delivery. FASB Statement of Concepts ("SFAC") No. 5, Recognition and Measurement in Financial Statements of Business Enterprises, ¶ 84(a), (b). Upon delivery, the seller should typically recognize as revenue the amount received from the buyer. See SFAC No. 5 at ¶ 83 ("Revenues and gains of an enterprise during a period are generally measured by the exchange values of the assets . . ."); SFAC No. 6, Elements of Financial Statements, ¶ 78 ("Revenues are inflows or other enhancements of assets of an entity . . . from delivering or producing goods . . ."). GAAP further requires that the amount of revenue recorded must be "measurable with sufficient reliability." SFAC No. 5 at ¶ 63; see also SFAC No. 2, Qualitative Characteristics of Accounting Information, ¶ 72 ("Reporting accounting numbers as certain and precise if they are not is a negation of reliable reporting."). GAAP further requires issuers to disclose any significant deviation from these basic revenue recognition policies. Accounting Principles Board Opinion No. 22, specifically requires issuers to disclose, among other things: (1) "important judgments as to the appropriateness of principles relating to recognition of revenue;" and (2) "[u]nusual or innovative applications of [GAAP] (and, as applicable, of principles and methods peculiar to the industry in which the reporting entity operates)." Stewart's failure to disclose its use of the A/P Method and its underlying layers of estimates therefore rendered its financial statements not in conformity with GAAP.

LEGAL ANALYSIS

Stewart Violated the Reporting, Books and Records and Internal Controls Provisions of the Exchange Act, and Budde and Hymel Caused Such Violations

26. Section 13(a) of the Exchange Act requires issuers to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Rules 13a-1, 13a-11 and 13a-13 require the filing of annual, current and quarterly reports, respectively. "The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports." SEC v. Savoy Industries, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing SEC v. IMC Int'l, Inc., 384 F. Supp. 889, 893 (N.D. Tex. 1974)). A violation of Section 13(a) is established if a report is shown to contain materially false or misleading information. SEC v. Kalvex, Inc., 425 F. Supp. 310, 316 (S.D.N.Y. 1975). Rule 12b-20 of the Exchange Act requires an issuer to include any

additional material information necessary to make the required statements in the filing not misleading. No showing of scienter is necessary to establish an issuer's violation of Section 13(a) of the Exchange Act. SEC v. Wills, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

27. Stewart violated Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder because its filings with the Commission between 2001 and 2005 contained materially misleading statements and omitted material information concerning Stewart's revenue recognition policies and materially misstated Stewart's revenues in reports filed with the Commission as a result of errors directly attributable to the estimates underlying the A/P Method. Budde and Hymel caused these violations by Stewart because they reviewed and approved of these filings and knew or should have known that they did not disclose the use of the A/P Method and inaccurately described Stewart's revenue recognition policies as being based on recognition of the "full contract amount," when Stewart was instead utilizing the A/P Method to estimate the actual contract amount.

28. Section 13(b)(2)(A) of the Exchange Act requires issuers with securities registered under the Exchange Act to make and keep books, records, and accounts that in reasonable detail accurately and fairly reflect the issuer's transactions and dispositions of assets. Section 13(b)(2)(B) of the Exchange Act requires the same issuers to devise and maintain a system of internal accounting controls which provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP. The Commission need not show scienter to prove violations of Section 13(b)(2). SEC v. World-Wide Coin Inv., Ltd., 567 F. Supp. 724, 749 (N.D. Ga. 1983).

29. Stewart violated Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) because its internal books, records, and accounts improperly and inaccurately reflected numerous transactions for which revenue should not have been recognized. Stewart's February 2006 restatement acknowledged the multiple errors in revenue recognition that had occurred and led to a \$93 million charge against shareholder equity, of which \$72 million was directly attributable to errors in the A/P Method. Stewart further lacked sufficient accounting procedures and controls by which it could identify the specific pre-need contract and corresponding amount of revenue for which cemetery merchandise had been delivered. Budde and Hymel caused these internal controls and books and records violations by Stewart. Budde and Hymel had ultimate responsibility for the adequacy of Stewart's internal controls and the accuracy of Stewart's accounting records. They knew or should have known that Stewart lacked adequate internal controls to identify the appropriate amount of revenue to recognize from the sale of pre-need cemetery merchandise and, thus, that Stewart's internal accounting records were inaccurate.

Budde Violated Exchange Act Rule 13a-14

30. Sarbanes-Oxley Section 302 provides that the Commission shall, by rule, require the principal executive officer and the principal financial officer of companies filing periodic reports under Section 13(a) of the Exchange Act to make certain certifications in each annual or quarterly report. To implement Section 302, the Commission promulgated Exchange Act Rule 13a-14, which provides that an issuer's annual and quarterly reports shall include certifications

signed by the principal executive and principal financial officer of the issuer that the report, to the best of their knowledge, does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made not misleading with respect to the period covered by the report.

31. Budde certified Stewart's 2003 Form 10-K and second-quarter 2003 Form 10-Q as CFO, in each certification attesting that, based on his knowledge, the respective Forms 10-K and 10-Q did not "contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made . . . not misleading." As set forth above, these filings contained materially misleading statements and omissions regarding Stewart's revenue recognition policies and methodologies. Accordingly, Budde violated Exchange Act Rule 13a-14.

REMEDIAL EFFORTS

In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Stewart and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Stewart cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. Pursuant to Section 21C of the Exchange Act, Respondent Budde cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 13a-14 and cease and desist from causing any violations and any future violations of Section 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

C. Pursuant to Section 21C of the Exchange Act, Respondent Hymel cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

By the Commission.

Florence E. Harmon
Acting Secretary