

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51719 / May 19, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2246 / May 19, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11932

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| In the Matter of | : | |
| | : | |
| Kevin Rodgers, | : | ORDER INSTITUTING CEASE- |
| | : | AND-DESIST PROCEEDINGS, |
| Respondent. | : | MAKING FINDINGS, AND |
| | : | IMPOSING A CEASE-AND- |
| | : | DESIST ORDER PURSUANT |
| | : | TO SECTION 21C OF THE |
| | : | SECURITIES EXCHANGE |
| | : | ACT OF 1934 |
| | : | |

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 Kevin Rodgers (“Rodgers” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent and Related Party

1. Rodgers, age 54, was the president of National Equipment Services, Inc. ("NES") from 1996 to October 2002. Rodgers resigned in late 2002. He was also a member of the board of directors. Rodgers is a resident of Glenview, Illinois.

2. National Equipment Services, Inc., founded in 1996, is a Delaware corporation based in Evanston, Illinois. During the relevant period, NES's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act. NES filed periodic and other reports with the Commission pursuant to Section 13(a) of the Exchange Act. NES's common stock was traded on the New York Stock Exchange.

Summary

3. NES overstated its assets, net income and earnings per share in its periodic filings with the Commission from 1999 through September 2001 by failing to take appropriate actions to correct unsubstantiated asset balances. Prior to the end of NES's fiscal year ended December 31, 2000, Rodgers learned that significant accounts receivable, inventory and equipment balances at two subsidiaries had not be substantiated by local employees. However, NES did not write off or otherwise correct its unsubstantiated asset balances until October 2001. While closing NES's books in early 2002, NES's new CFO concluded that certain of the October write-offs should have been taken earlier and identified other issues. On April 2, 2002, NES announced that it was restating its previously reported results for 1999 and 2000. NES also restated its first three quarters of 2001. NES restated its net income for 1999 from \$21.093 million to \$19.456 million. NES restated its net income for 2000 from \$11.009 million to \$6.053 million. Rodgers caused NES's reporting violations by approving the filing of NES's 2000 annual report and 2001 quarterly reports that contained materially inaccurate financial information.

Background

4. A venture capital group formed NES in 1996 to pursue a roll-up growth strategy in the equipment rental industry. NES thereafter acquired 45 rental companies between 1997 and 2001. As the number of acquisitions grew, NES began to regionalize its operating and accounting functions. Its Gulf Coast Region consisted of a number of rental companies, including R&R Rentals ("R&R"), Elite Rentals ("Elite") and Genpower Pump and Equipment ("Genpower"). NES combined the R&R and Elite subsidiaries in April 2000 ("R&R Elite").

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

NES generated capital for its acquisitions from several sources, including an initial public offering in July 1998.

NES Misstated Accounts Receivable, Equipment and Inventory

5. NES employees were not able to substantiate significant account balances in the company's Gulf Coast Region at year-end 2000.

6. R&R Elite's accounts receivable balance in its general ledger was approximately \$2.7 million higher than the balance in its subsidiary detail ledger. NES employees and outside consultants had investigated the issue and believed that the ledgers were out of balance because R&R Elite's former controller made a journal entry to increase prepaid expenses during a conversion which combined R&R and Elite's books in April 2000. It appeared that the entry was recorded to make the system agree with results reported to NES headquarters from 1998 through April 2000. NES's employees and its consultants were not able to locate any support for the journal entry or otherwise substantiate the higher general ledger balance.

7. R&R Elite and Genpower's general ledgers and subsidiary detail ledgers for rental equipment and inventory were also out of balance. Equipment and inventory counts by employees at both subsidiaries tended to confirm approximately a \$2.7 million shortage of equipment at R&R Elite, a \$1.9 million shortage of equipment at Genpower, and a \$662,000 shortage of inventory at Genpower. NES employees had ruled out several theories that may have accounted for the missing equipment, such as a transfer between regions, and had not been able to substantiate the higher general ledger balances.

8. R&R Elite and Genpower also carried uncollectible and old accounts receivable on their books, prompting the local controllers to recommend \$1.8 million in aged accounts receivable and other receivables write-offs.

9. Rodgers learned about the potential problems in the Gulf Coast Region from NES's CFO at the time. Rodgers agreed with the CFO's decision to include the higher general ledger balances for accounts receivable, rental equipment and inventory from the Gulf Coast Region in NES's consolidated financial statements while NES employees continued to investigate the issues, even though NES employees had not been able to substantiate those balances at year-end 2000. Rodgers thought that the CFO had disclosed the amount of the unsubstantiated account balances to NES's auditors, who issued an audit report containing an unqualified opinion on NES's December 31, 2000 financial statements.

10. NES's December 31, 2000 financial statements overstated NES's asset balances. Had NES written off the unsubstantiated accounts receivable, equipment and inventory balances in the Gulf Coast Region, the adjustments would have materially lowered NES's net income and earnings per share for 2000. However, NES did not write off, adequately reserve for or disclose the potential problems in its Gulf Coast Region. NES included its inaccurate December 31, 2000 financial statements in its annual report on Form 10-K, which it filed with the Commission and distributed to the public. As a result, NES's 2000 Form 10-K contained false information about NES's financial condition and results of operations. Rodgers signed NES's Form 10-K.

11. NES employees continued to investigate the out-of-balance accounts receivable, equipment and inventory issues at R&R Elite and Genpower in 2001, but additional inquiry did not materially reduce the discrepancies. In July 2001, the CFO informed Rodgers that write-offs would be necessary. Rodgers instructed the CFO to prepare a summary of the write-offs. After reviewing the summary, Rodgers instructed the CFO to gather additional information in support of the proposed write-offs. NES eventually recorded the write-offs relating to the Gulf Coast Region in the fourth quarter of 2001. At that time, NES did not adjust prior period results. Therefore, NES's 2001 quarterly reports included inaccurate information about NES's financial condition and results of operations.

NES's Restatements

12. NES hired a new CFO at the beginning of 2002. NES's new CFO determined that it was necessary to restate NES's financial statements for 1999, 2000 and certain quarters in 2001. The 1999 and 2000 restatements related primarily to accounts receivable, inventory and equipment. According to NES, it adjusted its balance sheets and income statements by decreasing its accounts receivable, inventory and equipment and increasing its selling, general and administrative ("SG&A") expenses and costs of revenue² for 1999 and 2000.³ NES's accounts receivable write-off resulted in an income statement expense increase of \$1.530 million in 1999 and \$2.412 million in 2000. NES's inventory and equipment write-offs resulted in an income statement expense increase of \$1.128 million in 1999 and \$5.276 million in 2000. The adjustments reconciled discrepancies between the company's detail ledgers, general ledgers and physical asset inventory counts taken during 1999 and 2000. The adjustments also corrected an erroneous accounting for certain leases as capital leases rather than operating leases.

13. As a result of increasing its reported expenses, NES's net income decreased \$1.637 million in 1999 (from \$21.093 million to \$19.456 million) and decreased \$4.956 million in 2000 (from \$11.009 million to \$6.053 million). Therefore, NES overstated its net income and basic earnings per share in 1999 and 2000. NES also filed amended Forms 10-Q for 2001 quarterly results, allocating write-offs to earlier quarters.

Violations of the Exchange Act

14. Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file quarterly and annual reports with the Commission and to keep this information current. The obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978).

15. As a result of the conduct described above, NES committed violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder by failing to write off or reserve for accounts receivable, rental equipment and inventory in the proper periods in accordance with GAAP, thereby overstating its net income and earnings per share in Forms 10-K

² NES uses the term "cost of revenue" rather than "cost of sales" or "cost of goods sold" because its income is derived primarily from equipment rentals, not sales.

³ NES also decreased its prepaid assets and increased its SG&A expenses by \$358,000 for 2000 to correct erroneous journal entries to prepaid asset accounts.

and 10-Q filed with the Commission from 1999 through September 2001. Rodgers caused NES's reporting violations by signing NES's 2000 10-K and by reviewing and approving NES's 2001 quarterly reports that contained materially inaccurate financial information.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Kevin Rodgers cease and desist from causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

By the Commission.

Jonathan G. Katz
Secretary