UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	:	AMENDED COMPLAINT
v.	:	05 Civ 7944 (SAS) (JCF) ECF Case
MARTIN E. KENNEY JR. Defendant.	:	

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

PRELIMINARY STATEMENT

1. In December 2002, Martin E. Kenney ("Kenney"), the Chief Executive Officer of WRC Media Inc. ("WRC"), aided and abetted WRC's improper recognition of $1.2 million in revenue from a purported sale of educational software to the Monroe City, Louisiana School District ("Monroe transaction"). The Monroe transaction did not meet the criteria under generally accepted accounting principles (GAAP) for revenue recognition, because it was contingent upon approval by the Monroe City School Board. As a result, WRC filed financial reports with the Commission that materially misstated its fourth quarter 2002 results.

2. As set forth below, Kenney aided and abetted WRC's violations of Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78o(d)]] and

Rules 12b-20, 15d-1, 15d-11, and 15d-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.15d-1, 240.15d-11, and 240.15d-13].

3. By this action, the Commission seeks (i) permanent injunctive relief, (ii) civil penalties, and (iii) such further relief as the Court may deem appropriate.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

5. Defendant Kenney, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of business alleged herein.

6. Venue is proper in this District pursuant to Section 27 of the Exchange Act. Kenney engaged in certain transactions, acts, practices and courses of business alleged herein within this District.

DEFENDANT

7. Martin E. Kenney, Jr., age 59, resides in Berwyn, Pennsylvania, and was, at all times relevant to this complaint, the Chief Executive Officer and a director of WRC Media, Inc. Kenney was also the Chief Executive Officer of CompassLearning, Inc., a wholly owned subsidiary of WRC ("Compass"). Kenney was a principal spokesperson for WRC responsible for communicating the company's financial results to investors. He signed WRC's periodic reports on Forms 10-K and 10-Q and certified, among other things, that (i) the reports did not contain any untrue statement of a material fact or any material omissions,

(ii) the financial statements and related information fairly presented WRC's financial condition and results of operations, and (iii) he was responsible for establishing and maintaining disclosure controls and procedures.

RELEVANT ENTITY

8. WRC Media, Inc., was at all relevant times a Delaware corporation with its principal place of business in New York, New York. WRC had $152 million of debt securities that traded on the Over the Counter Market. In the 2000 Form S-4 statement registering its offering of debt securities, WRC agreed to provide the holders of these securities, so long as any notes were outstanding, quarterly and annual reports on Forms 10-Q and 10-K, as well as all current reports on Form 8-K, in compliance with Commission rules and regulations. During all relevant times, WRC filed consolidated financial statements and reported the subsidiaries' individual financial performance in its Form 10-Qs and 10-Ks.

FACTS

Negotiations with Monroe City School District

9. In April 2002, Compass started negotiations with the superintendent of the Monroe City School District. The initial proposal was for the school district to purchase $2.5 million of educational software programs. Through September 2002, Compass' sales staff repeatedly met with the superintendent and other Monroe school personnel to discuss Monroe's software needs. Although the superintendent expressed interest, an agreement had not been reached.

10. In October 2002, one of the salespeople responsible for Monroe enlisted Kenney's help on the account by asking him to meet with the superintendent in Louisiana. It

was believed that having WRC's CEO personally involved in the negotiations would help impress the superintendent and close the deal. At the time, Kenney knew the potential Monroe transaction was among the large potential transactions that could close before the end of the year.

11. Kenney traveled to Monroe, Louisiana on October 15, 2002, to meet with the superintendent. Kenney also prepared materials for the superintendent to present to the Monroe City School Board describing the merits of the Compass software.

12. In October of 2002, Compass' sales staff presented the superintendent with a standard-form Compass sales contract, which, among other things, contained the following representation concerning the signing party's authority:

> PURCHASE AUTHORIZATIONS
> School/District represents and warrants that it has complied with any and all requirements necessary to authorize the execution of all Agreements with CompassLearning and the signing party(ies) are authorized to sign on behalf of School/District.

13. In October 2002, Mr. Kenney was told that board approval would be needed before Compass could get a purchase order from the school district. In an October 20, 2002 email, Kenney reported that "we left Monroe with a commitment that the superintendent would provide us a letter of commitment that would indicate intent to purchase at the amount presented subject to board approval. The board meeting on November 19 is the formal board meeting for approval . . . it has to be approved by the board before we get a po [purchase order]."

14. During the course of discussions with the Compass sales staff, the superintendent requested that the words "pending board approval" be included in Compass' contract. He later executed a contract containing such language on October 24, 2002.

15. The salespersons responsible for the Monroe account consulted with Compass' President to inquire whether Compass could book the revenue from the Monroe sale if the contract was contingent upon school board approval. The President informed them that revenue recognition would not be appropriate until the board approved the deal. Kenney later was informed of this accounting determination.

16. The Compass sales staff continued visiting the superintendent in Louisiana during November to assist him in securing board approval. In the first week of December 2002, the superintendent informed one of Compass' sales staff that the board would not consider the contract until 2003. The Compass sales person in turn so advised Kenney.

December Agreement with Superintendent

17. On December 11, 2002, Kenney returned to Louisiana with the Compass sales team for the purpose of having the superintendent sign a replacement agreement. During that trip, the superintendent signed a replacement Order Agreement as well as a Price Quote ("December Agreement") to lease Compass software and other materials for $2.3 million. The superintendent executed the contract on December 12, 2002.

18. Thereafter, one of the Compass salespeople forwarded the signed contract to Compass' accounting department. This contract was not the standard sales agreement typically used by Compass and did not mention any requirement of school board approval. Unaware that school board approval for this contract was required but had not been obtained, the Compass Controller approved recognition of $1.2 million in revenue for fiscal 2002.

19. Consequently, Compass improperly recorded nearly $1.2 million in revenue in the fourth quarter of 2002, materially overstating fourth quarter operating income and understating WRC's reported fourth quarter net loss. On March 24, 2003, WRC issued a

press release on Form 8-K reporting the results for the three months and year ended December 31, 2002, which included the Monroe revenue. These financial results were included in WRC's fiscal 2002 Form 10-K, filed on March 31, 2003.

20. Kenney authorized WRC's fiscal 2002 earnings press release and signed WRC's 2002 Form 10-K.

<u>Creation of Bad Debt Reserve for the Monroe Transaction</u>

21. In April 2003, after the company had filed its fiscal 2002 results, the superintendent informed Compass that the school district had run into unexpected financial difficulties. By May, it appeared highly doubtful to WRC that the Monroe City School District would conclude the transaction and that the revenue recorded in the fourth quarter of 2002 would be realizable.

22. On May 15, 2003, WRC recorded a bad debt reserve in the first quarter of 2003 for the Monroe transaction as opposed to reversing the transaction.

23. In WRC's Form 10-Q, signed by Kenney, WRC attributed the bad debt reserve "to the uncertainty of collection of the receivable which resulted from a change in financial condition of the purchaser." Such treatment was inappropriate under GAAP, because that treatment incorrectly assumed that it was appropriate to recognize the revenue in the first place when, in fact, the failure to obtain school board approval had precluded revenue recognition.

<u>Restatement to Correct Improper Accounting</u>

24. Under GAAP, an accounting "error," as defined by APB 20, results from mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared. Restatement

of prior period financial statements is required by GAAP upon the discovery of a material accounting error(s) in previously issued financial statements.

25. In March of 2004, WRC filed a Form 8-K disclosing the restatement of, among other items, the improper recognition of the Monroe revenue after determining that the Monroe agreement did not meet the criteria under GAAP for revenue recognition. Further, WRC determined that it had incorrectly recorded the related bad debt reserve. In a subsequent Form 8-K filed on March 31, 2004 and signed by Kenney, WRC explained the correction of the prior period accounting errors as follows:

> [W]e have restated our previously audited consolidated balance sheets as of December 31, 2001 and 2002, and the related statements of stockholders' deficit and operations for the years ended December 31, 2001 and 2002. The restatement corrects certain errors made in the application of accounting principles generally accepted in the United States of America ("GAAP") and corrects certain of our historical accounting policies to conform to GAAP. . . .
>
> In December 2002, the Company recorded a $1,860[,000] receivable of revenue from the sale of educational software and services to a school district [Monroe City]. . . . The Company has concluded that the sale did not meet the criteria under GAAP for revenue recognition for the year ended December 31, 2002, and that it incorrectly recorded the related bad debt reserve and retained the excess allowance for doubtful accounts in 2003. The Company has corrected these errors by reversing these transactions.

26. Subsequently, Kenney signed WRC's Form 10-Q filed on May 14, 2004 and in WRC's Form 10-K filed on June 15, 2004 which contained additional disclosures regarding the restatement.

CLAIM

REPORTING VIOLATIONS
Violations of Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] and Exchange Act Rules 12b-20, 15d-1, 15d-11, and 15d-13 [17 C.F.R. §§ 240.12b-20, 240.15d-1, 240.15d-11, and 240.15d-13]

27. The Commission re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

28. By recognizing revenue in 2002 from the Monroe transaction based on the December Agreement, the company violated Section 15(d) of the Exchange Act and Exchange Act Rules 12b-20, 15d-1, 15d-11, and 15d-13 by filing materially misstated reports on Form 8-K, Form 10-K, and Form 10-Q with the Commission.

29. By engaging in the conduct described above, Mr. Kenney aided and abetted WRC's violations of Section 15(d) of the Exchange Act and Exchange Act Rules 12b-20, 15d-1, 15d-11, and 15d-13.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

A. Permanently restraining and enjoining Kenney from aiding and abetting future violations of section 15(d) of the Exchange Act, and Exchange Act rules 12b-20, 15d-1, 15d-11, and 15d-13;

B. Ordering Kenney to pay a civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

C. Granting such other and additional relief as this Court may deem just and proper.

Dated: March 23, 2007

Respectfully submitted,

Robert W. Pommer III

Robert W. Pommer III (RP 5328)
John D. Worland, Jr. (JW 1962)
Thomas C. Swiers
Attorneys for Plaintiff
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-4030
(202) 551-4479 (Pommer)
(202) 772-9245 (Fax)