UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. DENNIS O'CONNOR, Defendant.	))))))))))	Case No: 05 C 2980

COMPLAINT

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

NATURE OF THE ACTION

1. This action involves reckless conduct by Dennis O'Connor, who failed to take appropriate actions to correct significant unsubstantiated account balances when he was the CFO of National Equipment Services, Inc. ("NES"), a public company. As a result, NES overstated its assets, income and earnings per share in its periodic filings with the Commission from 1999 through September 2001.

2. Defendant O'Connor, directly or indirectly, engaged in and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business which violate Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 thereunder [17 C.F.R. 240.10b-5, 240.13b2-1 and 240.13b2-2].

3. Defendant O'Connor also, directly or indirectly, aided and abetted and unless restrained and enjoined by this Court will continue to aid and abet transactions, acts, practices, and courses of business which violate Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13].

4. The Commission brings this action to enjoin such transactions, acts, practices and courses of business pursuant to Sections 20(e), 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78t(e), 78u(d) and 78u(e)].

JURISDICTION AND VENUE

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

6. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa].

7. O'Connor is a resident of Illinois. The acts, practices and courses of business constituting the violations alleged herein have occurred within the jurisdiction for the United States District Court for the Northern District of Illinois and elsewhere.

8. O' Connor made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts practices and courses of business alleged herein and will, unless enjoined, continue to engage in the acts practices and courses of business set forth in this Complaint and acts, practices and courses of business of similar purport and object.

DEFENDANT

9. O'Connor was the Chief Financial Officer of NES from August 1996 through December 2001. All NES financial employees reported directly or indirectly to O'Connor. He was also primarily responsible for communications with NES's independent auditors. O'Connor signed NES's quarterly and annual reports, filed with the Commission on Forms 10-Q and 10-K.

THE ISSUER

10. 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 [15 U.S.C. § 78*l*(b)]. NES filed periodic and other reports with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]. NES's common stock traded on the New York Stock Exchange. The New York Stock Exchange delisted NES's stock in November 2002. NES filed for Chapter 11 bankruptcy on June 27, 2003. NES emerged from bankruptcy with new ownership on February 11, 2004 (the "Effective Date").

FACTS

Background

11. NES management, with venture capital funding, launched NES in 1996 to pursue a roll-up growth strategy in the equipment rental industry. The company's growth philosophy was to: (1) find high-quality specialty equipment rental companies; (2) retain former owners to run the businesses; (3) provide them access to capital; (4) maintain a lean corporate overhead; and (5) centralize accounting functions over time, as necessary.

NES's senior management aggressively pursued the growth strategy, completing 45 acquisitions by mid-2001.

12. As the number of acquisitions grew, NES began to regionalize its operating and accounting functions. NES began consolidating operations in its Gulf Coast Region in 1999. The 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 acquired Genpower, a pump rental company, in January 1998; R&R, a crane rental company, in July 1998; and Elite, an earth-moving equipment rental company, in June 1999. NES merged R&R and Elite into one company at the beginning of the second quarter 2000. In late 2000, NES began dividing the Gulf Coast operating companies into two working groups, Equipment Services ("ESV") and Industrial Services ("ISV").

O'Connor Learned About Unsubstantiated Account Balances in NES's Gulf Coast Region

13. In July or August 2000, O'Connor learned that R&R Elite's accounts receivable general ledger was approximately $2.7 million higher than its subsidiary detail ledger. NES's financial statements were based on information from the general ledger. Therefore, any inaccuracies in the general ledger would cause corresponding inaccuries in NES's financial statements. O'Connor instructed local financial employees to resolve the discrepancy between the general ledger and the subsidiary detail ledger. During the Fall of 2000, NES's local controller and consultants confirmed that the ledgers were out of balance and that they went out of balance after a combination of R&R and Elite's computerized accounting systems in April 2000.

14. The former employee who handled the combination claimed that he lost subsidiary detail during the combination, but NES employees were not able to substantiate any missing detail. The employees could not find any additional detail and R&R Elite did not receive any payments on missing invoices. NES employees also determined that R&R and Elite's pre-combination computerized accounting systems reflected approximately $2.7 million more expenses than reported to NES headquarters from 1998 through April 2000. NES employees thought that the former employee may have made a journal entry to increase prepaid expenses during the combination in order to make the computerized accounting systems agree with results previously reported to NES headquarters, but the employees and outside consultants were not able to locate support for such a journal entry.

15. By approximately November 2000, O'Connor learned about other issues in the Gulf Coast Region. First, R&R Elite and Genpower's general ledgers for rental equipment and inventory were higher than the subsidiary detail ledgers, indicating potential shortages of equipment and inventory. Second, R&R Elite and Genpower carried uncollectible and old accounts receivable on their books. Third, R&R Elite and Genpower had understated certain accruals.

16. On November 27, 2000, O'Connor received an e-mail from the regional vice president of finance with a summary of proposed write-offs for R&R Elite and Genpower. The local controllers recommended writing off a $2.7 million shortage of equipment at R&R Elite, a $1.9 million shortage of equipment at Genpower, a $662,000 shortage of inventory at Genpower, and $1.8 million in aged accounts receivable and other items (plus the $2.7 million accounts receivable discrepancy at R&R Elite).

17. NES employees continued to investigate the unsubstantiated account balances, but were not able to substantiate any of the higher general ledger balances at the end of 2000. O'Connor discussed the unsubstantiated Gulf Coast balance sheet accounts internally with NES's management around year-end 2000. O'Connor decided that, without better facts, the company should continue to work on the discrepancies until they were resolved. Therefore, O'Connor did not authorize the write-offs proposed by NES's local controllers in NES's December 31, 2000 financial statements.

O'Connor Did Not Disclose to NES's Independent Auditors the Full Amount of the Unsubstantiated Account Balances

18. O'Connor failed to adequately disclose the extent of the Gulf Coast discrepancies to NES's independent auditors during NES's year-end 2000 audit. NES's auditors issued a report containing an unqualified opinion on NES's December 31, 2000 financial statements.

19. As had been the practice in prior years, the plan for NES's year-end 2000 audit included various levels of review for NES's operating companies, from full scope audits to desk reviews. NES's auditors decided to perform desk reviews for the companies in NES' Gulf Coast region based on the auditor's assessment of their materiality to NES as a whole and other factors. Desk reviews were not full scope audits. NES's auditors did not visit the site or perform any sample testing procedures. Instead, the auditors required the Gulf Coast operating companies to complete a checklist of questions and input key financial data into a spreadsheet.

20. Gulf Coast employees completed desk reviews for R&R Elite and Genpower during the audit and submitted them to NES's home office controller who was responsible for collecting the desk reviews and answering day-to-day questions relating

to the reviews. Although the desk reviews for R&R Elite and Genpower noted that various accounts had not been reconciled, the amount of the discrepancies was not quantified.

21. The explanatory note for R&R Elite stated:

> We did a combination of R&R Rentals and Elite Rentals in early 1999. At that time we encountered difficulties with the data combination in the MTA system. The then controller did a poor job of dealing with the issues when they occurred, and when the problems were escalated, we realized that historical data was lost in several balance sheet accounts. We are now in the process of recreating the historical detail and reconciling it with the general ledger. We answered no to the checklist items because as of year-end we still have the above accounts out of balance. Our financial staff is working on resolving all variances, and we do not anticipate any significant adjustments.

22. The explanatory note for Genpower stated:

> Genpower was merged into Sprintank to create NES Industrial Services. We have had difficulties with the combination in the MTA system. We have lost historical data in both the inventory and rental fleet sub-systems, and are now in the process of recreating the history and reconciling it with the general ledger. We answered no to the checklist items because as of year-end the inventory and fleet are out of balance. This will be a time consuming process, though we do not anticipate any significant adjustments.

23. O'Connor discussed the desk reviews with the audit engagement partner, but did not disclose that the full amount of the unsubstantiated balances totaled over $8 million. According to notes taken by the engagement partner on the desk reviews:

> Discussed w/ O'Connor who indicated to reconcile currently taking all items to P&L would be a charge of @ $1.5 million. However, he does not believe this will be the outcome of the process, mostly balance sheet.

24. NES's auditor confirmed its understanding of the amount of the discrepancies in a management comment letter, dated February 22, 2001:

Reportable Condition

We noted significant breakdowns in the internal accounting controls at two locations, R&R Rentals and Genpower. Management was unable to reconcile significant accounts at these locations. The difference between the subsidiary ledgers and the general ledger accounts totaled in excess of $1 million.

O'Connor did not Write-off, Reserve for, or Disclose Potential Overstatements of Assets in NES's 2000 Form 10-K

25. NES employees continued to investigate the out-of-balance accounts receivable, equipment and inventory issues at R&R Elite and Genpower in 2001 prior to the filing of NES's 2000 Form 10-K on March 30, 2001, but additional inquiry did not substantiate the higher general ledger balances. However, NES employees ruled out several theories that may have supported the higher general ledger balances, such as transfers of equipment between regions or mislabeled inventory.

26. O'Connor did not write off, reserve for or disclose the potential overstatement of inventory, equipment or accounts receivable balances from the company's Gulf Coast Region in NES's 2000 Form 10-K. O'Connor included the higher general ledger balances for accounts receivable, equipment and inventory in NES's December 31, 2000 consolidated financial statements, even though NES employees had not been able to substantiate those balances and his local controllers recommended substantial write-offs. The financial statements that NES filed with the Commission and distributed to the public in turn reflected the overstated asset balances.

27. Had NES written off the Gulf Coast accounts receivable, equipment or inventory discrepancies at year-end 2000, the adjustments would have materially lowered NES's reported net income and earnings per share as of December 31, 2000. As a result,

NES's 2000 Form 10-K contained false information about NES's financial condition and results of operations.

28. During the first and second quarters of 2001, NES employees failed to materially reduce the amount of unsubstantiated balances. Nevertheless, O'Connor did not write-off, adequately reserve for or disclose the potential overstatement of assets in NES's quarterly reports for the first and second quarters of 2001.

29. In July 2001, O'Connor finally concluded that write-offs would be necessary. He discussed the proposed write-offs with another member senior management who requested additional detail. Although NES took some write-offs relating to other issues in the third quarter, it did not record write-offs relating to the Gulf Coast Region until the fourth quarter of 2001. NES's audit committee received a memo in December 2001 that described the various write-offs.

NES's Restatements

30. NES hired a new CFO at the beginning of 2002. NES's new CFO examined receivables, inventory and equipment reflected in the company's 2001 financials and prior years' balance sheets, as well as the write-offs taken in the third and fourth quarters of 2001. The new CFO determined that it was necessary to restate NES's financial statements for 1999, 2000 and certain quarters in 2001.

31. 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 operating expenses and costs of revenue for 1999 and 2000. 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 assets counts taken during 1999, 2000 and 2001. The adjustments also corrected an erroneous accounting of certain leases as capital leases rather than operating leases.

32. 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 materially overstated its net income in 1999 and 2000. NES likewise overstated its basic earnings per share. NES also filed amended Forms 10-Q for 2001 quarterly results. NES overstated its net income in the first quarter in the second quarter. NES understated its net income for the third quarter of 2001.

COUNT I

Violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5]

33. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

34. From at least January 2000 through December 2001, O'Connor, in connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a

fraud and deceit upon purchasers and sellers and prospective purchaser and sellers of securities.

35. O'Connor knew or was reckless in not knowing the alleged facts and circumstances.

36. As a result of the alleged conduct, Defendant O'Connor violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

COUNT II

Aiding and Abetting Violations of Sections 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-1 and 13a-13]

37. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

38. NES filed with the Commission financial statements in its annual report on Form 10-K for 2000 and quarterly reports on Form 10-Q for the first three quarters of 2001 that were materially inaccurate.

39. NES also filed with the Commission an annual report on Form 10-K and quarterly reports on Form 10-Q that were not in accordance with such rules and regulations that the Commission has prescribed as necessary and appropriate in the public interest and for the protection of investors, and also failed to include in those reports such further material information as was necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

40. As a result, NES violated Sections 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-1 and 13a-13].

41. Defendant O'Connor knowingly provided substantial assistance to NES in its violations of Sections 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-1 and 13a-13] and thereby aided and abetted NES's violations of these provisions of the federal securities laws.

COUNT III

Aiding and Abetting Violations of Section 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] of the Exchange Act

42. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

43. From at least January 2000 through December 2001, NES, directly and indirectly, failed to make and keep books, records and accounts, which in reasonable detail accurately and fairly reflected the transactions and disposition of the assets of NES.

44. From at least January 2000 through December 2001, NES failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements.

45. As a result, NES violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

46. Defendant O'Connor knowingly provided substantial assistance to NES in its violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] and thereby aided and abetted NES's violations of these provisions of the federal securities laws.

COUNT IV

Violations of Exchange Act Rule 13b2-1 [17 C.F.R. 240.13b2-1]

47. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

48. From at least November 2000 through December 2001, O'Connor, directly and indirectly, falsified or caused to be falsified books, records and accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]

49. As a result, Defendant O'Connor violated Rule 13b2-1 of the Exchange Act [17 C.F.R. § 240.13b2-1].

COUNT V

Violations of Exchange Act Rule 13b2-2 [17 C.F.R. 240.13b2-2]

50. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

51. From at least November 2000 through December 2001, O'Connor, directly and indirectly, made or caused to be made materially false and misleading statements, or omitted to state or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with an audit and examination of the financial statements of NES or the preparation and filing of a document or report to be filed with the Commission.

52. As a result, Defendant O'Connor violated Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2].

COUNT VI

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]

53. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

54. From at least November 2000 through January 2002, O'Connor knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly falsified books, records and accounts described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

55. As a result, Defendant O'Connor violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that the Defendant O'Connor committed the violations charged and alleged herein.

II.

Issue an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant O'Connor, his agents, servants, attorneys and those persons in active concert or participation with him who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the acts, practices or courses of business alleged above, or in conduct of similar purport and object, as principals or aiders and abettors, in violation of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B) and 78m(b)(5)] and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1 and 13b2-2, thereunder [17 C.F.R. 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1 and 240.13b2-2].

III.

With regard to the Defendant O'Connor's violative acts, practices and courses of business set forth herein, issue an Order imposing upon him appropriate civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

V.

Grant Orders for such further relief as the Court may deem appropriate.

Respectfully submitted,

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