

**ADMINISTRATIVE PROCEEDING
FILE NO. 3-7714**

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of
KENNETH E. HASSEBROEK**

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INITIAL DECISION

**April 28, 1993
Washington, D.C.**

**Brenda P. Murray
Administrative Law Judge**

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APPEARANCES: Paul J. Bazil and Leo F. Orenstein for the Division of Enforcement,
Securities and Exchange Commission.

Kenneth E. Hassebroek, pro se

BEFORE: Brenda P. Murray, Administrative Law Judge

The Securities and Exchange Commission (Commission) initiated this proceeding on April 16, 1992, to determine whether Hunter International Trade Corporation (Forst-Hunter), violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (Exchange Act), and Rules 12b-20 and 13a-13 promulgated under those provisions, whether Kenneth E. Hassebroek caused those violations, and, if so, what action is appropriate.

I held a one-day hearing in Omaha, NE, on December 1, 1992. The parties filed briefs. I received the last brief on March 16, 1993.

Respondent

Mr. Hassebroek was awarded a Bachelor of Science degree in accounting in 1976. He had three years of public accounting experience when he headed Forst-Hunter's two-person accounting department in 1986 and 1987 (Tr. 124). 1/ His starting salary in 1985 when he joined the predecessor company was \$29,000, and when he left Forst-Hunter in December 1987 he was making \$33,000. Prior to joining Forst-Hunter, Mr. Hassebroek had been a staff auditor with a national accounting firm, a staff accountant with a local accounting firm, the chief financial officer and controller of a private company with annual sales of six million dollars, and an operations analyst doing internal audits at the University of Nebraska. Mr. Hassebroek earned a Masters in Public Administration from the University of Nebraska in 1986.

Findings of Fact

My findings and conclusions are based on the preponderance of the evidence in the record and from my observations of the witnesses' demeanor at the hearing.

1/ Mr. Hassebroek had one and perhaps two assistants. One was an accountant who was paid \$19,000, and the second was a bookkeeper (Tr. 78, 131-32).

Forst-Hunter was engaged in domestic and international purchases, sales, and brokering of heavy road-building machinery. Section 13 of the Exchange Act required Forst-Hunter, a public company with common stock registered with the Commission, to file reports with the Commission. Forst-Hunter ceased doing business in 1989, and at the time of the hearing was in Chapter 11 bankruptcy.

Mr. Forst was President and Mr. Hassebroek was Forst-Hunter's controller during the relevant time period. 2/ Mr. Hassebroek prepared the unaudited financial information included in Forst-Hunter's Form 10Q report for the quarter ended January 31, 1987 (Exhibit 1, Tr. 20). This information materially overstated Forst-Hunter's assets, revenue, and income for the period. A Balance Sheet dated January 31, 1987, erroneously included \$1,495,000, the amount due on the sale of thirteen Komatsu tractors as an "account receivable - trade" (Tr. 37-38). This error inflated total current assets for the period by 36 percent. In addition, the Statement of Operations for the period May 1, 1986 through January 31, 1987, erroneously included (1) the anticipated revenue from the sale of the thirteen tractors (\$1,495,000) in "Revenues - equipment sales" inflating this figure by 17 percent, and (2) the anticipated profit of between \$200,000 to \$300,000 from the tractor

2/ Forst-Hunter, Mr. Forst, and D. Elizabeth Wills, Esq., consented to the entry of final judgments of permanent injunction in the United States District Court for the District of Columbia in a civil action initiated by the Commission on these facts. Mr. Hassebroek was a defendant in that action. The court granted the Commission's Motion to Dismiss Without Prejudice as to Mr. Hassebroek. SEC v. Forst-Hunter International Trade, et al., Civil Action No. 91-2105 (JHG), October 9, 1991.

sales in "Income before income taxes & extraordinary items" inflating this figure by between 32 and 47 percent (Tr. 39-40). 3/

Forst-Hunter bought these thirteen Komatsu tractors located in Kuwait for about \$1,235,000 in January 1987. Mr. Hassebroek or the accountant he supervised prepared invoices dated January 23, 27, and 28, 1987, whereby Forst-Hunter agreed to sell the thirteen tractors to customers in the United States under terms by which the customer would pay a ten percent deposit, and the machines would be delivered "free of customs" with the balance due on their arrival "FOB Wilmington, DE".

Forst-Hunter had not sold these tractors as of January 31, 1987, the close of the period reflected in the Form 10Q report which it filed on March 17, 1987. The invoices indicated that the buyer would take title when the tractors arrived in Wilmington, that Forst-Hunter was responsible for the freight charges to Wilmington and the custom duties, and that Forst Hunter bore the risk of loss before delivery (Tr. 33-35). 4/ Forst-Hunter did not sell these tractors to the buyers shown on the invoices; the tractors never left Kuwait, and Forst-Hunter refunded the deposits.

The persuasive evidence is that Mr. Hassebroek was responsible for preparing Forst-Hunter's financial statements and maintaining the company's books. When he assumed

3/ The Division claims that in its Form 10Q Forst-Hunter overstated the results of three quarters of operations in the following respects: (1) earnings by \$248,574 or 69 percent, (2) sales revenues by roughly \$1.5 million or 21 percent, and (3) revenue by \$2.3 million or 37 percent and pretax income by \$289,000 or 91 percent (Division's Post Hearing Brief, 1, 4, and 6). I was unable to determine how the Division calculated these results.

4/ On March 24, 1993, seven days after Forst-Hunter filed its Form 10Q, Mr. Hassebroek notified Forst-Hunter's outside auditors who were working on another matter that Forst-Hunter had not sold the thirteen Komatsu trailers as reflected in its financial statements. Forst-Hunter filed an amended Form 10Q for the period ended January 31, 1987.

these responsibilities he had at least eight years of experience as an accountant including three years of public accounting (Tr. 75, 78, 81). In 1986 Mr. Hassebroek signed letters as Forst-Hunter's Controller in which he represented to outside auditors that Forst-Hunter was responsible for the fair presentation of its financial statements and financial positions in conformity with generally accepted accounting principles (GAAP). Based on his education and experience, Mr. Hassebroek was responsible for knowing, should have known, and was reckless in not knowing that it was materially misleading and violated GAAP for a public company to treat machines as sold in its financial statements where the invoices specified they were to be shipped "FOB Wilmington, DE", "free of customs", and that the amounts due reflected the total sales price with a ten percent deposit due by return Federal Express with the remainder due upon arrival of the machines. The invoices were dated from eight to three days before the end of the reporting period. Mr. Hassebroek did not act to establish that Forst-Hunter had sold the machines as of January 31, 1987, yet he prepared unaudited financial statements which Forst Hunter filed with the Commission representing that they had been sold.

I reject Mr. Hassebroek's claim that he is blameless because (1) he was merely a bookkeeper who assembled information for Certified Public Accounts to audit, (2) "no one ever told me I should not report these sales as revenue", and (3) he was not shown a communication indicating that the deal had fallen through (Respondent's Post-Hearing Brief, 1-4). The first is false, the second is irresponsible, and the third is irrelevant because Mr. Hassebroek's information did not support treating the tractors as sold.

Mr. Hassebroek is incorrect that his situation is distinguishable from Stewart Parness, Exchange Release No. 23507 (Aug. 5, 1986), 36 SEC Docket 395. The situations are similar in the essentials: Mr. Parness like Mr. Hassebroek was a knowledgeable accountant who

was the company's Controller, both men knew or recklessly disregarded facts which precluded recording certain transactions as sales under GAAP, both recorded transactions as sales without sufficient basis for doing so, and both worked in situations where it was well known that internal control systems were weak.

Respondent's defense that he did no wrong because other people thought the financials were in accordance with GAAP is especially troublesome. Even now, some six years after the events, he maintains he did nothing wrong. He does not accept that his position required him to reach an independent judgment about Forst-Hunter's financials, and that others believed the financials were in accordance with GAAP because they relied on his representations that they accurately represented Forst-Hunter's financial situation.

Mr. Hassebroek caused the violations alleged because he was responsible for seeing that Forest-Hunter complied with sections 13(a) and 13(b) of the Exchange Act, and applicable regulations and he did not do so. He caused the violations because he prepared the financial statements that were inaccurate in material respects and that were not prepared in accord with GAAP in that he knew or recklessly disregarded information which indicated that Forst-Hunter had not sold thirteen Komatsu tractors, he maintained Forst-Hunter's books, records, and accounts which did not accurately reflect the transactions and disposition of assets, and he did not devise and maintain a system of internal accounting which would permit preparation of financial statements in accordance with GAAP (Tr. 20).

I have considered and rejected those proposed findings, arguments, and conclusions that are inconsistent with this decision.

Public Interest

The Commission instituted this proceeding pursuant to Section 21C of the Exchange Act which provides that:

If the Commission finds, ...that any person ... has violated ... any provision of this title, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation.

The Division recommends that I order Mr. Hassebroek to cease and desist from causing any future violations of the statutory provisions and regulations which he has violated as provided for in Section 21C.

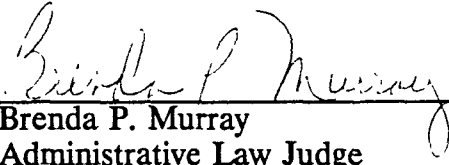
I find that a cease and desist order is required because Respondent violated the statute and regulations, he does not acknowledge his wrongdoing, and nothing in the record mitigates his conduct.

Order

I ORDER THAT Kenneth E. Hassebroek cease and desist from committing or causing any violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934, and Rules 12b-20 and 13a-13 promulgated under those provisions, and from committing or causing any future violations of these provisions and rules.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice (17 CFR 201.17(f)). Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 17(b) within 15 days after service of the initial decision upon him or her, unless the Commission, pursuant to Rule 17(c), determines

on its own initiative to review this initial decision as to a party. If a party timely files a petition for review, or the Commission acts to review as to a party, the initial decision shall not become final as to that party.


Brenda P. Murray
Administrative Law Judge

April 28, 1993
Washington, D.C.