

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

Kelly Lowther, and
AmeriText Corporation

Respondents

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ORDER TO CEASE & DESIST

I-2013-000012

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 421-B:26-a.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 421-B:23, the Secretary of State has the authority to issue and cause to be served an order requiring any person appearing to him to be engaged or about to be engaged in any act or practice constituting a violation of RSA 421-B or any rule or order thereunder, to cease and desist from violations of RSA 421-B.

Pursuant to RSA 421-B:24, I, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:23 shall be guilty of a class B felony.

Pursuant to RSA 421-B:26, the Secretary of State has the authority to impose administrative penalties of up to \$2,500.00 for each violation of New Hampshire securities law and rules.

NOTICE OF RIGHT TO REQUEST A HEARING

The above named respondents have the right to request a hearing on this order to cease and desist, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the respondents, or by the duly authorized agent of the above named respondents, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of RSA 421-B:23, I, if respondents fail to request a hearing on this order within 30 calendar days of receipt of this order, respondents shall be deemed in default, and this order shall, on the thirty-first day, become permanent.

Upon request for a hearing being received by the Bureau of Securities Regulation, in the manner and form indicated above, a hearing shall be held not later than ten days after such request is received by the Bureau, after which hearing, the Secretary of State, or such other person authorized by statute, shall issue a further order vacating or modifying this order, or making it permanent, as the circumstances require.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated November 19, 2013 (a copy of which is attached) are incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested,

It is hereby **ORDERED**, that:

1. The Respondents shall immediately cease and desist from the above indicated acts and from in any other way violating RSA 421-B;
2. The Respondents shall, jointly and severally pay an administrative fine in an amount to be determined by the hearings officer in accordance with RSA 421-B:10,VI, and RSA 421-B:26,III.
3. The Respondents shall, jointly and severally pay for the cost of the Bureau's Investigation of this matter, the amount of which shall be determined by the hearing officer, in accordance with RSA 421-B:22,IV.
4. The Respondents shall, jointly and severally pay restitution in an amount to be determined by the hearing officer, in accordance with RSA 421-B:26,V.
5. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered, including imposition of fines and penalties upon the defaulting Respondents.

SIGNED,

William M. Gardner, Secretary of State
By His Designee:

Dated: 11-19-2013



Barry J. Glennon, Director
N.H. Bureau of Securities Regulation

STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
25 CAPITOL STREET
CONCORD, NH 03301

STAFF PETITION FOR RELIEF
IN THE MATTER OF:

Kelly Lowther
AmeriText Corporation

I-2013000012

STATEMENT OF ALLEGATIONS

I. The staff of the State of New Hampshire, Department of State, Bureau of Securities Regulation ("Bureau") alleges the following issues of fact:

1. Kelly Lowther resides at 45 Harvey Mill Rd. in Lee, New Hampshire. The Lowther Family Trust (the "Trust"), of which Kelly Lowther states he is a beneficiary, has his son Christopher Lowther, who resides at 3460 Fourteenth St. NW, Washington, DC 20010, as trustee. American Business Service Corp. ("ABSC"), which is wholly owned by the Trust, and AmeriText Corporation ("AmeriText"), which is 74% owned by the Trust, both have their headquarters and principal place of business at 45 Harvey Mill Rd. in Lee, New Hampshire. Kelly Lowther, Chief Executive Officer of AmeriText, and his son, Jesse Lowther of 45 Harvey Mill Rd in Lee, New Hampshire, also a beneficiary of the Trust, are the two named founders in the AmeriText offering documents distributed by Kelly Lowther.

Investors

2. Investor #1 is from Suwanee, Georgia. Pursuant to a subscription agreement provided to the Bureau by Kelly Lowther and Investor #1, Investor #1 purchased 100 shares of AmeriText \$1,000 convertible preferred stock in January 2012 for a total of one hundred thousand dollars (\$100,000) and was appointed Vice President of Sales and Chief Sales Officer. Later, in February 2013, he was appointed Vice President of Product Development and promised a salary and stock options equal to 5% ownership of outstanding AmeriText common stock as compensation for his employment.
3. Investor #2 resides in Tuscon, Arizona. Investor #2 was hired by AmeriText initially as an independent contractor in August 2010 and later as an employee, primarily to work on the software that is part of the AmeriText platform, also known as DirectLink. As part of his compensation as an independent contractor, he was promised stock options equivalent to \$125 of AmeriText stock prior to sale or IPO per hour worked. When he became an

employee in January 2012, he was promised a salary and stock options equal to 6% ownership of outstanding AmeriText common stock as compensation. He never received any of the promised salary. In June 2012 his ownership was increased to 12% in compensation for taking on additional responsibilities. In October 2012, in response to his threat to quit over the unpaid salary, his ownership was increased again to 16%.

Offerings

4. In January 2012, Kelly Lowther distributed documents (the “2012 Offering Documents”) making an offer to sell 100 shares of AmeriText \$1,000 convertible preferred stock. Based on documents and communications provided and statements made by Kelly Lowther, in addition to Investor #1, Kelly Lowther sent the offering document to at least one individual on January 6, 2012, with the purpose that the individual distribute it to various potential investors with whom he had contacts, though no investment resulted from this offer.
5. From late March to early May of 2013 Kelly Lowther sent documents (the “2013 Offering Documents”) making an offer to sell 500 shares of AmeriText \$1,000 convertible preferred stock to at least five individuals with the intent that they distribute the documents among potential investors with whom they had contacts, though no investments resulted from these offers. Kelly Lowther distributed two versions of the offering documents, which he maintained were “very similar, if not identical” in a sworn statement to the Bureau taken on September 27, 2013.

Licensing & Registration

6. None of the individuals to whom these offerings were made, including Investor #1, were a general partner, executive officer, manager, or director at the time the offering documents were sent. Investor #1 was only made into an executive officer once the investment was made. As such, the subscription agreement signed by Investor #1 claimed the sale conformed to Rule 501(a) of Regulation D.
7. Additionally, the 2012 and 2013 Offering Documents include a statement that the securities are offered for investment only to “qualifying recipients of this information pursuant to the exemption from registration requirements of the Securities Act of 1933 (The “Act”) provided by section 4(2) of the Act and certain other exemptions under the relevant state securities laws”. There has been no proof provided, however, that the offering, made to individuals by Kelly Lowther with the intent that they in turn make the offering to other individuals, conforms to the requirements for exemption under section 4(2) of the Securities Act of 1933. Additionally, the manner of distribution, rather than being limited to a private offering as under that section, was left to the determination of those other individuals.
8. AmeriText is principally located in New Hampshire, and pursuant to RSA 421-B:6, both issuer-dealers and agents thereof principally located in NH must be licensed to sell their own securities. For both sets of offerings, AmeriText was never licensed as an issuer-dealer in New Hampshire, nor was Kelly Lowther licensed as an issuer-dealer agent. The offerings were neither exempt, registered, nor notice filed with the State of New Hampshire, nor was

a sales report filed with the New Hampshire Secretary of State. When asked during a sworn deposition with the Bureau on September 27, 2013, Kelly Lowther confirmed that he was never licensed to sell securities and that no other registration, notice filing, or sales report was made.

Misrepresentations & Omissions - Patents

9. The 2012 Offering Documents contain multiple inaccurate or untrue material statements of fact and omissions. Primarily, the executive summary included a statement that “AmeriText has filed three different patents with the United States Patent Office and is preparing to file a fourth provisional patent” and later “because of early patents in the industry [AmeriText] expects to have a strong IP Position.” Kelly Lowther, in a sworn statement to the Bureau, claimed that, at that time, the patents had an estimated value of five hundred thousand dollars each, 1.5 million total. Later offering documents prepared by Kelly Lowther state the value of the Patents at 5 million dollars total. Either amount shows that the patents were represented as a valuable asset of AmeriText.
10. According to Investor #1, his belief in the value of the patents and the related software, and the claimed ownership by AmeriText, were material factors in Investor #1’s decision to invest, despite AmeriText’s lack of operating history. According to Investor #2, the belief that AmeriText owned the patents and software on which he was employed to work, and his belief in the value thereof were material factor in Investor #2’s decision to accept stock in compensation for employment and services rendered.
11. In actuality, AmeriText had filed no patents, and the three patents referenced (Patents 8326351, 20110286467, and 20130210468, collectively the “Patents”) were applications filed and owned by Kelly Lowther, Jesse Lowther, and Christopher Lowther as individuals. As of the date of this petition, no assignment of the Patents, to the Trust or any other person or entity, has been recorded with the United States Patent Office. Ameritext had no interest or right to the Patents at the time of the 2012 offering. These material facts were omitted from the 2012 Offering Documents.
12. While Ameritext holds no patents, according to documents provided by Kelly Lowther, it does hold an exclusive, non-transferable license in the Patents from ABSC, executed in March 2013, which terminates if AmeriText liquidates or becomes insolvent. The licensing document states that ABSC is the “sole and exclusive owner” and owns “all right, title and interest” in the Patents. ABSC, however, is not an owner of the patents, but rather holds an exclusive, non-transferable license from the Lowther Family Trust, the document for which states the Trust is the sole and exclusive owner. The Patents, however, do not name the Trust as the inventor or as an assignee, and only names Kelly Lowther, Jesse Lowther, and Christopher Lowther as individuals. Nor is there any assignment to the Lowther Family Trust recorded with the United States Patent and Trademark Office as of the filing of this Petition.
13. The 2013 Offering Documents do change the language from the 2012 Offering Documents referencing the patents held to state that AmeriText only holds an exclusive license to the

Patents, although a later section entitled “Patents” states “[t]he patents held by AmeriText present a considerable advantage in the communications marketplace.” With that one exception, all of the facts in the above paragraph were omitted from both offerings.

14. According to multiple phone interviews with the Bureau during its investigation, in February 2013, through discussions with Kelly Lowther regarding the assets of AmeriText, Investor #1 discovered that AmeriText does not own the patents and complained to Kelly Lowther. At this point, in an attempt to placate Investor #1’s anger at being defrauded, Kelly Lowther promised Investor #1 that the aforementioned patent licenses were being prepared by a patent attorney, and executed an agreement between Investor #1 and ABSC granting five percent (5%) ownership of the patent license and software to Investor #1, despite the fact that ABSC had not been granted the patent license at this time.

Misrepresentations & Omissions – Software

15. The 2013 Offering Documents’ executive summary states that “[AmeriText] is also actively licensing the systems to be used within other commercially available systems on the market.” Ameritext had not, at that time or as of this petition, developed any business, including any licensing arrangements.
16. Both the 2012 and 2013 Offering Documents discuss the AmeriText secure messaging platform, including the programs MetroLink, DirectLink, Streetwise, Pulse, and PawPrints, which are all different brandings of the same software targeted to different markets. The offering documents make no mention of who owns the rights to the software. Kelly Lowther, in a sworn statement to the Bureau, stated that all of the software is owned by ABSC, not AmeriText, and exclusively licensed to AmeriText under the name DirectLink. The contract granting the license includes in its terms “Licensee shall not... license or sublicense the Software, or transfer or convey the Software or any right in the Software without prior written consent of [ABSC]” of which there was none. Additionally, the license terminates if AmeriText liquidates or becomes insolvent.
17. According to Investor #1, the software referred to as the “AmeriText Platform” or “DirectLink”, and the belief that it was owned by AmeriText, supported by the omission of any indication to the contrary, were material factors in Investor #1’s decision to invest, despite AmeriText’s lack of operating history. Similarly, according to Investor #2, the belief that AmeriText owned the software it employed him to work on was a material factor in Investor #2’s decision to accept stock in compensation for employment and services rendered.

Misrepresentations & Omissions – Business & Revenue

18. The 2012 Offering Documents also state that Ameritext “makes money by providing” its various services to multiple industry sectors and customers. At that time AmeriText had no business. It further stated “AmeriText has developed a significant backlog of new public sector and commercial customers eager to move their business onto the AmeriText

platform.” As of the date of this petition, AmeriText has no current or past public sector or commercial customers.

19. The 2012 Offering Documents also have incredibly high revenue and income projections, despite having no business or operating history. For example, the offering documents state estimated revenue for 2012 to be almost thirty billion dollars (\$29,251 denominated in millions of dollars). This grows to almost one hundred and thirty billion dollars (\$129,339 denominated in millions of dollars for 2014).
20. Like the 2012 Offering Documents, the 2013 Offering Documents include misleading or impossible revenue and income projections. These offering documents state estimated revenue for 2013 to be \$10,752,000, again denominated in million dollars, equaling almost eleven trillion dollars. In his sworn statement taken September 27, 2013 Kelly Lowther indicated that the million dollar denomination was a mistake in the case of the 2013 offerings, indicating that the intent was to show that, despite having no business or operating history, the revenue projection for the second half of 2013 would only be ten million dollars.
21. Additionally, the purchase of 100 shares of \$1,000 AmeriText preferred stock by Investor #1 (valued at \$1,000,000) in the subscription agreement with Investor #1) was characterized as a loan to AmeriText in the 2013 Offering Documents, concealing the true value of Investor #1’s interest in AmeriText and which could lead a potential investor to believe Investor #1 would only be owed a repayment of a loan of one hundred thousand dollars, plus interest, rather than the value of his preferred stock at one million dollars.

STATEMENT OF LAW

II. The Staff of the Bureau alleges the following issues of law:

1. Kelly Lowther and AmeriText are persons under RSA 421-B:2, XVI.
2. AmeriText is an “issuer-dealer” under RSA 421-B:2, XIII-a. Kelly Lowther is an “issuer-dealer agent” under RSA 421-B:2, II.
3. The preferred stock of AmeriText issued by Kelly Lowther are securities as defined by RSA 421-B:2, XX(a).
4. The common stock or stock options of AmeriText issued by Kelly Lowther to Investor #1 and #2 are securities as defined by RSA 421-B:2,XX(a).
5. Pursuant to RSA 421-B:3, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: (a) To employ any device, scheme, or artifice to defraud; (b) To make any untrue statement of a material fact or to omit to state a material

fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. Kelly Lowther and AmeriText are in violation of this provision and committed securities fraud for offering and selling securities based on the several material misrepresentations in the offering documents outlined above, including that AmeriText owns the Patents when it never has, or has an exclusive license when the licensing document is invalid; that AmeriText had customers and income at the time of the offerings when it has never generated business; misleading or impossible revenue and income projections; and mischaracterizing equity ownership rights as loans.

6. Pursuant to RSA 421-B:6,I-a, in connection with an offering of securities made pursuant to section 18(b)(4)(D) of the Securities Act of 1933 that requires only a notice filing in this state pursuant to RSA 421-B:11, I-a(e), a completed application for licensure as an issuer-dealer, an agent of an issuer-dealer and for an agent of the issuer, shall be filed with the secretary of state no later than 15 days after the first sale of securities in or from this state. Kelly Lowther and AmeriText are in violation of this provision for selling securities to Investor #1 and Investor #2 without applying for licensure as an issuer-dealer or agent of an issuer-dealer.
7. Pursuant to RSA 421-B:11,I, it is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempted under RSA 421-B:17, or it is a federal covered security for which the fee has been paid and documents have been filed as required by paragraph I-a of this section. Kelly Lowther and AmeriText are in violation of this provision for selling securities to Investor #1 and Investor #2 without exemption, registering, or notice filing.
8. Pursuant to RSA 421-B:17,V, in any judicial or administrative proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. If Kelly Lowther or AmeriText wish to assert the offering is exempt, they bear the burden of proving the exemption.
9. Pursuant to RSA 421-B:31,IV(a), any person who offers or sells securities in New Hampshire under a notice filing under section 18(b)(4)(D) of the Securities Act of 1933 shall file a sales report with the secretary of state. Kelly Lowther and AmeriText are violation of this provision for failing to file a sales report with the secretary of state regarding the multiple offerings and sale of AmeriText stock.
10. Pursuant to RSA 421-B:22, IV, in any investigation to determine whether any person has violated or is about to violate this title or any rule under this title, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided under this chapter. Kelly Lowther and AmeriText are subject to this provision.

11. Pursuant to RSA 421-B:23, I, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. Kelly Lowther and AmeriText are subject to this provision.
12. Pursuant to RSA 421-B:26, III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Kelly Lowther and AmeriText are subject to this provision.
13. Pursuant to RSA 421-B:26, V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. Kelly Lowther and AmeriText are subject to this provision.
14. Pursuant to RSA 421-B:10, VI, in lieu of, or in addition to, any order to suspend or revoke any license or application, the secretary of state may, upon hearing, assess an administrative fine of not more than \$2,500 per violation. Kelly Lowther and AmeriText are subject to this provision.

RELIEF REQUESTED

- III. The staff of the Bureau of Securities Regulation requests the Director take the following action:
 1. Find as fact the allegations contained in section I of the Statement of Allegations of this petition.
 2. Make conclusions of law as stated in section II relative to the allegations contained in section I of this petition.
 3. Order Kelly Lowther and AmeriText to cease and desist, in accordance with RSA 421-B:23, I.
 4. Order Kelly Lowther and AmeriText to pay an administrative fine in an amount to be determined by the hearing officer and in accordance with RSA 421-B:10, VI, and RSA 421-B:26, III.
 5. Order Kelly Lowther and AmeriText to pay for the cost of the investigation of this matter in an amount to be determined by the hearing officer and in accordance with RSA 421-B:22, IV.

6. Order Kelly Lowther and AmeriText to pay restitution in an amount to be determined by the hearing officer and in accordance with RSA 421-B:26, V.
7. Take such other actions as necessary for the protection of New Hampshire investors and enforcement of the Act.

RIGHT TO AMEND

The Bureau's Staff reserves the right to amend this Petition for Relief and to request that the Director of Securities take additional administrative action. Nothing herein shall preclude the Staff from bringing additional enforcement action under this NH RSA 421-B or the regulations thereunder.

Respectfully submitted by:


Eric Forcier, Staff Attorney

11/19/13
Date