

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

IN THE MATTER OF:)	
)	
Neil L. Kenny and)	FINDINGS, RULINGS AND ORDER
Ttanks Environmental, Ltd.)	I-2012000007
)	
)	
Respondents)	

Procedural History

On November 26, 2013, the Bureau of Securities Regulation (hereinafter referred to as “the Bureau”) filed a Staff Petition for Relief against the above-captioned Respondents alleging violations of New Hampshire RSA 421-B and requesting relief, including issuance of a cease and desist order, fines, costs of investigation, and disgorgement. The Bureau alleged that the Respondent Kenny, acting as the sole incorporator of Ttanks Environmental, Ltd.(hereinafter referred to as “Ttanks”), offered and sold shares of Ttanks while failing to disclose material information. The Bureau alleged that a review of the records of the Respondents revealed that Mr. Kenny engaged in various suspect transactions within the Ttanks business checking account, including taking loans from the account without any specific terms of repayment.

A Cease and Desist Order was issued on December 4, 2013, commencing the adjudicative proceeding in this matter. Respondents, through counsel, requested a hearing on January 13, 2014 and waived the ten-day requirement for holding a hearing on a cease and desist order. On January 17, 2014, an Order to Confer on a Proposed Scheduling Order was issued. The Order continued the hearing indefinitely and instructed the parties to confer on a proposed scheduling order. A proposed order was submitted on January 29, 2014, that was

assent to by the Respondents. A Scheduling Order was issued on January 31, 2014. The Scheduling Order set the following deadlines:

1. February 14, 2014 for discovery requests by all parties.
2. March 7, 2014 for document production pursuant to discovery requests.
3. March 14, 2014 for submission of preliminary, non-binding witness lists by all parties.
4. April 21, 2014 for submission of final witness lists and final exhibit lists by all parties.
5. April 28, 2014 at 10:00 a.m. for the final hearing.

On March 14, 2014, the Bureau submitted its preliminary, non-binding witness list. Respondents did not file their preliminary, non-binding witness list on this date nor at any time thereafter. On March 31, 2014, the Bureau submitted a Motion to Compel Production, stating that the Respondents had failed to respond to the Bureau's request for discovery and had failed to submit a preliminary, non-binding witness list as required by the Scheduling Order. On April 16, 2014, an Order Granting the Motion to Compel was issued. The Bureau submitted its Final Witness List and Final Exhibit List on April 21, 2014. Respondents did not file their Final Witness Lists or Final Exhibit Lists on this date nor at any time thereafter. The Bureau then submitted a Motion for Default based on Respondent's non-compliance with the Scheduling Order and the Order Granting the Motion to Compel. The final hearing was scheduled to begin at 10:00 a.m. on Monday, April 28, 2014 at the offices of the Bureau. At 10:00 a.m. on that day, neither the Respondents nor counsel for the Respondents appeared. Additional time was allowed for the Respondents to appear. They did not, and at 10:30 a.m. on April 28, 2014, the hearing in this matter was opened. The hearing was recorded. Before the hearing was closed, the Bureau made an oral motion for default pursuant to N.H. RSA 421-B:26-a, XXII. The presiding officer granted the motion and indicated that a more detailed order would issue thereafter with findings, rulings, and further orders.

Findings of Fact

The Bureau presented several allegations of fact in its Staff Petition for Relief, notably that:

1. Ttanks is a New Hampshire corporation in good standing incorporated by Respondent Kenny in 1998.
2. Ttanks' Certificate of Incorporation stated that the company's capital stock would be sold or offered for sale within the meaning of N.H. RSA 421-B.
3. Approximately 697 shares of Ttanks' common stock has been issued to 20 investors, six of whom are New Hampshire residents.
4. Ttanks common stock is valued at \$2500 per share, though Respondent Kenny has been unable to explain the basis for this valuation.
5. The original complainants in this matter include three investors in Ttanks who were also employees of the company.
6. Ttanks business checking account exhibited numerous suspect transactions.

7. Respondent Kenny offered and sold Ttanks' common stock during the same period in which the suspicious account activity in Ttanks' business checking account was taking place.
8. Respondent Kenny never disclosed that he was depleting Ttanks' funds for personal use or personal loans.

The Respondents, in a letter from their counsel dated January 13, 2014, generally denied the allegations found in the Bureau's Staff Petition for Relief. However, the Respondents' did not appear for the hearing on the merits of the matter to actively contest the allegations.

The Bureau, supported by the testimony of Kevin Bannon, CPA, CFE, Forensic Accountant, introduced a summary report at hearing drawn from account statements for bank accounts held by Ttanks and Respondent Kenny at Lake Sunapee Bank. The report and testimony demonstrated that Respondent Kenny had engaged in several suspect and/or inappropriate personal transactions in Ttanks' business account totaling \$89,561. These included the following:

1. Suspect travel charges
2. Suspect personal debit, ATM and EFT charges to Ttanks account by Respondent Kenny, including \$3600 in apparent online casino gambling charges and hundreds of dollars in cigar purchases
3. Suspect investor funds deposited into Respondent Kenny's personal account totaling \$8500
4. Suspect in-person withdrawals of cash by Respondent Kenny, as well as transfers to Mr. Kenny's personal accounts and checks written to Mr. Kenny
5. Suspect checks written from Ttanks business account to Respondent Kenny's personal account
6. A suspect check for \$2200 written to Respondent Kenny's personal account reportedly to pay for the funeral of Mr. Kenny's mother
7. Suspect transfers between accounts from the Ttanks business account to Respondent Kenny's personal accounts
8. Suspect checks written to Respondent Kenny and Newfound Contracting that were deposited into Mr. Kenny's personal accounts

The total of suspect transactions presented by the Bureau, including what Respondent Kenny characterized as "loans" from Ttanks to him, was \$89,561.

The Bureau also introduced into evidence a transcript of the Bureau's sworn deposition of Respondent Kenny taken on November 16, 2012. (NB: The actual transcript states that the deposition was taken on November 16, 2004, but this was apparently an error on the part of the court reporter.) In that deposition, Mr. Kenny stated:

1. He had taken loans from Ttanks and that he did not know how much the loans were for.
2. He could not confirm whether he told one investor about the loans prior to her investment.
3. He "might have" used money from Ttanks business account for online gambling.
4. He never documented any of the loans he had taken from Ttanks and has never made any payments back on any of the loans.

5. He had not travelled to Florida on behalf of Ttanks, even though bank statements demonstrated travel to Florida charged by Mr. Kenny to Ttanks business account.
6. He could not point to any records documenting his assertion, which he admitted making to some investors, that revenues for Ttanks could potentially reach between one and five million dollars.
7. He never discussed with potential investors that he would be taking loans from the company and had only revealed to "a couple" that he had been convicted of a felony in the past.
8. His representation to investors in a letter of June 25, 2012 that one of three key management people he alleged were trying to take over Ttanks had "been criminally charged" was wrong, and that so far only a complaint against the individual had been made.
9. Representations made on the Ttanks Web site that its product, the Joule EP4 unit, "uses a proprietary and patented system" misrepresented the status of the product.
10. He had no stream of income from which to pay back the loans from Ttanks and was depending on potential future returns from Ttanks.
11. He could not remember whether the decision not to pursue a full patent on the Joule EP4 unit was disclosed to investors.
12. He was the only holder of a debit card for the Ttanks business account.
13. He considered it the CFO's job to go through the bank statements and identify which expenses were business expenses and which were Mr. Kenny's personal expenses.
14. Investors did not understand until after they invested in Ttanks, when Mr. Kenny discussed it with them, that he would be taking loans from Ttanks.

The presiding officer finds this evidence to be relevant, material, and reliable. In addition, given the Respondents' failure to appear at the hearing and to comply with the Scheduling Order and the Order Granting the Motion to Compel, the presiding officer finds as fact the allegations contained in Section I, under the heading "Statement of Facts," in the Bureau's Staff Petition for Relief as supported by the evidence presented by the Bureau at hearing.

Rulings of Law

The presiding officer makes the following conclusions of law relative to the Bureau's factual allegations:

1. Respondent Ttanks and Respondent Kenny are "persons" within the meaning of N.H. RSA 421-B:2, XVI.
2. The common stock of Ttanks is a "security" within the meaning of N.H. RSA 421-B:2, XX.
3. Respondents failed repeatedly to disclose material information to investors prior to, during, and after the offer and sale of Ttanks common stock, in violation of N.H. RSA 421-B:3, I.
4. Respondents are subject to an order of rescission, restitution, or disgorgement pursuant to N.H. RSA 421-B:21, I-a(e)(3) and N.H. RSA 421-B:26, V.
5. Respondents are subject to a penalty of \$2,500 for each violation of N.H. RSA 421-B pursuant to N.H. RSA 421-B:26, I and RSA 421-B:26, III.

6. Respondents are subject to an order requiring Respondents to make a written offer to the purchasers of Ttanks common stock to repurchase the common stock of Ttanks or, if the purchaser no longer owns such common stock, an offer to pay an amount in cash equal to the consideration paid for the common stock together with interest at the legal rate, less the amount the purchaser received on disposition of the common stock and less the amount of any income received by the purchaser on the common stock, pursuant to N.H. RSA 421-B:26, VI.
7. Upon the Bureau prevailing or the Respondents being found in default, the Respondents are required to pay the Bureau's costs for its investigation of this matter and any related proceedings, including reasonable attorney's fees pursuant to N.H. RSA 421-B:22, IV.

Discussion

As noted, the Respondents did not submit documents required under the Scheduling Order and Order Granting the Motion to Compel and did not appear at the hearing for which notice was issued on January 31, 2014. Pursuant to N.H. RSA 421-B:26-a, XXII, "Any party to whom notice has been forwarded pursuant to and in accordance with [N.H. RSA 421-B:26-a] who fails to appear shall have a default judgment rendered against him." The presiding officer finds that the facts as presented in the Bureau's staff petition and at hearing support the conclusions of law enumerated in the Bureau's Staff Petition for Relief by a preponderance of the evidence.

Order

Finding it necessary and appropriate and in the public interest and for the protection of investors and consistent with the intent and purpose of the New Hampshire Securities Act, R.S.A. 421-B, it is hereby **ORDERED**, that:

1. The Respondents shall cease and desist from further violations of N.H. RSA 421-B pursuant to N.H. RSA 421-B:23.
2. Respondent Ttanks shall within 30 days from the date of this order make a written offer to repurchase Ttanks common stock from all purchasers pursuant to N.H. RSA 421-B:26, VI.
3. Respondent Kenny shall within 30 days from the date of this order, pursuant to N.H. RSA 421-B:21, I-a(e)(3) and N.H. RSA 421-B:26, V, disgorge \$89,561.00 that he misappropriated from Ttanks.

4. Respondent Kenny shall within 30 days from the date of this order pay the Bureau's costs of investigation in the amount of \$10,000 pursuant to N.H. RSA 421-B:22, IV.
5. Respondent Kenny shall within 30 days from the date of this order pay an administrative fine in the amount of \$25,000 pursuant to N.H. RSA 421-B:26, I and III.

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

Date: 4/30/14



Kevin B. Moquin
Presiding Officer
N.H. Bureau of Securities Regulation