

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

**IN THE MATTER OF:**

**Lewis S. Niles**

**Respondent**

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**ORDER TO CEASE AND DESIST**

**COM2018-0008**

**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:26,III-a, every person who directly or indirectly controls a person liable under 421-B:26,III, may upon hearing, and in addition to any other penalty provided for by law, be subject to a fine, and suspension, revocation, or denial of any registration or license.

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.

Pursuant to RSA 421-B:26, V the Secretary of State my order restitution for violations of this chapter.

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.

### **NOTICE OF RIGHT TO REQUEST A HEARING**

The above named respondent has 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 respondent, or by the duly authorized agent of the above named respondent, 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 respondent fails to request a hearing on this order within 30 calendar days of receipt of this order, respondent shall be deemed in default, and this order to cease and desist 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 May 31, 2019, (a copy of which is attached hereto) 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, therefore:

It is hereby **ORDERED**, that:

1. Respondent is hereby ordered to immediately cease and desist from the above indicated acts and from in any other way violating RSA 421-B.
2. Respondent shall pay restitution to Investor #1 as set forth in the Bureau's Staff Petition for Relief in the amount of \$70,000 plus interest at the legal rate.
3. Respondent shall pay an administrative fine of \$7,500 and investigation costs of \$7,500.
4. Respondent is permanently barred from the securities business, licensure, and securities registration in the State of New Hampshire.
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 and administrative penalties and other relief described herein being imposed upon the defaulting Respondent.

SIGNED,  
**WILLIAM M. GARDNER**  
**SECRETARY OF STATE**  
BY HIS DESIGNEE:

Dated: 5-31-19

  
**BARRY J. GLENNON, DIRECTOR,**  
**BUREAU OF SECURITIES REGULATION**

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

**STAFF PETITION FOR RELIEF**

**IN THE MATTER OF:**

Lewis S. Niles

COM2018-0008

- I. The staff of the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter referred to as the "Bureau") hereby petitions the Director, and makes the following statements of fact:

**STATEMENTS OF FACT**

1. LN resides in Whitefield, New Hampshire. LN also owns and operates a business in Lancaster, New Hampshire called Niles International Corporation. Investor #1 resides in Dover, New Hampshire and is the owner and operator of a variety store there. LN engages in and has engaged in various businesses. His main method of earning a living is through the purchase and sale of salvage materials either in the form of building materials from demolished homes or waste materials.
2. In March 2013, LN had befriended Investor #1 when he stopped by Investor #1's store in Dover for lunch or other sundries. LN would tell Investor #1 about his various business ventures and projects. In the March 2013 time frame, LN was working on demolishing a home in Dover and salvaging the used building materials. He was planning on demolishing two other homes in Lancaster, New Hampshire. LN and Investor #1 got to talking about it and Investor #1 let LN know he would be interested in a monetary commitment in LN's businesses to earn a profit. LN proposed that Investor #1 front him money to be used in his

business ventures with the promise to return the money with a profit from the businesses. Investor #1 agreed and took out a home equity loan on his home in Dover and on about March 15<sup>th</sup>, 2013, gave LN a check for seventy thousand dollars (\$70,000) based on the promise that it would be returned plus another seventy thousand dollars (\$70,000) doubling Investor #1's money. A written agreement was drawn up and signed by both Investor #1 and LN, however, that agreement was lost.

3. Following the transfer of Investor #1's funds to LN, Investor #1 periodically checked in with LN to find out when he would be paid back. Following the transfer of funds and throughout the time period between March 2013 and February 2018, Investor #1 would repeatedly ask LN to be paid back and LN would repeatedly confirm his commitment to pay the money back and would send various text messages to Investor #1 letting him know about his efforts to do so, but in every instance no money was sent. On about January 7, 2014, LN and Investor #1 drew up another written agreement ("Working Capital Agreement") regarding the seventy thousand dollars (\$70,000) which indicated that repayment was collateralized by the success of LN business venture in the purchase and resale of waste oil and purportedly secured with inventories of waste oil ("now or in the future"). Upon information and belief, there was never any waste oil inventory in the possession of LN securing the seventy thousand dollars (\$70,000). In fact, LN on about February 24<sup>th</sup>, 2014, shortly after this written agreement was entered into was stopped by the New Hampshire State Police in a Penske rental truck for illegally transporting waste oil, and consequently, an investigation ensued by New Hampshire State Police and Federal Motor Carrier Safety Administration clearly establishing that the law prohibited LN from engaging in the transportation of waste oil business because among other requirements, he didn't have the proper licensing and permitting to safely transport waste oil.
4. Finally, in February 2018, Investor #1 having exhausted his attempts to get paid back went to the Dover Police and filed a complaint. The complaint was referred to the Bureau and the Bureau conducted an investigation. Pursuant to the investigation, the Bureau obtained the bank records of LN and discovered that a significant portion of Investor #1's money, immediately after it was deposited into the account of LN, went to pay LN's personal living expenses, past due debt obligations such as covering previous bad checks, rent and daily

sundries. Prior to the deposit of Investor #1's money, LN's bank account balance was fifty-seven dollars and forty-three cents (\$57.43). The records also show numerous returned checks for insufficient funds in the days preceding the deposit of Investor #1's money. In the next thirty days LN spent all of Investor #1's money except for six hundred forty-two dollars and sixty-three cents (\$642.63). Investor #1 did not authorize LN to use any of his seventy thousand dollars \$70,000 for personal living expenses, past due debt obligations such as covering bad checks, rent and daily sundries. LN has not paid back one dime of Investor #1's money.

### STATEMENTS OF LAW

II. The Uniform Securities Act in effect prior to January 1<sup>st</sup>, 2016 is the applicable law. RSA 421-B:7-701. The staff of the Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, N.H. RSA 421-B, and regulations thereunder:

1. LN is a "person" within the meaning of N.H. RSA 421-B:2, XVI.
2. The Working Capital Agreement described above dated January 2014 and the original investment agreement made in about March 2013 is an unsecured promissory note and a security as defined by RSA 421-B:2, XX.
3. The Working Capital Agreement described above dated January 2014 and the original investment agreement made in about March 2013 is an investment contract as defined by RSA 421-B:2, IX-c.
4. Pursuant to N.H. RSA 421-B:3, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: (1) To employ any device, scheme, or artifice to defraud; (2) 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 (3) To engage in any act,

practice, or course of business which operates or would operate as a fraud or deceit upon any person. LN is in violation of this provision for failing to disclose material facts to Investor #1, namely that LN would use Investor #1's money to pay personal living expenses, past due debts such as covering bad checks, rent and daily sundries, that there was insufficient waste oil inventory in his possession to secure the repayment of the seventy thousand dollars (\$70,000) and that LN could not lawfully engage in the purchase, resale or transportation of waste oil business because he didn't have the proper state or federal permits. LN violated this provision.

5. Pursuant to RSA 421-B:23, LN shall cease and desist from any further violations of RSA 421-B.
6. Pursuant to RSA 421-B:26, I and III, in a final order, the secretary of state may impose a civil penalty up to a maximum of \$2,500 for each violation and a bar. LN is subject to this provision.
7. Pursuant to RSA 421-B:26, V, the Bureau can impose an order of restitution against LN. LN is subject to this provision.
8. Pursuant to RSA 421-B:26, VI, the secretary of state may order any person who violates RSA 421-B:3, upon hearing, and in addition to any other penalty provided by law, to make a written offer to the purchaser of the security to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid for the security together with interest at the legal rate, less the amount of any income received by the purchaser on the security. LN is subject to this provision.
9. Pursuant to N.H. RSA 421-B:22, in any investigation to determine whether any person has violated RSA 421-B, the secretary of state shall be entitled to recover the costs of the investigation. LN is subject to this provision.

RELIEF REQUESTED

III. The staff of the Bureau makes the following requests for relief in the above-referenced matter as permitted under the Act:

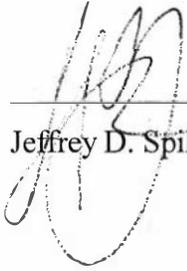
1. Find as fact the allegations contained in section I of the Statements of Fact of this petition.
2. Make conclusions of law as stated in section II relative to the allegations contained in section I of this petition.
3. Order LN to permanently cease and desist from further violations of N.H. RSA 421-B.
4. Pursuant to RSA 421-B:26, V impose an order of restitution of seventy thousand dollars (\$70,000) plus interest at the legal rate against LN to be paid to Investor #1 or impose an order of rescission under RSA 421-B:26, VI.
5. Order LN permanently barred from any securities business, licensure and securities registration in the State of New Hampshire, in accordance with N.H. RSA 421-B:26, I and III.
6. Pursuant to N.H. RSA 421-B:26, order LN to pay an administrative fine of seven thousand five hundred dollars (\$7,500).
7. Pursuant to N.H. RSA 421-B:22, order LN to pay the Bureau's costs of investigation in an amount of seven thousand five hundred dollars (\$7,500).
8. Take such other actions as necessary for the protection of New Hampshire investors and enforcement of N.H. RSA-421-B.

#### 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 N.H. RSA 421-B or the regulations thereunder.

Respectfully submitted by:



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Jeffrey D. Spill, Deputy Director

5/21/19

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Date