

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS

A. HEATH ABSHURE, ARKANSAS
SECURITIES COMMISSIONER

V.

NICK LYNN TECHNOLOGIES, INC.,
LENDELL EARL HILLHOUSE, SR.,
AND JAMES ROBIN PACE

CV 2008-947-2

FILED
2008 JUN 17 PM 2 00
BRENDA DESHIELDER
CLERK AND RECORDER
BENTON COUNTY, ARKANSAS
PLAINTIFF
DEFENDANTS

JUDGMENT

Now on this 2nd day of April, 2013, comes the above matter; the Plaintiff, A. Heath Abshure, Arkansas Securities Commissioner (hereinafter "Commissioner" or "Plaintiff") and through their counsel, Theodore Holder and J. Campbell McLaurin III; the Defendants Nick Lynn Technologies, Inc. (hereinafter "NLT") appearing pro se; the Defendant Lendell Hillhouse, Sr. (hereinafter "Hillhouse") by and through his attorney, Ralph Washington; and the Defendant James Robin Pace (hereinafter "Pace") appearing pro se. The Court, having considered all of the pleadings on file, motions, supporting briefs, pretrial briefs, post-trial briefs, evidence submitted at trial, exhibits, arguments of counsel, and the credibility and demeanor of the witnesses, hereby makes this judgment as to facts and conclusions of law and enters its order as follows:

That on April 17, 2008, the Plaintiff, as a public entity, filed its complaint as a regulatory action by a state government and not as a private action by an investor. Pursuant to A.C.A. §23-42-209, the

Commissioner asserted two distinct causes of action of the Arkansas Securities Act codified at A.C.A. §23-42-101 through 509. First, the Commissioner asserted the above Defendants engaged in the offer of the sale of unregistered securities in violation of A.C.A. §23-42-501. Second, the Commissioner asserted that the above Defendants engaged in securities fraud in violation of A.C.A. §23-42-507.

This Court finds that the Defendants were makers of promissory notes to several investors from January 22, 2002, to September 14, 2007, in the total amount of \$857,400.00. (See Plaintiff's Exhibit No. 4.) The purpose of the above investment loans or promissory notes was to allow Defendant NLT to develop a credit card for taxpayers to pay their taxes; to process consolidated government payments; to collect back taxes; and to activate a reverse 9-1-1 system. (See Plaintiff's Exhibit No. 9, NLT website dated March 21, 2008.) Defendant Hillhouse testified it would require \$2 million to \$100 million capital investment for the above business plan. (See Plaintiff's Exhibit 6, Lendell Hillhouse deposition dated February 27, 2007, at page 39.) On August 19, 2005, Defendant NLT's business plan stated that "the company seeks total investment of \$500 million." (See Plaintiff's Exhibit No. 8, page 3.)

That in support of this judgment the Court hereby incorporates the findings of fact and conclusions of law regarding the Plaintiff's motion for partial summary judgment filed July 20, 2012, as if stated word for word. In that order this court found that the Defendant NLT, Defendant Hillhouse and Defendant Pace had sold unregistered securities in violation of A.C.A. §23-42-501. The securities in question were promissory notes issued by NLT and sold by Hillhouse and Pace labeled as Exhibits N-1 through N-66, excluding Exhibits N-41 and N-44.

That on July 20, 2012, this court also found that although the Defendants had filed the proper documents for each of the promissory notes with the federal securities commission the Defendants did not register the notes with the Arkansas Securities Commission pursuant to A.C.A. §23-42-501(1). Arkansas law imposes an absolute duty on directors to register securities prior to sale. *Robertson v. White*, 635 F. Supp. 851(W.D. Ark. 1986). Ignorance of securities law in no way excuses failure to

register. *Hogg v. Jerry*, 299 Ark. 283 (1989).

The Court also found that the following facts must be determined at a bench trial in this matter:

- a. Whether one or more of the above Defendants directly or indirectly engaged in any fraudulent or deceitful actions as prohibited by A.C.A. §23-42-507.
- b. Whether the corporate veil of NLT may or should be pierced to attach personal liability to Defendant Hillhouse and/or Defendant Pace.
- c. Whether the Commissioner is entitled to any injunction and accounting, disgorgement of profits, a civil fine or any other relief pursuant to A.C.A. §23-42-209(a)(3-4) and A.C.A. §23-4-209(b)(1-6).

That on April 2, 2013, a bench trial was held in this matter to determine the above remaining issues. The Court, in part, based its findings on having viewed the credibility and demeanor of the witnesses at trial.

That on May 3, 2013, post-trial briefs were filed in this matter.

ISSUES DECIDED BY THE COURT

I. WHETHER ONE OR MORE OF THE ABOVE DEFENDANTS DIRECTLY OR INDIRECTLY ENGAGED IN ANY FRAUDULENT OR DECEITFUL ACTIONS AS PROHIBITED BY A.C.A. §23-42-507.

A.C.A. §23-42-507 states in part “it is unlawful for any person, in connection with the offer, sale, or purchase of any security to: 1) employ any device, scheme, or artifice to defraud; 2) make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or 3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”

The above Defendants may be found liable under the above statute if the Plaintiff proves, by a

preponderance of the evidence, any of the above three subsections under A.C.A. §23-42-507. This Court analyzed the facts, pleadings on file, exhibits, arguments of counsel, credibility and demeanor of witnesses, the evidence submitted at trial and applicable law under A.C.A. §23-42-507(2) to determine whether the Defendants made any untrue statements of material fact or omitted a material fact necessary so the statement was not misleading.

A. DEFENDANT NLT.

This Court hereby finds that Defendant NLT violated A.C.A. §23-42-507(2) by making untrue statements of material fact and omitted to state a material fact in order so that the statements were not misleading. This Court found as follows:

- 1) That NLT is a privately held corporation incorporated on August 9, 1999, by filing Articles of Incorporation with the state of Arkansas with its principal place of business in Bentonville, Arkansas. Hillhouse is the president of NLT, owning ninety (90) percent of NLT and Pace is the corporate secretary of NLT, owning ten (10) percent of NLT. (See Plaintiff's Exhibit No. 6, Lendell Hillhouse deposition dated February 27, 2007, page 3.)
- 2) That NLT's omission to state a material fact that NLT promissory notes were not registered with Arkansas Securities Commission misled investors to loan money to NLT in exchange for a promissory note. The omission was misleading in that a reasonable investor would have considered the omitted information, specifically, that the notes were unregistered, to be significant at the time of investment.
- 3) That in 1999, Defendant Hillhouse testified that he had sent unsolicited form letters to the governors of all fifty states requesting whether they would be interested in allowing NLT to collect back taxes from taxpayers through the use of a state issued credit card. (See Plaintiff's Exhibit No. 28(a), Lendell Hillhouse deposition dated February 24, 2011,

page 84.) Hillhouse testified that then Texas governor George W. Bush responded with a form letter for Defendant Hillhouse to contact the Texas Procurement Office. (See Plaintiff's Exhibit No. 28(a), Lendell Hillhouse deposition dated February 24, 2011, page 84.)

- 4) That in June 2002 and January 2005, NLT's business plan stated in part "management is currently seeking and is encouraged by lawmaker response to make payment of government obligations by electronic means, especially credit cards, to be equivalent to legal tender." (See Plaintiff's Exhibit No. 29, NLT Strategic Business Plan dated June 2002, page 4; see Plaintiff's Exhibit 30, NLT Strategic Business Plan dated January 2005, page 4.)
- 5) Defendant Pace testified at trial in this matter that on December 31, 2004, Defendants Pace and Hillhouse met then U.S. Congressman John Boozman at a coffee shop in Rogers, Arkansas. Pace testified he gave a copy of the June 2002 NLT business plan to Congressman Boozman who "offered anything he could do to help." Boozman instructed the Defendants to contact the "IRS and the Ways and Means Committee" for the purpose to try to facilitate a meeting with the IRS. Pace testified at trial there "wasn't anything definite."
- 6) The Court finds that the letters sent to various state governors; the Defendants' meeting with then Congressman Boozman at a coffee shop in Rogers, Arkansas, where the Congressman correctly instructed them to contact the House Ways and Means Committee and that nothing was "definite" does not reconcile with the statement made in the NLT Strategic Plans dated June 2002 that management is "encouraged by lawmaker response." The unsolicited contact to various state governors and courtesy responses from Boozman do not rise to the level of "encouragement" as stated in the

NLT business plans. Therefore, the Court finds the above statement to be untrue. The Court also finds the above untrue statement to be “material in that a reasonable investor would have considered the information significant at the time of investment.

- 7) An NLT business plan dated August 18, 2005, states in part “Nick-Lynn Technologies has already established excellent communication with key government officials, and will continue to harbor these relationships on a local, state and federal level.” (See Plaintiff’s Exhibit No. 8, Nick Lynn Technologies Business Plan dated August 18, 2005, page 16.) This plan replaces the earlier Business Plans dated January 2002 and 2005 which stated in part “management is currently seeking and is encouraged by lawmaker response . . .” (See Plaintiff’s Exhibit No. 29, NLT Strategic Business Plan dated June 2002, page 4; see Plaintiff’s Exhibit No. 30, NLT Strategic Business Plan dated January 2005, page 4.)
- 8) Hillhouse testified at deposition that the “key government officials” identified which NLT has “excellent communication” with are then U. S. Congressman John Boozman, Mr. Floyd Williams, Legislative Director at the Internal Revenue Service, and former U. S. President Bill Clinton. (See Plaintiff’s Exhibit No. 6, Lendell Hillhouse deposition dated February 27, 2007, page 57.)

FORMER U.S. CONGRESSMAN JOHN BOOZMAN.

- 9) That on July 8, 2011, a legislative assistant for Senator John Boozman testified during deposition that on or about February 13, 2005, a staff member from the House Ways and Means Committee and Mr. Floyd Williams from the IRS, Defendants Hillhouse and Pace met at then Congressman Boozman's office in Washington, D.C. to discuss Nick Lynn Technologies. (See Plaintiff’s Exhibit No. 26, Deposition of Phillip Moore, legislative assistant to Senator John Boozman, page 13.) That Mr. Moore further

testified that Congressman Boozman's office never facilitated the meeting to allow Hillhouse and Pace to meet with the IRS and House Ways and Means staff member. Furthermore, Congressman Boozman never made any endorsement of NLT. (See Plaintiff's Exhibit No. 26, Deposition of Phillip Moore, legislative assistant to Senator John Boozman, dated July 8, 2011, pages 13-14.)

FLOYD WILLIAMS, INTERNAL REVENUE SERVICE.

- 10) That Mr. Floyd Williams, legislative director of the Internal Revenue Service, testified during deposition that on or about February 13, 2005, Mr. Williams, Defendant Hillhouse, Defendant Pace, and then Congressman Boozman had a half hour meeting to discuss helping with tax collections. (See Plaintiff's Exhibit No. 25, Deposition of Floyd Williams dated December 16, 2011, page 8.) Mr. Williams stated that Defendant Hillhouse's idea of a dedicated credit card for tax payments was an interesting idea but that it must go through a procurement process. (See Plaintiff's Exhibit No. 25, Floyd Williams deposition dated December 16, 2011, pages 10-15.) Williams further testified that the dedicated credit card proposed by Defendant Hillhouse had not been approved by the IRS. (See Plaintiff's Exhibit No. 25, Deposition of Floyd Williams dated December 16, 2011, page 16.)
- 11) That in June of 2005, the IRS Procurement Office had notified Hillhouse that the procurement office had "evaluated and denied an unsolicited proposal request from Mr. Hillhouse in June of 2005 on this same type of initiative." (See Plaintiff's Exhibit No. 28(b) subexhibit 11, identified as an e-mail from Floyd Williams to Lendell Hillhouse dated Friday, June 23rd, 2006, page 1 of 2.)
- 12) That on June 23rd of 2005, Tim Shaughnessy, director of Office of Procurement Policy, wrote Defendant Hillhouse a denial letter which stated in part "I am in receipt of your

unsolicited proposal for the establishment of a 'Liberty card' to be utilized for payment of tax obligations. The project, although intriguing, far exceeds our current authority. . . . For that reason, we cannot accept your proposal.” (See Plaintiff's Exhibit No. 34, letter from Tim Shaughnessy to Nick Lynn Technologies dated June 23rd, 2005.)

FORMER U.S. PRESIDENT BILL CLINTON.

- 13) That Defendant Hillhouse testified at a deposition that he attended a campaign fundraiser and handed former U. S. President Bill Clinton an NLT business plan and asked Mr. Clinton to read it and get back to Defendant Hillhouse. (See Plaintiff's Exhibit No. 6, Lendell Hillhouse deposition dated February 27, 2007, page 57.) Defendant Hillhouse also testified at deposition that he attended a fundraiser at Ms. Beth Coulson's house in Little Rock, Arkansas, and that he sent an NLT business plan to the Clinton Library. (See Plaintiff's Exhibit No. 28(a), Lendell Hillhouse deposition dated February 25, 2011, page 74.)
- 14) The Court finds that the statement in Defendant NLT's business plan dated August 18, 2005, that “Nick Lynn Technologies has already established excellent communication with key government officials and will continue to harbor these relations in a local, state, and federal level” to be an untrue statement.
- 15) The Court finds that the meeting with then Congressman John Boozman on February 13, 2005, wherein Defendants Hillhouse and Pace were instructed to begin a procurement process with the IRS and that Congressman Boozman did not make any endorsement of NLT is not “excellent communication with key government officials.” The Court further finds that the rejection letter dated June 23rd, 2005, from Director Tim Shaughnessy of the IRS Office of Procurement Police which rejects Defendant NLT's proposal clearly indicates that the relationship with Mr. Floyd Williams does not rise to

level of “excellent communication” or that there is a “relationship” with Mr. Williams or the IRS. In fact, any relationship, if it existed, was terminated by Mr. Shaughnessy's rejection letter dated June 23, 2005. Furthermore, that the IRS rejection of the NLT proposal was material and that NLT omitted that material fact in its August 18, 2005 business plan so that the above statement was misleading to investors.

16) The Court further finds that Defendant Hillhouse's brief contact with former U. S.

President Bill Clinton and handing him a business proposal or sending a proposal to the Clinton Presidential Library does not rise to the level of “excellent communication” nor does it establish any type of relationship with former U. S. President Bill Clinton.

Therefore, the Court further finds that the statement “Nick Lynn Technologies has already established excellent communications with key government officials, and will continue to harbor these relationships on a local, state and federal level” is an untrue statement. The Court finds the above untrue statements and the above omissions to be material in that a reasonable investor would have considered the information significant at the time of investment. Therefore, NLT is in violation of A.C.A. §23-42-507(2).

B. DEFENDANT HILLHOUSE.

This Court hereby finds that Defendant Hillhouse violated A.C.A. §23-42-507(2) by making untrue statements of material fact and that he omitted to state material facts in order so that the statements made by Hillhouse were not misleading.

This Court finds as follows:

- 1) That Defendant Hillhouse is the President of Nick Lynn Technologies, Inc. owning ninety (90) percent of the Corporation. (See Plaintiff's Exhibit No. 6, Lendell Hillhouse deposition dated February 27, 2007, page 3.)

- 2) That Defendant Hillhouse's omission to state a material fact that NLT's promissory notes to investors were not registered with the Arkansas Securities Commission misled investors. The omission was material in that a reasonable investor would have considered the omitted information, specifically the sale of unregistered securities, significant at the time of investment.
- 3) That NLT investor Diane Mann (formerly known as Diane Adams) testified at trial that on March 17, 2005, she invested with NLT and received a promissory note in the amount of \$5,000.00, which was signed by Defendant Pace. (See Plaintiff's Exhibit No. 4 identified as N-30 in the amount of \$5,000.00 dated March 17, 2005.) She testified at trial that Defendant Hillhouse influenced her decision to invest the \$5,000.00 because Hillhouse told her that important political people, such as former U. S. Congressman Marion Barry, former U. S. Congressman John Boozman, former U. S. President Bill Clinton, then U. S. President George W. Bush, were behind the program. Specifically, she testified that Defendant Hillhouse told her that former U. S. President Bill Clinton was interested in being on NLT's board of directors and that Defendant Hillhouse had been invited to George W. Bush's ranch in Texas.
- 4) Ms. Mann testified at trial that on or about October 14, 2005, she received a phone call from Defendant Hillhouse. He invited her to a Democratic Party fundraiser in Little Rock, Arkansas to be held on that same day. He stated that Ms. Mann could meet former U. S. President Bill Clinton. Ms. Mann told Defendant Hillhouse that she had other commitments and that she could not attend the fundraiser. She further testified at trial that during the same conversation Defendant Hillhouse asked Ms. Mann to invest an additional \$50,000.00 to get them "over the hump." She testified Defendant Hillhouse stated they needed the \$50,000.00 to travel to "Washington to file the proper

papers.” Ms. Mann testified at trial that she invested the \$5,000.00 on March 17, 2005, and the additional \$50,000.00 on October 17, 2005, in part, because of all the political names Hillhouse told her were supporting the program. Ms. Mann's trial testimony that Defendant Hillhouse told her that former U. S. President Bill Clinton was interested in being on Defendant NLT's board of directors is corroborated, in part, by Defendant Pace's trial testimony and an e-mail dated October 17, 2005, from Defendant Pace's girlfriend, Patricia Mangold.

- 5) That on October 17, 2005, Defendant Pace told his girlfriend Patricia Mangold, that “it looks like Bill Clinton is now getting involved . . . He has agreed to be on the Board of Advisors for Nick Lynn.” (See Plaintiff's Exhibit No. 21, Patricia Mangold e-mail dated October 17, 2005.) Defendant Pace testified at trial that he received the above information about Bill Clinton being on NLT's Board of Directors from Defendant Hillhouse, He testified, “I told her (Mangold) whatever Len (Defendant Hillhouse) told me that night.”
- 6) That on October 17, 2005, the same day Defendant Pace told Patricia Mangold that Bill Clinton was going to be on NLT's board of advisors, Ms. Mann again invested with NLT and received another promissory note, this time however, in the amount of \$50,000.00, which was also signed by Defendant Pace. (See Plaintiff's Exhibit No. 4 (N-40), promissory note dated October 17, 2005, \$50,000.00.)
- 7) As stated earlier, Defendant Hillhouse's contact with former U. S. President Bill Clinton was minimal. It consisted of Defendant Hillhouse attending campaign fundraisers where Mr. Clinton was present. Hillhouse either handed or mailed Mr. Clinton a NLT business plan. (See Plaintiff's Exhibit No. 6, Lendell Hillhouse deposition dated February 27, 2007, page 57; see Plaintiff's Exhibit No. 28(a), Lendell Hillhouse

deposition dated February 25, 2011, page 74.)

- 8) That on June 23, 2005, Defendant Pace told his girlfriend, Patricia Mangold, that Floyd Williams, legislative director of the Internal Revenue Service, was to call Defendant Hillhouse “every day to see where they stand to get this done” . . . and that the “IRS has a call in to the White House to see when the President will be able to sign and get the money transferred next week. They will then fly back to Washington to open an account at Bank of America and get it started.” (See Plaintiff’s Exhibit No. 18, Patricia Mangold e-mail dated June 23, 2005.)
- 9) On that same day, June 23, 2005, Tim Shaughnessy, director of Office of Procurement Policy for the Internal Revenue Service, wrote Defendant Hillhouse a rejection letter which stated that although the establishment of a dedicated credit card for taxpayers to pay their taxes was “intriguing” it exceeded their “current authority” and they could not accept his proposal. (See Plaintiff’s Exhibit No. 34, letter from Tim Shaughnessy to Nick Lynn Technologies, Inc. dated June 23, 2005.)
- 10) That Defendant Hillhouse knew in June 2005, that the IRS Procurement Office had rejected NLT's proposal for a dedicated credit card. Therefore, it was an untrue statement that the IRS was calling Defendant Hillhouse “everyday”. (See Plaintiff’s Exhibit No. 18, Patricia Mangold e-mail dated June 23, 2005.) Defendant Pace testified at trial that he received the above information from Hillhouse.
- 11) That the IRS Procurement Office rejection of the NLT plan was material. That Hillhouse's statement that Bill Clinton was going to be on NLT's board of advisors was an untrue statement. That the above untrue statement was material in that a reasonable investor, such as Ms. Mann, would have found the fact that Bill Clinton was not behind the business plan to be significant at the time of her investment. That Defendant

Hillhouse's omission of this fact to Ms. Mann misled Ms. Mann to invest \$50,000.00 on October 17, 2005.

Therefore, this Court finds that Defendant Hillhouse violated A.C.A. §23-42-507(c) by making untrue statements of material fact and omitting to state material facts necessary to make the statement made not misleading.

C. DEFENDANT PACE.

This Court hereby finds that Defendant Pace violated A.C.A. §23-42-507(2) by making untrue statements of material facts and that he omitted to state a material fact in order so that the statement made by Pace was not misleading.

This Court finds as follows:

- 1) That Defendant Pace is the Secretary of NLT Corporation, owning ten percent (10%) of NLT. (See Plaintiff's Exhibit No. 6, Lendell Hillhouse Deposition dated February 27, 2007, page 3.)
- 2) That Defendant Pace's omission to state a material fact that NLT's promissory notes to investors were not registered with the Arkansas Securities Commission misled investors. The omission was material in that a reasonable investor would have considered the omitted information, specifically the sale of unregistered securities, significant at the time of investment.
- 3) That on June 23, 2005, Tim Shaughnessy, director of Office of Procurement Policy for the Internal Revenue Service, wrote Defendant Hillhouse a rejection letter which stated the IRS "could not accept his proposal" concerning the dedicated credit card for taxpayers. (See Plaintiff's Exhibit No. 34, letter from Tim Shaughnessy to Nick Lynn Technologies dated June 23, 2005.)

- 4) That on June 23, 2005, the same day as the above IRS rejection letter, Defendant Pace told his girlfriend, Patricia Mangold, that the IRS was to call Defendant Hillhouse “every day to see where they stand to get this done” . . . and that the “IRS has a call in to the White House to see when the President will be able to sign and get the money transferred next week.” (See Plaintiff’s Exhibit No. 18, Patricia Mangold e-mail dated June 23, 2005.)
- 5) That on August 19, 2005, Defendant NLT business plan dated August 18, 2005, states in part “Nick Lynn Technologies has already established excellent communication with key government officials and will continue to harbor these relationships on a local, state, and federal level.” (See Plaintiff’s Exhibit No. 8, NLT Business Plan dated August 19, 2005, page 16.)
- 6) That Defendant Hillhouse testified at deposition that former U. S. President Bill Clinton, and Mr. Floyd Williams, Legislative Director at the Internal Revenue Service, were some of the “key government officials” referred to in the above NLT Business Plan dated August 19, 2005, also NLT had established “excellent communications.” (See Plaintiff’s Exhibit No. 6, Lendell Hillhouse deposition dated February 27, 2007, page 57.)
- 7) That on October 17, 2005, Defendant Pace told his girlfriend, Patricia Mangold, that “it looks like Bill Clinton is now getting involved. . . .” He has apparently agreed to be on the Board of Advisors for Nick Lynn” . . . “Mr. Clinton wants Robin (Pace) to come back and put on a presentation about which laws need to be changed and why.” (See Plaintiff’s Exhibit No. 21, Patricia Mangold e-mail dated October 17, 2005.)
- 8) That investor Ms. Diane Mann testified at trial that on October 17, 2005, the same day she invested \$50,000.00 with NLT, Defendant Pace told her that Pace had met Bill

- Clinton; that Mr. Clinton was taken with Mr. Pace's date; and that "Clinton was on board and everything looked great."
- 9) Defendant Hillhouse testified at deposition that it was "not truthful" for Defendant Pace to tell Patricia Mangold on October 17, 2005, that Bill Clinton was to be on the NLT board of advisors. (See Plaintiff's Exhibit No. 28(a), Lendell Hillhouse deposition dated February 25, 2011, page 79.)
- 10) That on March 30, 2006, Eugenie Bisulco, Director of Correspondence for former U. S. President Bill Clinton, wrote Defendant Hillhouse a rejection letter stating in part that it is "impossible" for Mr. Clinton to support Defendant Hillhouse's business proposal due to so many other requests propounded to Mr. Clinton. (See Plaintiff's Exhibit 15, letter from Eugenie Bisulco to Lendel Hillhouse dated March 30, 2006.)
- 11) That Mr. Lendel Snoderly testified at trial that he and Defendant Pace attended church together at the New Hope Assembly of God in Rogers, Arkansas. Mr. Snoderly further testified that in April 2006, Defendant Pace approached Mr. Snoderly to invest in NLT Corporation. Mr. Snoderly testified that Defendant Pace told him that a lot of money was there in Houston and that they needed Mr. Snoderly's investment money to get to Houston to retrieve the money.
- 12) That on June 1, 2006, Mr. Lendel Snoderly and Judi A. Snoderly, husband and wife, invested \$15,000.00 with NLT Corporation and received a promissory note in the amount of \$15,000.00 signed by Defendant Pace. (See Plaintiff's Exhibit No. 4, identified a N-47 in the amount of \$15,000.00.)
- 13) That Defendant Pace's omission to state a material fact that NLT's promissory notes were not registered with the Arkansas Securities Commission misled Mr. and Mrs. Snoderly. The omission was material in that a reasonable investor would have

considered the omitted information, specifically, the sale of unregistered securities, significant at the time of investment.

14) This Court finds that the statement made by Defendant Pace to Snoderly in April 2006 that Snoderly's investment was needed to retrieve a lot of money in Houston to be untrue. Pace had told other people, namely Diane Mann and Patricia Mangold, that Bill Clinton was interested in being on NLT's board of advisors. (See Plaintiff's Exhibit No. 21, Patricia Mangold e-mail dated October 17, 2005.) Also, Pace had previous knowledge that Bill Clinton was not going to support NLT's business plan. (See Plaintiff's Exhibit No. 15, letter from Eugenie Bisulco to Lendel Hillhouse dated March 30, 2006.) This statement, like the statement Defendant Pace made to Patricia Mangold on June 23, 2005, that the "IRS has a call in to the White House to see when the President will be able to sign and get the money transferred next week" has similar promises of grandeur.

15) This Court also finds that Defendant Pace's omission to inform Mr. Snoderly that a "key government official" as identified in the NLT Business Plan dated August 19, 2005, was no longer in "excellent communication" with NLT Corporation was material. Defendant Pace failed to inform Mr. Snoderly that Bill Clinton was not going to provide any support for NLT, as stated in the March 30, 2006, letter to Defendant Hillhouse. (See Plaintiff's Exhibit No. 15, letter from Eugenie Bisulco to Lendel Hillhouse dated March 30, 2006.) This omission was material in that a reasonable investor would have considered the omitted information, that Bill Clinton was no longer interested in NLT, significant at the time of investment.

Therefore, this Court finds that Defendant Pace violated A.C.A. §23-42-507(2) by making untrue statements of material fact and omitting to state a material fact necessary to make the statement

made not misleading to investors.

II. WHETHER THE CORPORATE VEIL OF NLT MAY OR SHOULD BE PIERCED TO ATTACH PERSONAL LIABILITY TO DEFENDANT HILLHOUSE AND/OR DEFENDANT PACE.

The Court hereby finds that Defendant Hillhouse and Defendant Pace are personally liable for damages incurred by certain investors. NLT Corporation was a mere instrumentality of Defendant Hillhouse and Defendant Pace. In other words, NLT was no more than a mere “alter ego” of both Hillhouse and Pace.

NLT is a privately held corporation incorporated on August 9, 1999, by filing Articles of Incorporation with the state of Arkansas with its principal place of business in Bentonville, Arkansas. Hillhouse is president of the corporation, owning ninety (90) percent of NLT, and Pace is secretary of the corporation, owning ten (10) percent of NLT. (See Plaintiff’s Exhibit 6, Lendell Hillhouse deposition dated February 27, 2007, page 3.)

Arkansas Code Annotated §4-27-622(b) states in part “a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.” The Court hereby finds that both Hillhouse and Pace’s actions and conduct are an exception to A.C.A. §4-27-622(b) where they may be found personally liable for the acts and debts of the corporation.

The test the Court applied to determine whether Defendant Hillhouse and Defendant Pace were personally liable was whether NLT was so controlled by Defendant Hillhouse and Defendant Pace that NLT became a mere alter ego or instrumentality of Defendant Hillhouse and Defendant Pace. The Court used the following factors in deciding whether to hold Hillhouse and Pace personally liable:

- (1) Lack of meaningful separation between Hillhouse and Pace and NLT;
- (2) Commingling of corporate and individual assets;

- (3) Inadequate (or grossly inadequate) capitalization of the corporation;
- (4) Failure to observe corporate formalities; and
- (5) Hillhouse's and Pace's dominion and control of the corporation.

1. LACK OF MEANINGFUL SEPARATION BETWEEN HILLHOUSE, PACE AND NLT.

Hillhouse and Pace were NLT.

NLT did not have employees. (See Plaintiff's Exhibit 6, Lendell Hillhouse Deposition dated February 27, 2007, page 76.) NLT's registered office address was "2106 South Walton Boulevard, Suite D, Bentonville, Arkansas 72712. (See Plaintiff's Exhibit 28, Lendell Hillhouse Deposition dated February 25, 2011, page 7; see Exhibit 28D, Subexhibit No. 1.) Defendant Pace is a licensed attorney in the state of Arkansas. Defendant Pace's business address is the same as the registered office of NLT at 2106 South Walton Boulevard, Suite D, Bentonville, Arkansas 72712.

From January 22, 2002, to September 14, 2007, the NLT investors' deposits were made into Regions Bank Account No. xx-xxxx-6205 (hereinafter No. 6205). (See Plaintiff's Exhibit No. 1, Cash flow chart.) This account number 6205 is entitled "J. Robin Pace, P.A. Attorney at Law" (See Defendant Pace Exhibit No. 4.) At trial in the matter, Defendant Pace introduced Defendant's Exhibit No. 3 which is a credit/debit transaction report entitled "Nick Lynn Technologies." Defendant Pace further identified Defendant's Exhibit No. 3, the NLT "transaction report," as "my trust account." Also, Defendant Pace introduced Defendant's Exhibit No. 4 which lists checks drawn from Regions Bank Account No. 6205 and Regions Bank Account No. xxx-xxxx-9449 (hereinafter No. 9449). The name on both accounts 6205 and 9449 are "J. Robin Pace, P.A., Attorney at law, 2106 S. Walton Blvd., Suite D, Ph. 479-273-7020, Bentonville, AR 72712." (See Defendant Pace Exhibits 3 and 4.) Defendant Hillhouse has not filed personal income taxes since 2005. He stated the income from the corporation was "borrowed money and not considered as income for income tax purposes." (See Plaintiff's Exhibit No. 28, Lendell Hillhouse Deposition dated February 25, 2011, page 22.) The investors received

promissory notes from NLT, not Hillhouse. The so-called “borrowed money” was not Hillhouse's money to expend. Defendant Hillhouse clearly saw the investors' “borrowed money” as NLT's loan, but he used the money for personal expenses. All checking accounts used by NLT were entitled “J. Robin Pace, P.A., Attorney At Law” or Lendell Hillhouse.

2. COMMINGLING OF CORPORATION AND INDIVIDUAL ASSETS. Plaintiff introduced Plaintiff's Exhibit No. 1, a cash flow chart of deposits and transfers, and Plaintiff's Exhibit No. 4, a list of investors' promissory notes from January 22, 2002, to September 14, 2007. Plaintiff's Exhibit No. 4 shows investments for promissory notes in the amount of \$857,400.00 deposited into Regions Account No. 6205. As stated earlier, Regions Account No. 6205 is in the name of “J. Robin Pace, P.A.” not NLT Corporation, the entity to which the investors were loaning money. (See Defendant's Exhibit No. 4.) Plaintiff's Exhibit No. 1, the cash flow chart, shows deposits and transfers from Regions Account No. 6205 to Region Account No. 2339 and transferred into Regions Account No. 9449 identified as “Nick Lynn Technologies” account, identified as Defendant Hillhouse's account at deposition. However, the “Nick Lynn Technologies” account in Plaintiff's Exhibit No. 1 Regions Account No. 9449 was actually in the name of “J. Robin Pace, P.A.” not in “Nick Lynn Technologies.” (See Defendant's Exhibit No. 4.) Plaintiff's Exhibit No. 1 shows that after the deposits and transfers were made from Regions Account No. 6205 and Regions Account No. 9449 that withdrawals and expenses were then paid to both Defendants Hillhouse and Pace. (See Plaintiff's Exhibit No. 1.) In other words, deposits and transfers which should have originally been made into an account identified as “Nick Lynn Technologies” were actually deposited into an account identified as “J. Robin Pace” wherefrom money was transferred to another account identified as “J. Robin Pace.” Therefore, the Court finds that based upon the exhibits and testimony of the witnesses that original deposits were made into Regions Account No. 6205 which is in the name of Defendant

Pace not in the name of NLT and that deposits and transfers were then made from Account 6205 in the name of Defendant Pace to another Region Account No. 9449, also entitled "J. Robin Pace." Moreover Defendant Hillhouse testified that he does not have a personal checking account. (See Plaintiff's Exhibit No. 28, Lendell Hillhouse Deposition dated February 25, 2011, page 24.)

3. INADEQUATE CAPITALIZATION OF THE CORPORATION. Defendant Hillhouse testified that it would take \$10 million to start a bank and \$2 million investment for purpose of a Liberty card. (See Plaintiff's Exhibit No. 6, Lendell Hillhouse Deposition dated February 27, 2007, page 39.) That NLT's Business Plan dated August 19, 2005, states in part "company seeks total investment of \$500 million." (See Plaintiff's Exhibit No. 8, NLT Business Plan dated August 19, 2005, page 3.) Defendant Hillhouse testified the first investor that Hillhouse received money from was Steve Chastain and that he told Chastain "I need some money to run on for a little bit." And then Mr. Chastain gave him \$1,000 and later an additional \$9,000. (See Plaintiff's Exhibit No. 28, Lendell Hillhouse Deposition dated February 25, 2011, page 14.) Defendant Hillhouse testified that he thought he could get \$2 million to start the business from loans. (See Plaintiff's Exhibit No. 6, Lendell Hillhouse Deposition dated February 27, 2007, page 64.) Defendant Pace testified at trial that when the corporation needed money for a website that he asked his girlfriend, Patricia Mangold, for the money.

That in Defendant NLT's profit and loss from January through December 2006 net income was a loss in the amount of \$281,516.42. (See Plaintiff's Exhibit No. 28B Exhibit 4.) That Defendant NLT's profit and loss statement from January through December 2005 shows a loss in the amount of \$242,766.99. (See Plaintiff's Exhibit No. 28B Subexhibit 4.)

The Court finds that NLT Corporation's capitalization of between \$2 million to \$500 million far exceeds the initial "seed" money realized by Defendants Hillhouse and Pace.

Therefore, NLT's initial capital was grossly inadequate.

4. FAILURE TO OBSERVE CORPORATE FORMALITIES. Failure to observe formalities is essential in finding that the corporate veil should be disregarded. Defendant Hillhouse testified that he holds board meetings with Defendant Pace “every hour of the day” but that they never actually sat down and took minutes or did any board meetings. (See Plaintiff's Exhibit No. 28(a), Lendell Hillhouse Deposition dated February 25, 2011, page 9.) Defendant Hillhouse testified that there were no stock certificates, board minutes, or any other documents to verify or confirm that Mr. Hillhouse owned ninety (90) percent of the corporation and that Pace owned ten (10) percent of the corporation. (See Plaintiff's Exhibit No. 28, Lendell Hillhouse Deposition dated February 25, 2011, page 8.) Defendant Hillhouse testified that he did not know for sure whether the corporation had any yearly financial statements, income statements or balance sheets. (See Plaintiff's Exhibit No. 28, Lendell Hillhouse Deposition dated February 25, 2011, page 19.) The Court finds that no corporate formalities were observed or followed by any of the Defendants.

5. HILLHOUSE'S AND PACE'S DOMINION AND CONTROL OF THE CORPORATION. Len Hillhouse is listed as the sole board of director in the articles of incorporation of Nick Lynn Technologies dated August 9, 1999. (See Plaintiff's Exhibit No. 28B, Subexhibit 1.) Hillhouse testified that he owned ninety (90) percent of the NLT corporation and that Pace owned ten (10) percent of the NLT corporation. (See Plaintiff's Exhibit No. 6, Hillhouse deposition dated February 27, 2007, page 3.) Defendant Hillhouse testified that he did not have any idea what Defendant Pace was saying to other people to get them to invest. (See Plaintiff's Exhibit No. 28, Lendell Hillhouse Deposition dated February 25, 2011, page 17.) Defendant Pace testified at trial April 5, 2013, that the corporation had no employees. The Court finds that Defendants Hillhouse and Pace exercised sole dominion and control over NLT Corporation so that it was a

mere alter ego of Defendants Hillhouse and Pace.

III. WHETHER THE COMMISSIONER IS ENTITLED TO ANY INJUNCTION AND ACCOUNTING, DISGORGEMENT OR PROFITS, A CIVIL FINE, OR ANY OTHER RELIEF PURSUANT TO A.C.A. §23-42-209(a) AND A.C.A. §23-42-209(b).

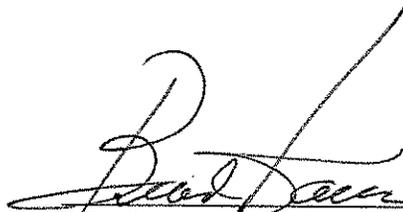
The Court hereby finds that the Plaintiff has met its burden of proof by a preponderance of the evidence and upon a proper showing pursuant to A.C.A. §23-42-209(a) and 209(b); that a permanent injunction shall be ordered against Defendants NLT, Hillhouse and Pace. That the above Defendants are hereby permanently enjoined to engage in the sale of securities in any capacity within the state of Arkansas until further orders of this Court or a court of competent jurisdiction finds otherwise.

That pursuant to A.C.A. §23-42-210, the Defendants NLT, Hillhouse and Pace are jointly and severally liable as follows:

- a) That the above Defendants shall be ordered to pay restitution to Ms. Diane Mann, a/k/a Diane Adams, in the amount of fifty-five thousand dollars (\$55,000).
- b) That the above Defendants shall be ordered to pay restitution to Mr. Lendel B. Snoderly and Ms. Judi A. Snoderly, husband and wife, in the amount of fifteen thousand dollars (\$15,000.00).

That the judgment of this Court is final, subject to review by the Supreme Court of Arkansas.

IT IS SO ORDERED.


BRAD KARRER, CIRCUIT JUDGE

ENTERED: July 17, 2013