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Department of State
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January 11, 2019

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Tennessee Department of Commerce &
Insurance
Office of Legal Counsel
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500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Chattaco, Inc.
c/o Harry Thompson
67503 Hixson Pike, Suite #115-H
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Harry Thompson
1400 Innisbrook Drive
Hixson, TN 37343

RE: In the Matter of: Chattaco, Inc. and Harry F. Thompson
Docket No. 12.06-150550J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

RECEIVED
JAN 16 2019
DEPT. OF COMMERCE AND INSURANCE
LEGAL OFFICE

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

Attached is the Administrative Judge's decision in your case before the **Commissioner of the Tennessee Department of Commerce & Insurance (the Commissioner)**, called an Initial Order, with an entry date of **January 11, 2019**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the decision is incorrect. The APD must receive your written Petition no later than 15 days after entry of the Initial Order, which is no later than **January 28, 2019**. A new 15 day period for the filing of an appeal to the Commissioner (as set forth in paragraph (2), below) starts to run from the entry date of an order disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be received by the APD no later than 15 days after the date of denial of the Petition. See TENN. CODE ANN. § 4-5-317 and § 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the Commissioner. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the Commissioner, along with the basis for your appeal. The APD must receive your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **January 28, 2019**. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.
3. **The Commissioner of the Tennessee Department of Commerce & Insurance decides to Review the Initial Order:** In addition, the Commissioner may give written notice of his or her intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Commissioner renders a Final Order.

If none of these actions set forth in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order **January 29, 2019**. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be received by the APD within 7 days of the date of entry of the Initial Order, which is no later than **January 18, 2019**. See TENN. CODE ANN. § 4-5-316.

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the Commissioner deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner rendered a Final Order, the Commissioner will consider the Petition. The APD must **receive** your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the Commissioner; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.

2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date of entry of the Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the Commissioner deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner rendered a Final Order, the Commissioner will consider the Petition. A Petition for a stay of a Final Order must be **received** by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102
Fax: (615) 741-4472

**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

**TENNESSEE SECURITIES
DIVISION,**

Petitioner,

vs.

**CHATTACO, INC., and HARRY F.
THOMPSON,**

Respondents.

Docket No. 12.06-150550J

TSD No. 17-024

INITIAL ORDER

This matter was heard on August 3, 2018, in Nashville, Tennessee, before Administrative Judge Elizabeth D. Cambron, assigned by the Secretary of State, Administrative Procedures Division (“APD”), to sit for the Commissioner of the Tennessee Department of Commerce and Insurance. The August 3, 2018, hearing addressed the allegations contained in the NOTICE OF HEARING AND CHARGES filed on February 2, 2018, and in the AMENDED NOTICE OF HEARING AND CHARGES filed on February 16, 2018, pertaining to Respondents Chattaco, Inc., Harry F. Thompson, and former Respondent Steven S. Boulter. Jesse D. Joseph, Assistant General Counsel, represented the Petitioner, Tennessee Securities Division. The Respondent Harry F. Thompson appeared at the August 3, 2018 hearing, and represented himself, waiving the assistance of legal counsel.

Former Respondent Steven S. Boulter testified during the August 3, 2018 hearing, and based on a separate settlement entered into between Petitioner and Respondent Steven S. Boulter in July 2018, all of the claims against former Respondent Steven S. Boulter have been dismissed by the Petitioner with prejudice, by separate Order entered on August 10, 2018.

After consideration of the RECORD in this matter, it is **ORDERED** that the Respondents Harry F. Thompson and Chattaco, Inc. are **assessed total civil penalties in the amount of \$162,000**. This Judgment is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent Chattaco, Inc. (“Chattaco”), is a Tennessee for-profit corporation formed on July 1, 2010, with a principal office address of 3875 Hixson Pike, Chattanooga, TN 37415. According to the Tennessee Secretary of State’s records, Respondent Harry F. Thompson is the controlling owner of Chattaco, and is listed as Chattaco’s initial Registered Agent, President, and Incorporator. During all relevant times, Harry Thompson has been a resident of Tennessee, with a last-known residential address of 1400 Innisbrook Dr., Hixson, TN 37343. Harry Thompson and Chattaco have never been registered with the TSD or with the Financial Industry Regulatory Authority (“FINRA”) as a broker-dealer, issuer-dealer, broker-dealer agent, investment adviser, or investment adviser representative. (¶ 4 of Petitioner’s February 16, 2018 Amended Notice of Hearing and Charges (“Amended NOHC”); ¶ 4 of Respondent Thompson’s July 16, 2018 Answer to Allegations of Petitioner Herein (“Answer”); Nos. A.1-A.5 of Respondent Thompson’s June 23, 2018 Responses to Petitioner’s First Set of Requests for Admissions; testimony of Investigator Eddie Davis at Transcript of August 3, 2018 Proceedings (“Tr”) p. 47, lines (“l”) 20-25; Tr. 48, l. 1-6; testimony of Respondent Thompson at Tr. 33, l. 21-25, Tr. 34, l. 1-4.)

2. On August 6, 2016, the Tennessee Secretary of State administratively revoked Chattaco’s charter, requiring that Chattaco file its Annual Report for 2015, and a separate reinstatement application in order to have its charter reinstated. On August 15, 2016,

Chattaco filed the 2015 Annual Report and changed its principal office address to 6503 Hixson Pike, Suite 115H, Hixson, TN 37343-2586. However, Chattaco did not file the separate reinstatement application, and to date, its charter remains administratively revoked. (§ 5 of Petitioner's February 16, 2018 Amended NOHC; § 5 of Respondent Thompson's July 16, 2018 Answer to Allegations of Petitioner Herein ("Answer"); Nos. A.7-A.11 of Respondent Thompson's June 23, 2018 Responses to Petitioner's First Set of Requests for Admissions.)

3. Steven S. Boulter ("Boulter") is a resident of Colorado, and has never been registered with the TSD or with FINRA as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative. (Tr. 47, l. 20-25, Tr. 48, l. 1-6 - testimony of Investigator Davis; Tr. 90, l. 18-22 – testimony of Steven S. Boulter).

THE INVESTORS INTRODUCTIONS TO RESPONDENTS'
INVESTMENT OPPORTUNITY

4. Jeannie King resides in Idaho Springs, Colorado. By late 2011, she and her husband Kevin had known Boulter for quite some time, due to Boulter's coaching football in the area as did Kevin, and due to Boulter's management of a Central City Casino and Brewpub named Dostal Alley. (§ 3 of the Affidavit of Jeannie King, Hearing Exhibit [HRG. EX.] 1 admitted into evidence at Tr. 31.)

5. In or about December 2011, Boulter told Jeannie King and her husband that Boulter's mother-in-law, and several other people were investing in Chattaco, and that if she and her husband invested \$20,000 in Chattaco's oil and gas venture, they would expect a return of approximately \$1,500 per month. Ms. King and her husband then spoke with Boulter and Harry Thompson several times about investing in Chattaco during December 2011 and January 2012. Boulter and Harry Thompson were very convincing in their

presentation to the Kings. (¶ 4 of the Affidavit of Jeannie King, HRG. EX. 1 admitted into evidence.)

6. Troy Grice of Evergreen, Colorado, has known Boulter for a number of years as a fellow volunteer coach in the Mountain area youth football association in Evergreen. In or about January or February 2013, Boulter approached Mr. Grice about an investment opportunity with Chattaco and arranged for Mr. Grice to speak with Harry Thompson, who informed Mr. Grice that he was looking for an investor in a natural gas well. Harry Thompson then requested that Mr. Grice invest \$27,500 for “reworking” the Bryan and Ida Arnett Well No.1 in Magoffin County, Kentucky, and explained that this well had been in operation before and would be profitable in the future. On behalf of Chattaco, Thompson offered Mr. Grice in early April 2013 a royalty of 25% of the net revenue produced and sold by the well until the \$27,500 investment was paid in full, and thereafter, a royalty of 12.5% of the revenue produced by the well. (¶¶ 3-4 of the Affidavit of Troy J. Grice, HRG. EX. 2 admitted into evidence at Tr. 31.)

7. Jeff and Cindy Thompson, of Tigard, Oregon (“the Thompson investors”), are unrelated to Harry Thompson. Jeff Thompson is the owner, founder, and President of Sport Build/Sport Striping, which he founded in 1987 for the engineering and striping of running tracks. In late 2011, the Thompson investors were introduced to Chattaco and to Harry Thompson by Boulter. Having known Boulter for a number of years, Jeff Thompson trusted Boulter and Boulter’s recommendations regarding investments, and Boulter’s recommendation to invest in Chattaco. In or about January or February 2012, Harry Thompson spoke by phone with these investors, and offered them repayment of their planned \$20,000 investment in eight (8) months. Thompson also offered these investors a royalty of 7% of the revenue of a certain well in Magoffin County, Kentucky, payable on

a monthly basis. (¶¶ 3-4 of the Affidavit of Jeff Thompson, HRG. EX. 3 admitted into evidence at Tr. 31.)

8. Michael Hipps resides in Silverthorne, Colorado. Mr. Hipps also spends several months of some years residing in Florence, Oregon. In or about May 2012, he received a call from his friend, Jeff Thompson, who had invested with Chattaco, Inc., earlier in 2012. Very soon after Jeff Thompson's recommendation that he invest with Chattaco as well, Mr. Hipps received a call from Harry Thompson, who he understood to be the owner of Chattaco. Harry Thompson requested that Mr. Hipps invest \$25,000 with Chattaco for six (6) months, explained that the investment was very low risk, because as Harry Thompson explained, "there was gas in these wells." Harry Thompson also indicated that Mr. Hipps would receive a 6% working interest in a well, which would be paid monthly. Harry Thompson told Mr. Hipps that it was estimated Mr. Hipps would make approximately \$750 per month for the first year in "royalty" revenue from the gas produced by the well. (¶ 3 of the Affidavit of Jeff Thompson, HRG. EX. 4 admitted into evidence at Tr. 31.)

9. In the fall of 2012, Boulter presented Chattaco's investment opportunity to his friend, Mark Whitt of Evergreen, Colorado. Mr. Whitt then had several conversations with Harry Thompson - who explained that he was the President of Chattaco, and that for an investment of \$27,500, Chattaco would use the investment to rework the Phyllis Blair Well No. 2 in Magoffin County, Kentucky, which would "get it producing at a higher rate." Mr. Whitt was offered 25% of the net revenue of the well until his \$27,500 investment was paid in full, at which time he would receive a royalty of 12.5% of the well's net revenue. (¶¶ 3-5 of the Affidavit of Mark Whitt, HRG. EX. 5 admitted into evidence at Tr. 31.)

THE KINGS' INVESTMENT

10. On February 2, 2012, the Kings wired \$10,000 to Chattaco's Sun Trust bank account from each of the two (2) businesses Ms. King owned, named "The Hollywood Body Laser Center, Inc.," and "Esthetic Laser Clinic, LLC," for a total investment of \$20,000. On February 3, 2012, Harry Thompson executed a \$20,000 promissory note on behalf of Chattaco made payable to The Hollywood Body Laser Center, Inc., which was due on or before August 6, 2012. (¶ 5 of HRG. EX. 1, and attachments A-D to said Exhibit.)

11. On February 3, 2012, Chattaco, through Harry Thompson, entered into an Assignment with The Hollywood Body Laser Center, Inc., assigning to Ms. King's company a 6% working interest in the Robert Keeton Well No. WO-25, located in Magoffin County, Kentucky. Chattaco recorded this Assignment with the Magoffin County Clerk's Office on April 13, 2012. (¶ 6 of HRG. EX. 1, and attachment E to said Exhibit.)

12. Boulter and Harry Thompson told Ms. King that the investment was to be used for "fracking," and she was also led to believe that there was very little risk involved in this investment, since, she was told by Boulter that the wells already existed. From 2012 through 2014, the Kings never received monthly checks representing natural gas sales based on their 6% working interest of this well. Any checks Harry Thompson sent to the Kings were sporadic, and the Kings only received five (5) intermittent royalty payments from Chattaco totaling \$1,784.52, over this three (3) year period. Those checks are attached to Ms. King's Affidavit as follows:

(a) check no. 2078 dated November 10, 2012 in the amount of \$148.88 (Attachment F); (b) check no. 2079 dated November 10, 2012 in the amount of \$171.80 (Attachment G); (c) check no. 2278 dated June 22, 2013 in the amount of \$911.11 (Attachment H); (d) check no. 2376 dated September 6, 2013 in the amount of \$154.23 (Attachment I); and (e) check no. 2548 dated February 4, 2014 in the amount of \$398.50 (Attachment J).

(¶ 7 of HRG. EX. 1, and attachments F-J to said Exhibit.)

13. Through the present, neither Chattaco nor Harry Thompson has paid back any of the Kings' \$20,000 principal investment despite numerous demands they have made to Harry Thompson since 2013. All the Kings have received from Harry Thompson every time they reached him by phone is one excuse after another as to why they were not getting their money back or what they had been sold. On or about August 7, 2014, Ms. King submitted a complaint to the Petitioner against Harry Thompson and Chattaco about the allegedly false statements made to the Kings about this investment, and the refusal of Harry Thompson or Chattaco to return their investment as was promised in writing. (¶ 8 of HRG. EX. 1, and attachment K to said Exhibit.)

MR. GRICE'S INVESTMENT

14. On or about April 9, 2013, Harry Thompson emailed to Mr. Grice a "Cash Flow Pro Forma" document reflecting that the Bryan Arnett natural gas well was operating and producing 2100 mcf¹ per month (or 70mcf per day). This Cash Flow Pro Forma also stated that Mr. Grice, as investor, would receive 25% of the \$59,748 projected annual net revenue of this well, or an annual amount of \$14,937. (¶ 5 of HRG. EX. 2, and attachment A to said Exhibit.)

15. On April 15, 2013, Mr. Grice asked Harry Thompson what the risk was of the well not producing any significant gas, given Chattaco's plans to rework the well. In his reply email of April 15, 2013, Harry Thompson told Mr. Grice that "since the well previously produced and is an offset of other producing wells in the same formation, I have no doubt it will produce as indicated. Therefore, I believe the risk is low..." (¶ 6 of HRG. EX. 2, and attachment B to said Exhibit.)

¹ Mcf is an abbreviation denoting a thousand cubic feet of natural gas according to the U.S. Energy Information Administration (EIA) (testimony of Investigator Eddie Davis at Tr. 59, l. 18-20).

16. Based on Harry Thompson's assurances, Mr. Grice sent Chattaco a cashier's check for \$27,500 on April 15, 2013, representing his investment. On that same day, Harry Thompson prepared and signed a letter indicating that Mr. Grice had purchased an interest in the Bryan and Ida Arnett Well No. 1 in Magoffin County, Kentucky, confirming that Mr. Grice would receive a royalty of 25% of the net revenue sold by the well until his \$27,500 investment was paid in full, and afterwards, a royalty of 12.5% of the net revenue produced by the well. (¶ 7 of HRG. EX. 2, and attachments C & D to said Exhibit.)

17. For approximately eighteen (18) months after making the investment, Mr. Grice spoke with Thompson every month, and was told as late as early October 2014, that he would receive royalties the following month or shortly thereafter. To date, Mr. Grice has only received two (2) checks representing partial return of his principal investment amounting to \$2,500, and one (1) royalty check on his investment for three (3) months (July-September 2013) totaling \$168.36. (¶ 8 of HRG. EX. 2, and attachments E-G to said Exhibit.)

18. Through the present, neither Chattaco nor Harry Thompson has paid back any more of Mr. Grice's \$27,500 principal investment despite numerous demands Mr. Grice has made to Harry Thompson since the fall of 2014. All Mr. Grice has received from Harry Thompson every time Mr. Grice reached him by phone is one excuse after another as to why Mr. Grice was not getting his money back or what Harry Thompson had sold this investor. Harry Thompson did not bother to attempt to return any of Mr. Grice's principal investment until May 2015 – after Mr. Grice had lodged a complaint against Harry Thompson with the Tennessee Department of Commerce and Insurance in October 2014. (¶¶ 9-10 of HRG. EX. 2, and attachment H to said Exhibit.)

INVESTMENTS BY THE THOMPSON INVESTORS

19. With respect to the question of risk, Harry Thompson told these investors in or about January or February 2012 that the investment was a “slamdunk,” that the natural gas “was there and presold,” and that all “we had to do was to rework the wells.” (¶ 4 of HRG. EX. 3).

20. Based on Harry Thompson’s representations to the Thompson investors, on or about February 21, 2012, these investors sent him their first investment via company check (dated February 21, 2012 and signed by Cindy Thompson) in the amount of \$20,000, made payable to Chattaco. On June 18 and 19, 2012, these investors sent Harry Thompson two (2) checks comprising their second investment made payable to Chattaco totaling \$25,000. (¶ 5 of HRG. EX. 3, and attachments A-C to said Exhibit.)

21. On or about February 24, 2012, Harry Thompson executed a \$20,000 promissory note on behalf of Chattaco made payable to the Thompson investors, which was due on or before August 31, 2012, and on or about June 22, 2012, Harry Thompson executed a \$25,000 promissory note on behalf of Chattaco made payable to these investors, which was due on or before December 31, 2012. On March 19, 2012, Chattaco, through Harry Thompson, prepared an Assignment and recorded same on June 19, 2012, with the Magoffin County, Kentucky Clerk’s Office, assigning to these investors a 6% working interest in the Purcell No. 1 Well, located in Magoffin County, Kentucky (¶¶ 6-7 of HRG. EX. 3, and attachments D-F to said Exhibit.)

22. This 6% working interest as reflected in the written Assignment prepared and filed by Chattaco was not agreed to by the Thompson investors; on the contrary, Harry Thompson agreed orally in January or February 2012, and restated within Chattaco’s

“monthly statements” sent to these investors, that they were entitled to a 7% revenue interest in the production from the well. (¶ 8 of HRG. EX. 3).

23. From 2012 through 2014, the Thompson investors never received consistent monthly checks representing natural gas sales our based on their 7% working interest from the wells. Any checks Harry Thompson sent them were sporadic, and they only received four (4) intermittent royalty payments (which were not returned due to insufficient funds) from Chattaco totaling \$931.28, over this three (3) year period. (¶ 9 of HRG. EX. 3, and attachments G-J to said Exhibit.)

24. Chattaco also issued to the Thompson investors two (2) additional royalty checks amounting to \$378.18 during this period which were returned due to insufficient funds (check no. 2084 on November 10, 2012 for \$153.75, and check no. 2371 on September 8, 2013 for \$224.43). (¶ 10 of HRG. EX. 3, and attachments K-L to said Exhibit.)

25. To date, neither Chattaco nor Harry Thompson has paid back any of the Thompson investors’ \$45,000 principal investment despite numerous demands they have made to Harry Thompson since 2013. All they have received from Harry Thompson every time they reached him by phone is one excuse after another as to why they were not getting their money back or what they understood they had been sold. (¶ 11 of HRG. EX. 3).

26. In June 2014, the Thompson investors filed, through counsel, two (2) lawsuits - one (1) lawsuit seeking \$20,000, and the other seeking \$25,000 - alleging breach of contract against Chattaco with the Hamilton County (Tennessee) General Sessions Court, due to the failure of Chattaco to pay the February and June 2012 promissory notes (Case Nos. 14-GS-7018 and 7020). In or about January 2015, Harry Thompson, as President of Chattaco, signed a Settlement Agreement acknowledging Chattaco’s breach of contract under both of these Promissory Notes. Chattaco also agreed that if it did not

pay on time and in full according to an agreed schedule that judgments could be entered against Chattaco in the amount of \$45,000, and that these investors could thereafter proceed with execution of Chattaco's available assets to satisfy said Judgments. (§§ 24-25 of Amended NOHC; §§ 24-25 of Respondent Thompson's Answer; § 12 of HRG. EX. 3; Administrative Judge Cambron's Order Granting Motion to Take Administrative Notice of Adjudicative Facts, entered September 6, 2018).

27. Chattaco made no payments pursuant to the Settlement Agreement it entered into with the Thompson investors, and consequently, on December 14 and 15, 2015, the Hamilton County General Sessions Court entered two (2) Agreed Judgments (one for each Case No. listed above) whereby the Thompson investors were awarded \$20,000 and \$25,000 in Judgments against Chattaco. (§ 13 of HRG. EX. 3; Administrative Judge Cambron's Order Granting Motion to Take Administrative Notice of Adjudicative Facts, entered September 6, 2018.)

MR. HIPPS' INVESTMENT

28. Following up on Jeff Thompson's referral, Harry Thompson called Mr. Hipps in or about May 2012, and in or about late May or early June 2012, Harry Thompson sent Mr. Hipps a Proposal from Chattaco, requesting therein that Mr. Hipps invest \$25,000 in Chattaco for six (6) months. On June 6, 2012, Mr. Hipps sent Chattaco his investment check of \$25,000 and on June 11, 2012, Thompson executed a \$25,000 promissory note on behalf of Chattaco made payable to Mr. Hipps, due on or before December 15, 2012. (§ 4 of HRG. EX. 4, and attachments A-C to said Exhibit.)

29. Although Harry Thompson promised to send Mr. Hipps a copy of a well assignment promptly after this investment, Mr. Hipps did not receive it until March 2014 – twenty-one (21) months after making the investment. Further, although Harry Thompson

offered Mr. Hipps a 6% working interest in certain Magoffin County, Kentucky natural gas wells during their conversations in May 2012, when the actual assignment was received by Mr. Hipps in early March 2014, all Chattaco granted Mr. Hipps was a 3.5% interest in the Robert Slusher Well No. 1. Mr. Hipps received only one (1) \$500 check from Chattaco toward his working interest in this well dated March 2, 2014, and has never received his \$25,000 outstanding principal investment back, despite numerous demands. (¶¶ 5-6 of HRG. EX. 4, and attachments D-E to said Exhibit.)

30. In June 2014, Mr. Hipps filed a lawsuit alleging breach of contract against Chattaco with the Hamilton County General Sessions Court, due to the failure of Chattaco to pay the June 2012 promissory note. On December 7, 2015, Mr. Hipps obtained an Agreed Judgment against Chattaco in the Hamilton County General Sessions Court in the amount of \$25,000. To date, Chattaco has paid nothing towards Mr. Hipps' Judgment. (¶ 29 of Amended NOHC; ¶ 29 of Respondent Thompson's Answer; ¶ 7-8 of HRG. EX. 4, and attachments F-G of said Exhibit; Administrative Judge Cambron's Order Granting Motion to Take Administrative Notice of Adjudicative Facts, entered September 6, 2018).

MR. WHITT'S INVESTMENT

31. At some point in or about January 2013, Harry Thompson emailed to Mr. Whitt a "Proposal" and accompanying three (3) year "Cash Flow Pro Forma" document regarding Mr. Whitt's proposed \$27,500 investment, reflecting that the Phyllis Blair Well No. 2 natural gas well was operating and would be producing 1,500 mcf per month for the first year (or 50 mcf per day). This Cash Flow Pro Forma also stated that as investor, Mr. Whitt should receive 25% of the \$41,820 projected annual net revenue of this well, or an annual amount of \$10,455 for the first year. (¶ 5 of HRG. EX. 5, and attachment A to said Exhibit.)

32. On or about January 22, 2013, Mr. Whitt sent his investment check of \$27,500 to Chattaco, and executed a letter agreement, which Harry Thompson countersigned for Chattaco. According to this letter agreement, Chattaco agreed to pay Mr. Whitt the aforementioned royalty of 25% of the net revenue of the Gary & Phyllis Blair No. 2 well until his \$27,500 investment was paid in full, and thereafter, a royalty of 12.5% of the revenue produced by the well. On January 18, 2013, Harry Thompson executed a formal Assignment for filing with the Magoffin County, Kentucky Clerk's Office, assigning to Mr. Whitt a 12.5% working interest in the Phyllis Blair Well No. 2, located in Magoffin County, Kentucky . (§ 6 of HRG. EX. 5, and attachments B-D to said Exhibit.)

33. Between April 2013 and early February 2014, Mr. Whitt received a total of four (4) checks totaling \$1,235.36 from Chattaco, representing royalty payments for the months of January through August 2013. Through the present, neither Chattaco nor Harry Thompson has sent Mr. Whitt any further monthly royalty payments than those four (4) checks, nor any return of his \$27,500 principal investment, despite numerous demands Mr. Whitt has made to Harry Thompson since the spring of 2014. The only explanations Mr. Whitt has received every time he reached Harry Thompson by phone is one excuse after another as to why Mr. Whitt was not getting his money back or what he had been sold. (§§ 7-8 of HRG. EX. 5, and attachments E-G of said Exhibit.)

34. After the spring of 2014, when Mr. Whitt realized Harry Thompson was avoiding and not returning his phone calls and was not going to send any further monthly royalty payments beyond the August 2013 payment, and after Mr. Whitt realized that neither Thompson nor Chattaco was going to return this investor's \$27,500 principal investment, Mr. Whitt assumed his investment was a loss. Even though Mr. Whitt did receive the \$1,235.36 in sporadic royalty payments detailed above for the eight (8) months

of January-August 2013, those monthly amounts did not come close to the projected \$10,455 in annual revenue set out in Chattaco's Cash Flow Pro Forma for the first year, which Harry Thompson sent to Mr. Whitt. Mr. Whitt began receiving intermittent monthly payments of royalties from Chattaco beginning in January 2013, which continued through January 2014, totaling \$1,235.56. After August 2013, Mr. Whitt called Thompson and his call was never returned. Consequently, by late 2013, Mr. Whitt assumed the remainder of his investment was a loss, and he never received any further royalty payments or the return of his \$27,500 principal investment. (¶ 9 of HRG. EX. 5, and attachment A to said Exhibit.)

RESPONDENT'S ACTIONS AND THEIR USE OF THE INVESTMENT FUNDS

35. During all times relevant, Respondent Thompson and his son, and Eric J. Thompson were the only authorized signers as to Chattaco's SunTrust business account, account number ending with -1431, and Eric Thompson is listed as Vice President of Chattaco within all Tennessee Corporation Annual Report Forms filed by Chattaco with the Tennessee Secretary of State. (Nos. A.6 and A.12 of Respondent Thompson's June 23, 2018 Responses to Petitioner's First Set of Requests for Admissions).

36. Beginning in the first quarter of 2011 through the first quarter of 2016, Respondent Thompson and his son Eric J. Thompson paid themselves a total of \$491,367.21 from Chattaco's SunTrust business bank account ending in -1431. (Nos. A.14 -A.34 of Respondent Thompson's June 23, 2018 Responses to Petitioner's First Set of Requests for Admissions; testimony of Respondent Thompson at Tr. 34, l. 25, Tr. 35, l. 1-21; HRG. EX. 6, PDF scans contained therein captioned "Checks Acct 1431," "Checks Acct 1431 2014thru2016," and "Statements.")

37. After reviewing eleven (11) checks written from Chattaco's business bank account ending in -1431 by Respondent Thompson to himself between the first quarter of

2011 through the first quarter of 2016 (some made payable to “cash” and almost all stating “cash withdrawal” on the reverse side), none of these checks included any notation on the memo line indicating that these checks were written for “services, labor and operational expenses” as Respondent Thompson claimed in his Responses to Petitioner’s First Set of Requests for Admission. There are hundreds of additional checks written from Chattaco’s business bank account ending in -1431 made payable to Respondent Thompson and his son Eric during the relevant period for cash, which contain no notations on the memo line. (testimony of Respondent Thompson at Tr. 36, l. 15-25, through Tr. 41, l. 1-14; HRG. EX. 6, PDF scans contained therein captioned “Checks Acct 1431,” “Checks Acct 1431 2014thru2016.”)

38. Instead of utilizing all of his investors’ funds from the Chattaco business bank account ending in -1431 for legitimate oil and gas business purposes as his investors expected and his fiduciary duties to such investors required, during this time frame, in addition to the \$491,367.21 in checks written to himself and to his son Eric J. Thompson from this account set out above, Respondent Thompson used approximately another \$161,000 out of this account to fund his or his family members’ personal expenses, and to fund his own personal lifestyle via ATM cash withdrawals, check card purchases, and point of sale debit transactions, including, but not limited to, the following illustrative examples:

Per the January 31, 2011 Bank Statement

- (a) \$700 -- Cash ATM withdrawals (1/3/11 & 1/5/11);
- (b) \$136.69 – Publix Supermarket Point of Sale Debit (1/3/11);
- (c) \$500 -- Cash ATM withdrawal (1/13/11);
- (d) \$400 -- Cash ATM withdrawal (1/19/11);
- (e) \$500 -- Cash ATM withdrawal (1/24/11);
- (f) \$216.61 -- Publix Supermarket Point of Sale Debit (1/31/11).

Per the July 31, 2012 Bank Statement

- (a) \$100 -- Cash ATM withdrawal (7/2/12);

- (b) \$500 -- Cash ATM withdrawal (7/9/12);
- (c) \$100 -- Cash ATM withdrawal (7/18/12);
- (d) \$120 -- Cash ATM withdrawal (7/18/12);
- (e) \$621 -- Bi-Lo Supermarket Point of Sale Debit (7/19/12);
- (f) \$102 -- Publix Supermarket Point of Sale Debit (7/24/12).

Per the April 30, 2013 Bank Statement

- (a) \$400 -- Cash ATM withdrawal (4/8/13);
- (b) \$200 -- Cash ATM withdrawal (4/11/13);
- (c) \$162.50 -- Publix Supermarket Point of Sale Debit (4/16/13);
- (d) \$326.50 -- Wal Mart Point of Sale Debit (4/22/13);
- (e) \$200 -- Cash ATM withdrawal (4/29/13);
- (f) \$200 -- Cash ATM withdrawal (4/30/13);
- (g) \$112 -- Bi-Lo Supermarket Point of Sale Debit (4/16/13).

(HRG. EX. 6, PDF scan contained therein captioned "Statements," pp. 3 and 4 of 165 (Jan. 31, 2011 Statement); pp. 16 and 18 of 165 (July 31, 2012 Statement); pp. 41 and 42 of 165 (April 30, 2013 Statement); HRG. EX. 8; testimony of Investigator Eddie Davis at Tr. 67, l. 1-17, Tr. 74 -76, l. 1-24.)

39. Out of the total of approximately \$1,734,000 which the Chattaco Sun Trust Bank business account records (account ending in -1431) reflected was deposited from investors and all sources (excluding wire transfers) during the relevant period of time, Respondents are given credit for a total of \$195,943.26 insofar as this amount represented Respondents' own deposits (from sources such as 'Cash;' the "Harlis Trust" a trust which Respondent Thompson serves as Trustee; Northgate Title Escrow – a Chattanooga title/real estate closing company; several title loan companies; and Respondent Thompson himself). This leaves in excess of \$1,500,000 in such check deposits from investors during the relevant period of time. (HRG. EX. 8; testimony of Investigator Eddie Davis at Tr. 67, l. 1-17.)

40. In addition to the approximate \$1,500,000 in check deposits from investors between early 2011 and early 2016 that Respondents Thompson and Chattaco received

according to HRG. EX. 8, these Respondents also received at least \$413,000 in wire transfer deposits from the same investors identified in HRG. EX. 8. Some of the representative wire transfer deposits received in the Chattaco Sun Trust Bank business account (account ending in -1431) benefiting these Respondents from these specific investors during the relevant period were originated as follows:

Name of Investor	Amount	Date Wire Sent
Gayle or Mary Worf	\$60,000	5/6/11
Malcolm Kanan Trust	\$146,500	6/15/11
Gayle or Mary Worf	\$50,000	7/29/11
Gayle and Mary Worf	\$25,000	10/31/11
Hollywood Body Laser Center (the Kings)	\$10,000	2/2/12
Esthetic Laser Clinic (the Kings)	\$10,000	2/2/12
Aaron and Karina Lubowitz	\$46,500	3/25/13
Gayle or Mary Worf	\$25,000	9/26/13
Gayle and Mary Worf	\$15,000	12/19/13
Gayle and Mary Worf	\$25,000	2/5/16

(HRG. EX. 6, PDF scan contained therein captioned “Wire Transfers,” pp. 3, 4, 6, 10, 15, 16, 35, 57, 72, & 117 of 117; HRG. EX. 9; testimony of Investigator Eddie Davis at Tr. 69, l. 13-16.)

41. Chattaco and Respondent Thompson did not inform these investors that there was substantial risk involved in investing in this oil and gas scheme. At the time these investments were made, these Respondents did not inform the investors that many of the natural gas wells regarding which Chattaco held leasehold interests in Magoffin County, Kentucky, were not producing any gas, or that such wells’ production was substantially reduced. (HRG. EX. 7, Certified copies by Kentucky Department for Natural Resources of Certain Magoffin County Well Production by Permit pages printed December 12, 2017, p. 1 [after certification page] (Bryan and Ida Arnett Well No. 1), p. 2 (Robert Keeton Well

No. WO-25), p. 3 (Robert Slusher Well No. 1), p. 4 (Gary and Phyllis Blair Well No. 2), p. 5 (Gary and Phyllis Blair Well No. 1).

42. Chattaco and Harry Thompson did not inform the investors that there were considerable price risks involved due to the highly volatile relationship between the supply of oil and gas and the demand for energy, that the available geological information was negative as to production for these wells in Magoffin County, Kentucky, and that there were possibly immense costs associated with ongoing operations, such as expensive equipment for hauling, storage, and drilling, and costly insurance. HRG. EXS. 1, ¶ 7 (Affidavit of Jeannie King); 2, ¶ 6, and Attachment B to this Exhibit (Affidavit of Troy J. Grice); 3, ¶ 4 (Affidavit of Jeff Thompson); 4, ¶ 3 (Affidavit of Michael Hipps); and testimony of Investigator Eddie Davis at Tr. 56, l. 18-25; Tr. 57, l. 1.)

43. During the period of time between 2011 and 2014 in which these, and additional persons invested in Chattaco, Harry Thompson intentionally misrepresented facts to these investors regarding the production of the natural gas wells regarding which Chattaco held leasehold interests in Magoffin County, Kentucky, by substantially inflating the actual current production figures according to the most-recent data for these wells maintained by the Kentucky Department of Natural Resources' Division of Oil and Gas. By considerably overstating the actual production data for these wells, Thompson's representations to these investors that they could earn huge annual returns by investing in Chattaco – such as up to \$15,000 per year – were false and misleading. (HRG. EX. 7).

44. For example, in April 2013, Harry Thompson provided Mr. Grice with Cash Flow Pro Forma documents which indicated a production estimate for the first year after Mr. Grice's investment of 2100 mcf per month for Well No. 1 on the Bryan and Ida Arnett farm in Magoffin County, Kentucky, and estimated annual revenue to Mr. Grice

from the well of \$14,937. In truth and in fact, the most-recent production data for this well maintained by the Kentucky Department of Natural Resources' Division of Oil and Gas reflects that the well produced 605 million cubic feet by the end of 2010, and has produced no gas at all since 2010. (HRG. EX. 7, p. 1 [after certification page]; testimony of Investigator Eddie Davis at Tr. 61, l. 5-25; Tr. 62, l. 1-4.)

45. Further, according to the Kentucky Department of Natural Resources' Division of Oil and Gas' records, Well No. 1 on the Robert Slusher farm, regarding which Chattaco gave Mr. Hipps an assignment in March 2014, is not a natural gas well as represented by Harry Thompson in May 2012. Instead, this is an oil well which, from January 2010 through the end of 2011, produced only 63 barrels through the end of 2011. From 2012 through December 12, 2017 (the date this production page was printed), this well produced no oil. In May or early June 2012, Thompson gave Mr. Hipps the same type of unrealistic proposal and Cash Flow Pro Forma Documents as were given to Mr. Grice, since Mr. Hipps was told he would receive approximately \$750 per month for the first year in royalty revenue. (HRG. EX. 7, p. 3 [after certification page]; HRG. EX. 4, ¶¶ 3 & 4; testimony of Investigator Eddie Davis at Tr. 62, l. 19-25; Tr. 63, l. 1-16.)

46. In addition, although Boulter (on behalf of Harry Thompson) told Ms. King in or about January or February 2012 to expect a return of approximately \$1,500 per month on the Kings' \$20,000 investment, these investors' assignment in Well No. WO-25 on the Robert Keeton farm could not reasonably be expected to generate anything close to that rate of return. According to the Kentucky Department of Natural Resources' Division of Oil and Gas' records, this is because that well has had no production whatsoever between 2006 through December 12, 2017 (the date this production page was printed). Moreover, the Gary & Phyllis Blair Well No. 2 has produced no gas at all since the end of 2010

according to the Kentucky Department of Natural Resources' Division of Oil and Gas, from which Mr. Whitt could earn any royalty, or anything close to an amount of \$10,455 in royalties for the first year after his January 2013 initial investment in this well, projected by Harry Thompson. (HRG. EX. 7, pp. 2 and 4 [after certification page]; HRG. EX. 1, ¶ 4; HRG. EX. 5, ¶ 5; testimony of Investigator Eddie Davis at Tr. 62, l. 19-25; Tr. 63, l. 1-16.)

ANALYSIS AND CONCLUSIONS OF LAW

1. In accordance with Tenn. Comp. R. & Regs. 1360-04-01-.02(7) and 1360-04-01-.15(3), the Petitioner has proven by a preponderance of evidence that the facts alleged in the February 16, 2018, AMENDED NOHC pertaining to Respondents Thompson and Chattaco are true and that the issues raised therein should be resolved in its favor.

2. Tenn. Code Ann. §§ 48-1-102(3), (4)(A), (13)(A)(iii), & (14) (2010 & 2012 Supp.) provide, in pertinent part:

(3) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in, or into this state. A partner, officer, director or manager of a broker-dealer, or a person occupying similar status or performing similar functions, is an agent only if such person otherwise comes within this definition or receives compensation specifically related to purchases or sales of securities from, in or into this state. "Agent" does not include such other persons not within the intent of this subdivision (3) as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors[;]

(4) "Broker-Dealer" means any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities. "Broker-Dealer" does not include:

(A) Issuers, except to the extent provided in § 48-1-110(f)[;]

(13)(A) "Issuer" means every person who issues any security, except that:

...

(iii) With respect to a fractional undivided interest in oil, gas, or other mineral rights, "issuer" means the owner of such right or of an

interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of sale.

(14) "Person" means a natural person, a sole proprietorship, a corporation, a partnership, an association, a limited liability company, a joint-stock company, a trust, a governmental entity or agency, or any other unincorporated organization[.]

3. Tenn. Code Ann. §§ 48-1-110(f)(1) & (2) (2010 & 2012 Supp.) provide, in pertinent part:

(f)(1) Any person who is included in the definition of "issuer" by virtue of § 48-1-102(13)(A)(iii) shall register as an issuer-dealer unless either:

(A) Such person sells less than one hundred thousand dollars (\$100,000) per year in undivided fractional interests in any twelve-month period; or

(B) Such person contributes money or services for lease acquisition and drilling or mining activities on property covered by the undivided fractional interests in proportion to the person's interest in the proceeds from such activities on the same basis as all purchasers of undivided fractional interests. For purposes of this provision, services shall be valued at the fair market value of similar services and at competitive rates, and such value shall be established prior to the sale of any interests.

(2) An issuer-dealer is not deemed to be a "broker-dealer" and is not subject to regulation other than as provided by this subsection (f) and rules permitted hereby so long as its securities business is restricted to the sale of undivided fractional interests.

4. Tenn. Code Ann. § 48-1-102(17)(A) (2010 & 2012 Supp.), defines a security as:

... any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement contract, as defined in former § 56-50-102, or any fractional or pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or

participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

5. Tenn. Code Ann. §§ 48-1-109(a), (b), & (e) (2010 & 2012 Supp.) provide, in pertinent part:

(a) It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part...

(b) It is unlawful for any broker-dealer to employ an agent to transact business as an agent unless the agent is registered under this part...

...

(e) The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

6. Tenn. Code Ann. §§ 48-1-121(a), (b), (c) & (d) (2010 & 2012 Supp.) provide:

(a) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:

- (1) Employ any device, scheme, or artifice to defraud;
- (2) Make any untrue statement of a material fact or 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) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this state, to:

- (1) Employ any device, scheme, or artifice to defraud the other person;
- (2) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

- (3) Take or have custody of any securities or funds of any client except as the commissioner may by rule permit or unless the person is licensed as a broker-dealer under this part.

(c) It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this part, 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.

(d) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed five thousand dollars (\$5,000) per violation.

7. During all relevant times, the promissory notes and the certificates of interest or participation (assignments and letter agreements) which Harry Thompson and Chattaco sold in an oil, gas, or mining title or lease, or in payments out of production under such a title or lease, constitute securities pursuant to Tenn. Code Ann. §§ 48-1-102(17)(A) (2010 & 2012 Supp.) (Testimony of Investigator Eddie Davis at Tr. 51, l. 2-13.)

8. Chattaco and Harry Thompson acted as issuers pursuant to Tenn. Code Ann. § 48-1-102(13)(A)(iii) (2010 & 2012 Supp.), in that these persons issued securities in the way of Chattaco's promissory notes and assignments of fractional undivided interests of oil, gas, or other minerals rights, and given that Thompson and Chattaco were the owners of such rights which created fractional interests therein for the purposes of sale. (Testimony of Investigator Eddie Davis at Tr. 51, l. 14-25; Tr. 52, l.1-2.)

9. Chattaco sold more than \$100,000 per year in undivided fractional interests in oil, gas, or other mineral interests every year between 2011 and 2015, and did not contribute money or services for lease acquisition, drilling, or mining activities on the properties in Magoffin County, Kentucky, in proportion to its interest in the proceeds from these oil and gas activities on the same basis as all purchasers of undivided fractional

interests. During this period, Chattaco sold such interests to at least twenty-five (25) individuals and entities that invested more than \$1,900,000. (Testimony of Investigator Eddie Davis at Tr. 52, l. 3-25; Tr. 53, l. 1-5; Tr. 67, l. 1-17; HRG. EX. 8; HRG. EX. 6, PDF scans contained therein captioned "Deposits Acct 1431," and PDF scan contained therein captioned "Wire Transfers," pp. 3, 4, 6, 10, 15, 16, 35, 57, 72, & 117 of 117; HRG. EX. 9.)

10. Boulter acted as an agent of Harry Thompson and Chattaco pursuant to Tenn. Code Ann. § 48-1-102(3) (2010 & 2012 Supp.), given that he represented Thompson and Chattaco in effecting or attempting to effectuate sales of securities from Tennessee, given that Respondent Thompson wrote, and Boulter received at least six (6) commission checks from Chattaco's SunTrust business bank account ending in -1431 totaling \$11,500 from Chattaco between March 2013 and April 2014, based on Chattaco's sales of natural gas assignments to several investors referred to Harry Thompson by Boulter. (Testimony of Respondent Thompson at Tr. 41, l. 15-23; Tr. 42, l. 1-5.)

11. Given that Harry Thompson and Chattaco did not register with the Tennessee Securities Division as issuer-dealers during all relevant times, in violation of the requirement set out in Tenn. Code Ann. § 48-1-110(f)(1) (2010 & 2012 Supp.), they are not entitled to rely on the language within § 48-1-110(f)(2) which states that issuer-dealers are not deemed to be broker-dealers. Therefore, both Harry Thompson and Chattaco acted as unregistered broker-dealers pursuant to Tenn. Code Ann. § 48-1-102(4)(A) (2010 & 2012 Supp.), since, as set forth above, they engaged in the business of effecting transactions in securities for the accounts of the above five (5) investors, and for the accounts of many additional investors.

12. The facts as proven above demonstrate that Respondents Harry Thompson and Chattaco employed Boulter as their unregistered agent in transacting securities

business from Tennessee, in that Harry Thompson compensated Boulter from March 2013 through April 2014 with six (6) checks totaling \$11,500, representing commissions paid on Chattaco's sales of natural gas and oil assignments to several investors referred to Harry Thompson by Boulter. These actions on behalf of Respondents Harry Thompson and Chattaco are in violation of Tenn. Code Ann. § 48-1-109(b) (2010 & 2012 Supp.).

13. Respondents Harry Thompson and Chattaco, in connection with the offer and sale of securities to the above investors set forth in at least the above six (6) transactions, omitted material facts necessary to make the marketing statements which were made, in the light of the circumstances under which they were made, not misleading by failing to disclose to the above investors the substantial risk involved in investing in this oil and gas scheme - that many of the natural gas and oil wells regarding which Chattaco held a leasehold interest in Magoffin County, Kentucky, were not producing any natural gas or oil between 2008 and 2015, or that such wells' production was substantially reduced. Moreover, these Respondents did not warn the investors that there were considerable price risks involved due to the highly volatile relationship between supply of oil and gas and demand for energy, that the available geological information was negative as to production for these wells in Magoffin County, Kentucky, and that there were possibly immense costs associated with ongoing operations. These omissions on the part of Respondents Thompson and Chattaco have violated Tenn. Code Ann. § 48-1-121(a)(2) (2010 & 2012 Supp.).

14. Respondents Thompson and Chattaco, in connection with the offer and sale of securities to the above investors set forth in at least the above six (6) transactions, made untrue statements of material fact by misrepresenting the actual current production figures for the subject wells in Magoffin County, Kentucky according to the most-recent data for

these wells maintained by the Kentucky Department of Natural Resources' Division of Oil and Gas. By substantially overstating the actual production data for these wells within the Pro Forma materials provided to these investors, Harry Thompson's representations to these investors that they could earn huge annual returns by investing in Chattaco – such as up to \$15,000 per year – were false and misleading. Thompson's and Chattaco's actions in this regard have violated Tenn. Code Ann. § 48-1-121(a)(2) (2010 & 2012 Supp.). (HRG. EX. 2, ¶ 5 and Attachment A to said exhibit; HRG. EX. 5, ¶ 5 and Attachment A to said exhibit.)

15. Respondents Thompson and Chattaco, in connection with the offer and sale of securities to the above investors set forth in at least the above six (6) transactions, employed devices, schemes, or artifices to defraud by affirmatively stating that investments in Chattaco's oil and gas operation involved minimal or no risk, or was a "slamdunk." These Respondents' actions in employing such devices, schemes, or artifices to defraud, have violated Tenn. Code Ann. § 48-1-121(a)(1) (2010 & 2012 Supp.).

16. Respondents Thompson and Chattaco also committed acts which deceived and operated as a fraud upon all of the investors who invested in this scheme from 2011 through early 2016 by informing them that Chattaco would use the investment proceeds to "rework" the wells, or for "fracking" to create conditions to allow natural gas or oil to flow more freely, while in truth and in fact, from 2011 through early 2016, out of the approximate \$1,900,000 deposited into Chattaco's business account by investors (including wire transfers), Harry Thompson paid himself and his son, Eric Thompson, using investor funds in the approximate amount of \$650,000 from Chattaco's SunTrust business account via checks, money orders, bank counter withdrawals and transfers to other accounts, ATM withdrawals, and check card/point of sale debit card purchases, to pay for

his or his family members' personal expenses, and to fund his own personal lifestyle. These actions committed by Thompson and Chattaco have violated Tenn. Code Ann. § 48-1-121(a)(3) (2010 & 2012 Supp.)

17. Respondents appear to have asserted an affirmative defense under TENN. R. CIV. P. 8.03 by contending that the money that Chattaco sent from its SunTrust Business bank account (ending in -1431) during the relevant period to an entity named "Nu Era Energy, LLC" and the allegations that are made within what is claimed to be pending litigation in Kentucky trial court captioned *Miller Supply of Ky., Inc., v. NuEra Energy, LLC*, No. 17-CI-105 (Floyd Circuit), bear upon the Petitioner's allegations of securities fraud against them. Essentially, Respondents are asserting a new allegation that seeks to avoid liability as to the securities fraud violations pursuant to Tenn. Code Ann. § 48-1-121, because of a legally sufficient excuse. *See Thompson, Breeding, Dunn, Creswell & Sparks v. Bowlin*, 765 S.W.2d 743, 744 (Tenn. Ct. App. 1987) ("[a]n affirmative defense is one that wholly or partly avoids the cause of action asserted by the preceding pleading by new allegations that admit part or all of the cause of action, but avoids liability because of a legally sufficient excuse, justification, or other matter negating the alleged breach or wrong.")

18. To the extent that Respondents are asserting an affirmative defense, their argument fails because they have failed to meet their burden of proof. The appellate courts of Tennessee are clear in holding that "the burden of proving an affirmative defense is on the party asserting it." *Tennessee Farmers Mut. Ins. Co. v. Farrar*, 337 S.W.3d 829, 837 (Tenn. Ct. App. 2009). Here, the burden of proving that Chattaco's payments to NuEra Energy which were allegedly misappropriated or converted out of NuEra's bank accounts according to Harry Thompson, shifts to Respondents. As a threshold matter, the proffered

evidence is not relevant under TENN. R. EVID. 401, and has no bearing on whether Respondents made misrepresentations to, and perpetrated frauds on investors regarding the questions of the riskiness of the investment scheme, the utilization of investor funds for Respondent, and the projected returns and repayment of principal. Chattaco is not a party to the Kentucky trial court litigation, and there appear to be no claims in the lawsuit papers that any alleged conversion or misappropriations out of the accounts of NuEra Energy prevented Chattaco from meeting its obligations under the promissory notes Chattaco entered into and in paying the projected returns to investors according to the terms of the Pro Forma documents Chattaco provided.

19. In *Johnson v. John Hancock Funds*, 217 S.W.3d 414, 428 -29 (Tenn. Ct. App. 2006), the Court of Appeals concluded that when a broker or financial advisor is providing financial or investment advice, he or she is required to provide the utmost good faith, loyalty, and honesty toward the client. The Court went on to conclude that said broker or financial advisor is required to disclose facts that are material to the client's decision making. Under the facts of the *Johnson* case, the Court ultimately held that he had not met his disclosure obligations to his investment client, and that generally, such a professional has not discharged their fiduciary duties to the client where their investor client losses which resulted from the risky nature of the investment scheme occurred because they (as did Respondents in this case), represented that the investment was safe. (Emphasis added). While Harry Thompson may not have held himself out as a securities professional overtly, under the facts of this case, he was acting as an unregistered broker when he provided advice to his investment clients herein regarding investing in his company. He has breached that duty of utmost good faith, loyalty, and honesty toward his clients, based on the foregoing facts.

20. In *U.S.S.E.C. v. Zada*, 787 F.3d 375 (6th Cir. 2015), the Sixth Circuit found that Zada lured many wealthy investors by promising large returns through touting his “claimed” connections with royalty in Saudi Arabia - indicating that he would combine their money with his to make large purchases of oil that would be stored in offshore tankers. Zada told his investors that they could expect returns up to 40% in as little as 3 months, giving the investors promissory notes. However, he used the investments largely (as is the case herein) to pay his personal expenses (including his personal credit card bills). In affirming the District Court’s civil penalty and disgorgement order of over 56 million against Zada, the Sixth Circuit also upheld the conclusions that he had engaged in multiple instances of securities fraud. The appellate court found the fact that the SEC alleged he had made misrepresentations to 60 investors but only offered testimony or affidavits from only 10 did not defeat the securities fraud claim, reasoning “[t]o establish Zada’s liability under the Securities Acts, the SEC was not required to offer testimony from each of Zada’s victims; instead, it was required simply to show that Zada made misrepresentations. *Id.* at 379-382.

21. The Petitioner has shown, by a preponderance of the evidence, that the multiple violations of Tenn. Code Ann. §§ 48-1-109(a) & (b), and 48-1-121(a)(1)-(a)(3) (2010 & 2012 Supp.) committed by Respondents Thompson and Chattaco provide adequate grounds for the entry of an Order imposing civil penalties against them.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that **CIVIL PENALTIES are ASSESSED** against Respondents Harry Thompson and Chattaco jointly and severally in **the total amount of \$162,000**, pursuant to Tenn. Code Ann. §§ 48-1-109(e) and 48-1-121(d) (2010 & 2012 Supp.), calculated as follows according to the cited Counts within the Petitioner’s AMENDED NOHC:

Count Two – Thompson’s and Chattaco’s Transacting Securities Business as Unregistered Broker-Dealers in Violation of the Act

a) for Thompson’s and Chattaco’s actions in transacting at least six (6) sales of securities in the form of undivided fractional interests in oil and gas rights and promissory notes to the above five (5) investors as unregistered broker-dealers during the relevant period of time, in violation of Tenn. Code Ann. § 48-1-109(a) (2010 & 2012 Supp.), as set forth in Count Two above, a civil penalty of \$5,000 for each of the six (6) sales of securities, or **a sub-total of \$30,000 as to this Count**, pursuant to Tenn. Code Ann. § 48-1-109(e) (2010 & 2012 Supp.);

Count Three – Thompson’s and Chattaco’s Actions in Employing Boulter as an Unregistered Agent in Violation of the Act

b) for Thompson’s and Chattaco’s actions in compensating Boulter as their unregistered agent from March 2013 through April 2014 with six (6) checks totaling \$11,500, representing commissions paid on Chattaco’s sales of natural gas assignments to several investors referred to Thompson by Boulter, in violation of Tenn. Code Ann. § 48-1-109(b) (2010 & 2012 Supp.), as set forth in Count Three above, a civil penalty of \$1,500 for each of the six (6) commissions paid to Boulter as agent, or **a sub-total of \$9,000 as to this Count**, pursuant to Tenn. Code Ann. § 48-1-109(e) (2010 & 2012 Supp.);

Count Five – Thompson’s and Chattaco’s Commission of Securities Fraud

c) i. for Thompson’s and Chattaco’s employing devices, schemes, or artifices to defraud in connection with the offer and sale of securities to the above investors in at least the above six (6) transactions, given the statements that investments in Chattaco’s oil and gas operation involved minimal or no risk, or was a “slamdunk,” in violation of Tenn. Code Ann. § 48-1-121(a)(1) (2010 & 2012 Supp.), a civil penalty of \$5,000 for the employment of fraudulent schemes as to each of these six (6) transactions, or **a sub-total of \$30,000 as to this paragraph**, pursuant to Tenn. Code Ann. § 48-1-121(d) (2010 & 2012 Supp.);

ii. for Thompson’s and Chattaco’s actions in omitting material facts and making untrue statements of material fact in connection with the offer and sale of securities in at least the above six (6) transactions, in violation of Tenn. Code Ann. § 48-1-121(a)(2) (2010 & 2012 Supp.), a civil penalty of \$5,000 as to each of these six (6) transactions, or **a sub-total of \$30,000 as to this paragraph**, pursuant to Tenn. Code Ann. § 48-1-121(d) (2010 & 2012 Supp.);

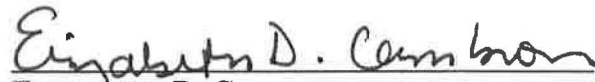
iii. for Thompson’s and Chattaco’s actions which deceived and operated as a fraud upon all of the investors who invested in this scheme from 2011 through the end of 2015 by informing them that Chattaco would use the investment proceeds to “rework” the wells, or for “fracking” to create conditions to allow natural gas or oil to flow more freely, while in truth and

in fact, from 2011 through early 2016, out of the approximate \$1,900,000 deposited into Chattaco's business account by investors, Thompson paid himself and his son, Eric Thompson, using investor funds in the approximate amount of \$650,000 from Chattaco's business account for his or his family members' personal expenses in violation of Tenn. Code Ann. § 48-1-121(a)(3) (2010 & 2012 Supp.), a civil penalty of \$1,000 per month for each continuous month over this sixty-three (63) month period (January 2011-early March 2016) in which Respondent improperly paid himself and his family from investors' funds, which operated as a fraud upon all of Chattaco's investors, or **a sub-total of \$63,000 as to this paragraph**, pursuant to Tenn. Code Ann. § 48-1-121(d) (2010 & 2012 Supp.).


The policy reason for this decision is to protect the public and investors in the State of Tennessee, consistent with the purposes fairly intended by policy and provisions of the Act.

It is so ORDERED.

This Initial Order entered and effective this the 11TH day of JAN, 2019.


ELIZABETH D. CAMBRON
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this the 11TH day of JAN, 2019.


J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE