



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2011 AUG 26 P 3:44

BUSINESS REGISTRATION DIVISION,
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of	)	SEU 2001-041 and SEU 2001-042
)	
JEFFREY R. GARMAN and	)	COMMISSIONER'S FINAL ORDER AS TO
WEBZNET, INC.,	)	JEFFREY R. GARMAN
)	
Respondents.)	

COMMISSIONER'S FINAL ORDER
AS TO JEFFREY R. GARMAN

On March 29, 2010, the duly appointed Hearings Officer submitted her Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the parties. On March 31, 2010, the Hearings Officer issued an Errata to the recommended decision.

On April 15, 2010, Jeffrey Garman ("Respondent") by and through his attorney Harry Eliason, Esq. filed written exceptions to the Hearings Officer's recommended decision. On April 28, 2010, the State of Hawai'i ("Petitioner") by and through its attorney Carolyn M. Yu, Esq. filed a statement in support of the recommended decision. Oral arguments were not requested.

Upon review of the entire record of this proceeding, including the exceptions and statement in support, the Commissioner of Securities finds and concludes that Respondent violated Hawai'i Revised Statutes §§ 485-8, 485-14, 485-25(a)(1), 485-25(a)(2) and 485-25(a)(3).

For the violations found, the Commissioner of Securities orders that the February 9, 2009 Preliminary Order to Cease and Desist be and hereby is affirmed.

DATED: Honolulu, Hawaii,

August 26, 2011


TUNG CHAN

Commissioner of Securities
Department of Commerce and Consumer Affairs



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2010 MAR 31 A 11:38

HEARINGS OFFICE

BUSINESS REGISTRATION DIVISION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of	)	SEU 2001-041 and SEU 2001-042
)	
JEFFREY R. GARMAN and	)	ERRATA
WEBZNET, INC.,)	
)	
Respondents.)	
)	
)	

ERRATA


Paragraph 4 on page 1 and paragraph 1 of page 2 of the Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order issued in the above-captioned matter on March 29, 2010 should read as follows:

On March 19, 2009, the hearing was convened by the undersigned Hearings Officer. Petitioner was represented by Carolyn M. Yu, Esq. and Respondent appeared *pro se*. As a preliminary matter, Respondent requested that the matter be postponed because he received Petitioner's exhibits in the afternoon of March 18, 2009 and he did not have time to review all the documents submitted by Petitioner, which he believed to be about 400 pages. **Petitioner** objected to **Respondent's** request.

Over **Petitioner's** objection, **Respondent's** request was granted and the hearing in this matter was reset for May 6, 2009 at 8:30 a.m.

MAR 31 2010

DATED: Honolulu, Hawaii, _____


SHERYL LEE A. NAGATA
Administrative Hearings Officer
Dept. of Commerce and Consumer Affairs



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2010 MAR 29 A 9:53

BUSINESS REGISTRATION DIVISION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

HEARINGS OFFICE

In the Matter of	)	SEU 2001-041 and SEU 2001-042
)	
JEFFREY R. GARMAN and	)	HEARINGS OFFICER'S FINDINGS OF
WEBZNET, INC.,	)	FACT, CONCLUSIONS OF LAW AND
	)	RECOMMENDED ORDER AS TO
Respondents.	)	RESPONDENT JEFFREY R. GARMAN;
	)	APPENDIX "A"
)	
)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED
ORDER AS TO RESPONDENT JEFFREY R. GARMAN

On February 9, 2009, the Commissioner of Securities, Department of Commerce and Consumer Affairs issued a Preliminary Order to Cease and Desist and Notice of Right to Hearing against Jeffrey R. Garman and Webznet, Inc.

The Office of Administrative Hearings received Jeffrey R. Garman's ("Respondent") request for hearing on February 26, 2009. No request for hearing was filed on behalf of Webznet, Inc. The matter was set for hearing and the Notice of Hearing and Pre-Hearing Conference was transmitted to the parties.

At the pre-hearing conference held on March 10, 2009, the parties agreed that the Securities Enforcement Branch, Business Registration Division, Department of Commerce and Consumer Affairs ("Petitioner") would file and send its exhibits and witness list to Respondent on or before March 16, 2009 and that the hearing would commence on March 19, 2009.

On March 19, 2009, the hearing was convened by the undersigned Hearings Officer. Petitioner was represented by Carolyn M. Yu, Esq. and Respondent appeared *pro se*. As a preliminary matter, Respondent requested that the matter be postponed because he received Petitioner's exhibits in the afternoon of March 18, 2009 and he did not have time to review all the documents submitted by Petitioner, which he believed to be about 400 pages. Respondent objected to Petitioner's request.

Over Respondent's objection, Petitioner's request was granted and the hearing in this matter was reset for May 6, 2009 at 8:30 a.m.

On May 6, 2009, July 28, 2009 and July 29, 2009 the hearing was conducted by the undersigned Hearings Officer. Petitioner was represented by Ms. Yu and Respondent was present and was represented by Harry Eliason, Esq. At the close of the hearing, the parties agreed to file written closing arguments by October 12, 2009 and Petitioner would file written rebuttal closing argument by October 26, 2009. Proposed findings of fact and conclusions of law would be filed by October 30, 2009. Petitioner filed its written closing argument on October 12, 2009. Respondent's closing brief was filed on October 14, 2009. Petitioner's rebuttal argument was filed on October 26, 2009. Petitioner filed its proposed Findings of Fact, Conclusions of Law and Recommended Order on November 2, 2009 and it is attached hereto and incorporated herein by reference as Appendix "A".

Having reviewed and considered the evidence and arguments presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT

The Hearings Officer adopts the Findings of Fact as provided in Appendix "A".

III. CONCLUSIONS OF LAW

The Hearings Officer adopts the Conclusions of Law as provided in Appendix "A".

IV. RECOMMENDED ORDER

Based on the foregoing, the Hearings Officer recommends that the Commissioner of Securities finds and concludes that Respondent violated Hawai'i Revised Statutes §§ 485-8, 485-14, 485-25(a)(1), 485-25(a)(2) and 485-25(a)(3).

For the violations found, the Hearings Officer recommends that the February 9, 2009 Preliminary Order to Cease and Desist be affirmed.

DATED: Honolulu, Hawaii, MAR 29 2010.



SHERYL LEE A. NAGATA
Acting Senior Hearings Officer
Department of Commerce
and Consumer Affairs

matter on July 29, 2009, Petitioner Securities Enforcement Branch (hereinafter "SEB"), Business Registration Division, Department of Commerce and Consumer Affairs, State of Hawaii (hereinafter "Petitioner") submits and proposes the following Findings of Fact, Conclusions of Law and Recommended Order regarding Respondents JEFFREY R. GARMAN and WEBZNET, INC.

I. INTRODUCTION

On February 9, 2009, Tung Chan, Commissioner of Securities, Department of Commerce and Consumer Affairs, State of Hawaii (hereinafter "Commissioner") issued a Preliminary Order to Cease and Desist and Notice of Right to Hearing (hereinafter "Order") against Respondents JEFFREY R. GARMAN (hereinafter "Garman") and WEBZNET, INC. (hereinafter "WEBZNET" and together with Garman, "Respondents"). Garman requested a hearing that convened on May 6, 2009 and July 28-29, 2009.

The Hearings Officer requested that Petitioner prepare and submit Proposed Findings of Fact, Conclusions of Law and Recommended Order by October 30, 2009.

Petitioner hereby submits to the Hearings Officer its Proposed Findings of Fact, Conclusions of Law and Recommended Order along with supporting citations.

II. PROPOSED FINDINGS OF FACT

1. The State of Hawaii, acting through its Office of the Commissioner of Securities, Department of Commerce and Consumer Affairs, State of Hawaii (hereinafter referred to as "Office of the Commissioner"), administers and enforces the Hawaii Uniform Securities Act, Hawaii Revised Statutes, ("HRS") chapter 485 (hereinafter referred to as "chapter 485").

2. At all times material herein, beginning May 1998 through December 31, 2000, Respondents were residents of the State of Hawaii and engaged in the below described activities or conduct in or from the State of Hawaii. See testimonies of Garman, Tom Slater, Hajjar Gibran and Skip Shigeoka. See exhibits 1a – 20, 25 – 30, 32 – 34.

3. At all times material herein, beginning May 1998 through December 31, 2000, WEBZNET's principal place of business was in the State of Hawaii. See testimonies of Garman, Tom Slater and Skip Shigeoka. See exhibits 1a – 20, 25 – 30, 32 – 34.

4. At all times material herein, beginning May 1998 through December 31, 2000, Garman was WEBZNET's sole Director, Officer and agent. See testimonies of Garman and Skip Shigeoka. See exhibits 1a – 2a.

5. At all times material herein, beginning May 1998 through December 31, 2000, Respondents offered and/or sold stock in WEBZNET and investment contracts (hereinafter collectively referred to as "securities") as defined under § 485-1(13), HRS and *State v. Hawaii Market Center, Inc.*, 52 Haw. 642, 485 P.2d 105 (1971) (hereinafter referred to as "*Hawaii Market Center*") in or from Hawaii to investors. Id.

6. At all times material herein, beginning May 1998 through December 31, 2000, Respondents established WEBZNET which received proceeds through or in connection with the offer and/or sale of stock in WEBZNET and investment contracts offered and sold to investors. See testimonies of Garman,

Tom Slater, Hajjar Gibran, and Skip Shigeoka. See exhibits 1a – 3c, 5 – 10, 13 – 17, 27 – 30, 32 and 33.

7. At all times material herein, beginning May 1998 through December 31, 2000, Respondents established and/or provided organizational structure, policies, rules, procedures, promotional materials, website access, investment account statements, and/or other information and materials regarding their securities and provided service in connection therewith, such as arranging for program meetings, collecting payments, distributing interest payments or return of principal payments, distributing account statements, giving presentations on the securities being offered, explaining procedures, and conducting client meetings. See testimonies of Garman, Tom Slater, Hajjar Gibran, and Skip Shigeoka. See exhibits 1a – 1c, 5 – 11, 19 – 20, 28 – 30 and 32.

8. At all times material herein, beginning May 1998 through December 31, 2000, the securities offered and sold by Respondents were administered and under the direction and control of Respondents. See testimonies of Garman, Tom Slater, Hajjar Gibran, and Skip Shigeoka. See exhibits 1a – 20, 25 – 30, 32 – 34.

9. At all times material herein, beginning May 1998 through December 31, 2000, Respondents obtained cashier's checks, checks and wire transfers directly or indirectly from investors who purchased their securities. See testimonies of Garman, Tom Slater, Hajjar Gibran, and Skip Shigeoka. See exhibits 2a-3c, 7, 14-16, 27-30, 32 and 33.

10. In May 1998, Respondents offered and/or sold an investment contract or “security” as defined under § 485-1(13), HRS and *Hawaii Market Center* to Maryland resident Tom Slater. See testimonies of Garman, Slater and Skip Shigeoka. See exhibits 5, 6, 7, 13 and 30.

a. Tom Slater invested \$15,000.00 with Garman in May 1998 for purchase of a municipal bond. Id.

b. Mr. Slater’s initial payment of \$15,000.00 was induced by Garman’s promises or representations which gave rise to a reasonable understanding that a valuable benefit of some kind, income or profits would result from the initial payment’s employment through Garman’s efforts. Specifically, Garman promised Mr. Slater that he would accrue 7% (seven percent) per annum or \$87.50 per month on his initial investment and that his investment would be returned after October 1, 1998. Id.

c. Mr. Slater’s initial payment was subject to the risks of Garman’s investment scheme and all or some of Mr. Slater’s initial payments were put at risk in the event that Garman’s investment scheme failed or Garman failed to follow through with his investment scheme. Id.

d. Mr. Slater had no practical or actual control over the managerial decisions and operations of Garman’s investment scheme. Id.

11. In or around July 1999, Garman offered and sold to Mr. Slater stock in WEBZNET. Id.

12. In or around July 1999, Mr. Slater invested \$10,000.00 in WEBZNET. Id.

13. In or around July 1999, Mr. Slater received a WEBZNET stock certificate for 10,000 shares in WEBZNET. Id.

14. In or around July 1999, Garman offered and sold to Fred Frost stock in WEBZNET. See testimony of Garman and Skip Shigeoka. See exhibits 5, 6, 8, 13 and 28.

15. In or around July 1999, Mr. Frost invested \$2,000.00 in WEBZNET. Id.

16. In or around July 1999, Mr. Frost received a WEBZNET stock certificate for 2,000 shares in WEBZNET. Id.

17. In or around November 29, 1999, Garman offered and sold to Mr. Frost stock in WEBZNET. Id.

18. In or around November 29, 1999, Mr. Frost invested \$20,000.00 in WEBZNET. Id.

19. In or around November 29, 1999, Mr. Frost received 20,000 shares of stock in WEBZNET. Id.

20. Between May 27, 1999 and November 24, 1999, Garman offered and sold to Michael White stock in WEBZNET. See testimony of Garman and Skip Shigeoka. See exhibit 5, 6, 13 and 29.

21. Between May 27, 1999 and November 24, 1999, Mr. White invested \$18,000.00 in WEBZNET. Id.

22. In or around July 14, 1999 Mr. White received a WEBZNET stock certificate for 8,000 shares in WEBZNET. Id.

23. In or around December 1, 1999, Mr. White received a WEBZNET stock certificate for 10,000 shares in WEBZNET. Id.

24. Between May 31, 1999 and November 30, 1999, Garman offered and sold to Robert Cauthers stock in WEBZNET. See testimony of Garman and Skip Shigeoka. See exhibit 5, 6, 9, 13 and 32.

25. Between May 31, 1999 and November 30, 1999, Mr. Cauthers invested \$10,000.00 in WEBZNET. Id.

26. In or around July 1999, Mr. Cauthers was issued WEBZNET stock for 5,000 shares in WEBZNET. Id.

27. In or around December 1999, Mr. Cauthers was issued WEBZNET stock for 5,000 shares in WEBZNET. Id.

28. Beginning January 1, 2000 and through December 31, 2000, Garman offered and sold to Hajjar Gibran four (4) investment contracts which are securities as defined under § 485-1(13), HRS and *Hawaii Market Center*. See testimonies of Garman, Mr. Gibran and Skip Shigeoka. See exhibits 10 -12, 14 – 20, 27 and 33.

29. Between January 1, 2000 and December 31, 2000, Mr. Gibran invested \$485,000.00 in Garman's securities. Id.

30. Mr. Gibran's investments were subjected to the risks of Garman's investment scheme and all or some of Mr. Gibran's initial payments were put at risk in the event that Garman's investment scheme failed or Garman failed to follow through with his investment scheme. Id.

31. Mr. Gibran's investments were induced by Garman's promises or representations which gave rise to a reasonable understanding that a valuable benefit, income or profit would result from the initial payment's employment through Garman's efforts. Id.

32. Garman offered Mr. Gibran a return on his investment that was higher than his original investment amount. Id.

33. Mr. Gibran had no practical or actual control over the managerial decisions and operations of Garman's investment scheme. Id.

34. From May 1998 through December 31, 2000, Respondents' securities were not registered with the Commissioner and were not exempt from registration. *See* testimony of Skip Shigeoka. *See* exhibit 31.

35. From May 1998 through December 31, 2000, Respondents were acting either as an issuer for their own securities or as a dealer or salesperson of the securities. *See* testimonies of Tom Slater, Hajjar Gibran and Skip Shigeoka. *See* exhibits 1a – 20, 25 – 34.

36. From May 1998 through December 31, 2000, Respondents were not registered as salespersons or dealers of securities with the Office of the Commissioner nor were Respondents exempt from registration. *See* testimony of Skip Shigeoka. *See* exhibit 31.

37. Respondents in connection with the offer, sale or purchase of securities to Mssrs. Slater, Frost, White and Cauthers in Respondents' WEBZNET securities scheme to defraud, made untrue statements of material fact or omitted 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:

a. Respondents failed to disclose Garman's Citigroup 1995 default judgment for failure to pay his Citicorp Diners Club credit card. *See* testimonies of Garman, Tom Slater and Skip Shigeoka. *See* exhibit 26.

b. Respondents falsely represented that their investment monies were invested in WEBZNET. See testimonies of Tom Slater and Skip Shigeoka. See exhibits 5 – 9, 28 – 30 and 32.

c. Respondents failed to disclose that their securities were not registered with the Office of the Commissioner and were not exempt from registration. See testimonies of Garman, Slater and Skip Shigeoka. See exhibits 28 – 31 and 32.

d. Respondents failed to disclose that they were acting either as an issuer for their own securities, as a dealer or salesperson of the securities or as an investment adviser or investment adviser representative. See testimonies of Tom Slater, and Skip Shigeoka. See exhibits 1a – 20, 25 – 34.

e. Respondents failed to disclose that they were not registered as dealers, salespersons, investment advisers or investment adviser representatives with the Office of the Commissioner nor were Respondents exempt from registration. Id.

38. Garman in connection with the offer, sale or purchase of securities to Hajjar Gibran in Garman's securities scheme to defraud, made untrue statements of material fact or omitted 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:

a. Garman falsely represented that he made "\$2 million" in the stock market. See testimony of Hajjar Gibran.

b. Garman falsely represented that he owned real estate in the State of Hawaii. See testimonies of Hajjar Gibran and Skip Shigeoka.

- c. Garman falsely represented that he sold “his ranch” on the Big Island for \$2.5 million. See testimony of Hajjar Gibran and Skip Shigeoka.
- d. Garman falsely represented that he was the trustee of his aunt’s estate and sold her house for \$250,000.00 profit. See testimony of Hajjar Gibran.
- e. Garman falsely represented that he inherited his father’s wealthy estate. Id.
- f. Garman falsely represented that he was a “NASA” engineer. Id.
- g. Garman falsely represented that he was a financial expert. Id.
- h. Garman falsely represented that he invested Mr. Gibran’s \$370,000 “offshore” or outside of the United States for tax advantage purposes in the Isle of Man. See testimony of Hajjar Gibran. See exhibits 10 – 20.
- i. Garman falsely represented that he would invest Mr. Gibran’s \$80,000 in a “Jumbo Certificate of Deposit” in the Bank of Scotland. Id.
- j. Garman failed to disclose his Citigroup 1995 default judgment for failure to pay his Citicorp Diners Club credit card. See testimonies of Garman, Hajjar Gibran and Skip Shigeoka. See exhibit 26.
- k. Garman failed to disclose that to Mr. Gibran that his investment monies were used to pay Garman’s personal living expenses and fund his securities trading accounts at Morgan Stanley and Datek brokerages. See testimonies of Garman and Hajjar Gibran. See exhibits 2a – 3c.
- l. Garman failed to disclose that he only had a high school education. See testimonies of Garman and Hajjar Gibran.

m. Garman failed to disclose that he never held any position in the securities industry as a securities dealer, salesperson, investment adviser or investment adviser representative. Id.

n. Garman failed to disclose that the securities were not registered with the Office of the Commissioner and were not exempt from registration. See testimonies of Garman, Hajjar Gibran and Skip Shigeoka. See exhibit 31.

o. Garman failed to disclose that he was acting either as an issuer for his own securities, a dealer, salesperson, investment adviser or investment adviser representative. See testimonies of Hajjar Gibran and Skip Shigeoka. See exhibits 10 – 20, 27 and 33.

p. Garman failed to disclose that he was not registered as a dealer, salesperson, investment adviser or investment adviser representative with the Office of the Commissioner nor was Garman exempt from registration. See testimonies of Garman, Hajjar Gibran and Skip Shigeoka. See exhibit 31.

39. Investors, Tom Slater, Fred Frost, Michael White, Robert Cauthers and Hajjar Gibran have not received the repayment of their investments notwithstanding demands on Respondents. See testimonies of Slater, Hajjar Gibran and all admitted exhibits.

40. From May 1998 through December 31, 2000, Respondents acted with the requisite scienter or acted with reckless disregard for the truth, when Respondents employed a device, scheme or artifice to defraud upon investors, which included but were not limited to: issuance of valueless stock certificates from WEBZNET and solicitation and sales of unregistered investment contracts or “securities” in violation

of § 485-25(a)(1), HRS. See testimonies of Garman, Tom Slater, Hajjar Gibran and Skip Shigeoka. See exhibits 5 – 20, 27 – 33.

41. From May 1998 through December 31, 2000, Respondents operated schemes to defraud investors in violation of § 485-25(a)(3), HRS. See testimonies of Tom Slater, Hajjar Gibran and Skip Shigeoka. See all admitted exhibits.

III. PROPOSED CONCLUSIONS OF LAW

Petitioner alleges in the Preliminary Order to Cease and Desist filed on February 9, 2009, that Respondents' committed or engaged in the following violations of chapter 485 when Respondents offered and sold securities to investors:

1. Respondents failed to register said securities in violation of § 485-8, HRS;
2. Respondents were not registered as securities dealers and/or salespersons in violation of § 485-14, HRS;
3. Respondents employed devices, schemes, and/or artifices to defraud in violation of § 485-25(a)(1), HRS;
4. Respondents employed devices, schemes, and/or artifices to defraud in violation of § 485-25(a)(2), HRS;
5. Respondents employed devices, schemes, and/or artifices to defraud in violation of § 485-25(a)(3), HRS.

A. INVESTORS PURCHASED SECURITIES AS A MATTER OF LAW

1. STOCKS ARE SECURITIES UNDER CHAPTER 485

WEBZNET stock offered and sold by Respondents are securities as defined under § 485-1(13), HRS.

2. INVESTMENT CONTRACTS ARE SECURITIES UNDER HAWAII MARKET CENTER

Investment contracts are securities under § 485-1(13), HRS.

In the landmark case of *State v. Hawaii Market Center, Inc.* 52 Haw. 642, 485 P.2d 105 (1971), the Hawaii Supreme Court set forth a four-prong test to determine when an investment scheme involved securities or investment contracts and fell within the purview of chapter 485. The Hawaii Supreme Court held that an investment contract is created whenever:

1. An offeree furnishes initial value to an offeror;
2. A portion of this initial value is subjected to the risks of the enterprise;
3. The furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise; and
4. The offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

Id. at 49, 485 P.2d 109.

The Hawaii Supreme Court clearly adopted this broad test for an investment contract in recognition of the remedial purpose of the state securities laws in preventing fraud and protecting the public against unsubstantial schemes. Id. The Court designed this test to protect the public against both “novel forms of investment” as well as more conventional forms of investments, and stated that the formula was to be broadly construed for these purposes. Id.

3. HAJJAR GIBRAN PURCHASED INVESTMENT CONTRACTS WHICH ARE SECURITIES UNDER CHAPTER 485

To determine whether or not investments by Hajjar Gibran are investment contracts and therefore “securities” as defined in HRS § 485-1(13), it must be

emphasized that the laws must be given broad construction for the purpose of protecting the public. *See, Hawaii Market Center*, 52 Haw. at 648. Moreover, in determining whether the investments Garman offered and sold to Mr. Gibran are investment contracts and “securities,” the focus should be on the “economic realities” of the transaction as opposed to the superficial form of the investment. *Id.* at 647.

In this case, investments by Mr. Gibran are “securities” as it is clear from the evidence presented at the hearing all four prongs set forth under *Hawaii Market Center* are present.

a) Hajjar Gibran (offeree) conveyed \$485,000 (initial value) to Garman (offeror)

The first element of the *Hawaii Market Center* four-prong test, “an offeree furnishes initial value to an offeror,” has been met since Mr. Gibran invested approximately \$485,000.00 to Garman for investment purposes.

b) A portion of Mr. Gibran’s monies were “subject to the risks of the enterprise” (Garman’s investment scheme to defraud)

An investment contract is formed when “a portion of the initial value is subject to the risks of the enterprise.” *Trivectra v. Ushijima*, 112 Haw. 90, 100, 144 P.3d 1, 11, citing *Hawaii Market Center*, 52 Haw. at 648-49, 485 P.2d at 109.

Hawaii Market Center made it clear, however, that a product’s status as a “security” did not hinge upon whether the business seeking the investment was fully capitalized. Rather, the focus is properly “on the economic realities of security transactions: that is, ‘[t]he placing of capital or laying out of money in a way intended to secure income or profit from its employment’ in an enterprise.” 52 Haw. at 647-48, 485 P.2d at 109 (quoting *Minnesota v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 177 N.W. 937, 938 (1920)). This subjection of the investor’s money to the risks of an enterprise over which he exercises no managerial control is the basic economic reality of a security transaction. *Hawaii Market Center*, at 648, 485 P.2d at 109 (citations omitted).

Under the second prong of the *Hawaii Mkt. Ctr.* test, therefore, an investment contract is formed if the capital paid into the business by investors, in order to derive income from the use of that capital in the business, is put at risk in the event the business venture fails.

Trivectra v. Ushijima, supra, at 100, 144 P.3d at 11.

Here, Mr. Gibran's \$485,000.00 total investment was placed with Garman with the intention that income, profit or other benefit would flow from its employment through Garman's efforts. The fact that Mr. Gibran exercised no managerial control over the investment decisions of his monies put his investments at risk in the event or when Garman's investment scheme failed.

c) Mr. Gibran was induced by Garman's promises or representations that he would receive a valuable benefit beyond his initial value if he invested his money in Garman's investment schemes

The evidence is clear. Mr. Gibran was induced to invest with Garman when Garman promised and made false representations that Mr. Gibran would receive a valuable benefit, profit or higher return on his investment monies beyond its initial value. For example, Garman represented to Mr. Gibran that he would "make good profits" from "daytrading" Mr. Gibran's two (2) investments totaling \$35,000.00 by "daytrading" in the volatile high tech stock market. Further, Garman represented that he would invest Mr. Gibran's \$80,000.00 in a "Jumbo Certificate of Deposit" that would make Mr. Gibran 8% (eight percent) per annum interest. Finally, Garman represented that he could place Mr. Gibran's proceeds from the sale of his home in Colorado and create an "off-shore" trust in the Isle of Man that would act as a tax shelter against capital gains taxes.

Garman's promises and representations made to Mr. Gibran gave rise to a reasonable understanding that as a result of participating in Garman's investment

scheme, Mr. Gibran would receive a valuable benefit beyond his initial investment, satisfying the third prong of the *Hawaii Market Center* test.

d) Hajjar Gibran did not have practical or actual control over Garman's investment scheme

The evidence also established that Mr. Gibran received no practical or actual control over the managerial decisions of Garman's investment schemes. In fact, Mr. Gibran repeatedly testified that he was totally unaware of where his money went once he invested his money with Garman. The evidence further established that only Garman controlled Mr. Gibran's money and was the sole signatory on the WEBZNET Morgan Stanley checking account where Mr. Gibran wired his investment monies. This allowed Garman full control over Mr. Gibran's entire \$485,000 investment and Garman's ability to spend it on himself as he wished, which Mr. Gibran could not prevent. Thus, the fourth prong of the *Hawaii Market Center* test is satisfied.

Therefore, Petitioner has established by a preponderance of the evidence that Mr. Gibran's investments with Garman constituted "investment contracts" and therefore are deemed "securities" under chapter 485. As such, these transactions are subject to regulation under chapter 485 in addition to the stock certificates issued by Respondents in WEBZNET.

B. RESPONDENTS VIOLATED HAWAII SECURITIES LAWS

1. SECURITIES REGISTRATION VIOLATIONS – § 485-8, HRS

First, as made clear, Mr. Eliason does not represent WEBZNET at all. Therefore allegations that WEBZNET violated § 485-8, HRS are conclusively proven as WEBZNET presented no defense and is in default.

A security must be registered with the Office of the Commissioner before being offered or sold, pursuant to § 485-8, HRS unless appropriately exempt from registration. It is a violation of § 485-8, HRS if any person offers to sell or sells any security that has not been registered or properly exempt from registration. This is a strict liability statute.

The evidence is clear that Respondents, through Garman, offered to sell and sold stock in WEBZNET to investors Slater, Frost, White and Cauthers between May 1998 and December 31, 1999. Stocks are securities as defined under § 485-1(13).

Moreover, the evidence is also clear that Garman offered and sold investment contracts to Hajjar Gibran. Investment contracts are securities under § 485-1(13) provided the investment scheme meets the four prong test set forth in *Hawaii Market Center*. Certainly, in Mr. Gibran's case, all 4 of his investments with Garman met the *Hawaii Market Center* 4 prong test. As such, his investments were investment contracts and securities under § 485-1(13).

None of the eleven (11) securities offered and sold by Respondents were registered with the Office of the Commissioner or appropriately exempt from registration. Therefore, Respondents violated § 485-8, HRS 11 times.

2. GARMAN'S SECURITIES OFFERED AND SOLD TO HAJJAR GIBRAN ARE NOT EXEMPT TRANSACTIONS UNDER § 485-6(9), HRS

Mr. Eliason asserts that Garman's (4) securities transactions with Hajjar Gibran are exempt from registration requirements and cites § 485-6(9), HRS as his legal basis for this proposition. For the following reasons, Garman's securities transactions with Hajjar Gibran are not exempt transactions under § 485-6(9), HRS.

§ 485-6(9), HRS states:

Any transaction pursuant to an offer to sell securities of an issuer, if the transaction is part of an issue which:

- (A) There are no more than twenty-five offerees, wherever located (other than those designated in paragraph (8)) during any twelve consecutive months;
- (B) The issuer reasonably believes that all purchases, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;
- (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and
- (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium. [Emphasis added.]

The focus on whether or not Garman's transactions with Mr. Gibran fall within the purview of § 485-6(9), HRS centers on sub-section (C) above. For Mr. Eliason to succeed in his assertion that Garman's transactions with Mr. Gibran are exempt from registration, this statute contemplates that Garman did not take or pay himself one penny as a commission, discount or paid other remuneration, in addition to complying with sub-sections (A),(B) and (D) as well. Garman received and kept 100% of Mr. Gibran's investment monies as either a commission or other remuneration. Therefore, Garman's transactions with Mr. Gibran are not exempt transactions under § 485-6(9), HRS.

Additionally, to fall within this exempt transaction category, the underlying transaction is or presumably should be a legitimate securities transaction. A policy argument against Garman having any of his securities transactions with Mr. Gibran fall under the purview of § 485-6(9) is to focus on the remedial purpose of the state securities laws to prevent fraud and to protect the public against unsubstantial schemes. *Hawaii Market Center, supra*, at 648-49, 485 P.2d 109. It would not appear that the

legislative intent in enacting chapter 485 ever contemplated providing fraudsters with a “safe harbor” by application of an exempt transaction status under § 485-6(9), HRS. To do so would defy logic and defeat the legislative intent underlying securities regulation which is to protect consumers and main street investors from fraudsters like Garman who go to the public with illegal schemes to defraud.

Unquestionably, Garman engaged in a securities scheme to defraud Mr. Gibran from the outset. Nothing that Garman represented to Mr. Gibran was truthful and it was clear from the start, Garman was unaware of chapter 485 and never intended to comply with its requirements.

Application of § 485-6(9), HRS should be reserved for those legitimate securities transactions by promoters with legitimate securities investment opportunities. Since Garman’s transactions were clearly done from the outset with fraudulent intent, as a matter of public policy, his transactions should clearly be deemed to fall outside § 485-6(9), HRS. As such, the (4) securities transactions Garman offered and sold to Mr. Gibran are not exempt transactions under § 485-6(9), HRS and hence, Garman violated § 485-8, HRS 4 times when he failed to register the securities he offered and sold to Hajjar Gibran.

3. SALESPERSON AND DEALER REGISTRATION VIOLATIONS – HRS § 485-14.

A securities dealer and/or salesperson must be registered with the Office of the Commissioner or appropriately exempt from registration before transacting securities in Hawaii under § 485-14, HRS. Said section makes it unlawful for any person to transact

business in Hawaii as a securities dealer or salesperson unless that person has been registered with the Office of the Commissioner.

Respondents' conduct in offering for sale and selling securities in the form of stock in WEBZNET to Mssrs. Slater, Frost, White, Cauthers and investment contracts to Mr. Gibran constitute the transaction of business in Hawaii as defined under chapter 485. Therefore, Respondents acted as either a securities dealer or salesperson within the meaning of §§ 485-1(2) and/or (3), HRS and hence violated § 485-14, HRS eleven (11) times for failure to register or be appropriately exempt from registration with the Office of the Commissioner.

4. AGENCY ENFORCEMENT OF HRS § 485-25(a)(1) REQUIRES SCIENTER BUT NOT FOR ENFORCEMENT OF HRS §§ 485-25(a)(2) AND (3).

Securities fraud and other similar practices are prohibited in Hawaii under § 485-25(a), HRS *et seq.* Portions of § 485-25(a), HRS were promulgated directly from Section 17(a) of the Federal Securities Exchange Act of 1933 (hereinafter "the 1933 Act") and should be interpreted, where similar, in the same manner as federal courts and the Securities and Exchange Commission have interpreted Section 17(a) of the 1933 Act.

In 2006, the Hawaii Supreme Court decided *Trivectra v. Ushijima*, 112 Haw. 90, 144 P.3d 1 (2006). In *Trivectra*, the Hawaii Supreme Court reaffirmed *Hawaii Market Center* and additionally held that in an agency enforcement action as in this case, Petitioner need only prove "scienter" of at least recklessness to establish violations alleged under § 485-25(a)(1), HRS. However, scienter is not required to be pled or proven in order to establish violations under §§ 485-25(a)(2) and (3), HRS. *Id.* at 104.

a. Securities Fraud Under § 485-25(a)(1), HRS.

A finding of recklessness is sufficient to prove a violation of § 485-25(a)(1), HRS.

Id. HRS § 485-25(a) states: “It is unlawful for any person, in connection with the offer, sale, or purchase (whether in a transaction described in section 485-6 or otherwise) of any security (whether or not of a class described in section 485-4), in the State, directly or indirectly: (1) To employ any device, scheme, or artifice to defraud.”

Here, the evidence demonstrates that Respondents’ sale of stock in WEBZNET was the device, scheme or artifice to defraud investors of their money. The WEBZNET stock certificate was the officious looking paper used to perpetrate and perpetuate Respondents’ securities scam and hide from investors Respondents’ misrepresentations and material fact omissions of the truth which was, WEBZNET was created by Garman with illegal and fraudulent intent to divest WEBZNET investors of their hard earned money.

Similarly, the evidence indicates that Garman’s transactions with Mr. Gibran were a scheme to defraud Mr. Gibran of his money. Nothing Garman represented to Mr. Gibran was truthful. Once Mr. Gibran conveyed his investment money to Garman, Garman immediately spent it on himself or lost it in the stock market.

Respondents induced investors to invest in WEBZNET stock and Garman’s investment schemes by promising investors returns on their investments which were higher than what the investors were currently receiving from commercial banks, and falsely represented that their investments would be used to create an internet eCommerce payment system, placed offshore or abroad into a “Jumbo Certificate of Deposit” in the Bank of Scotland or create a tax shelter trust in the Isle of Man amongst

other promises. Instead, the monies were used by Garman for his personal travel, fund his stock “day trading” dalliances or to pay his living expenses, all unbeknownst to the investors. Moreover, Respondents issued documents resembling bona fide stock certificates which were arguably purchased through the internet and printed copies of a “trust” instrument and gave to investors for the obvious purpose of facilitating an air of legitimacy and authenticity to Respondents’ investment schemes. Respondents’ conduct in this regard demonstrates their malicious intent in their scheme to defraud investors of their monies.

Therefore, it should be found that Respondents violated § 485-25(a)(1), HRS.

b. Securities Fraud Under HRS §§ 485-25(a)(2) and (3).

Scienter need not be pled or proven in order to establish a violation under HRS §§ 485-25(a)(2) and (3). *Id.* §§ 485-25(a)(2) and (3), HRS states: “It is unlawful for any person, in connection with the offer, sale, or purchase (whether in a transaction described in section 485-6 or otherwise) of any security (whether or not of a class described in section 485-4), in the State, directly or indirectly: (2) To 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; (3) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.”

Here, Respondents made numerous false statements and/or omissions to Mssrs. Slater, Frost, White and Cauthers, including but not limited to:

a. Respondents failed to disclose Garman’s Citigroup 1995 default judgment for failure to pay his Citicorp Diners Club credit card;

b. Respondents falsely represented that the investment monies were invested in WEBZNET;

c. Respondents failed to disclose that the securities were not registered with the Office of the Commissioner and were not exempt from registration;

d. Respondents failed to disclose that they were acting either as an issuer for their own securities, as a dealer or salesperson of the securities or as an investment adviser or investment adviser representative;

e. Respondents failed to disclose that they were not registered as dealers, salespersons, investment advisers or investment adviser representatives with the Office of the Commissioner nor were they exempt from registration.

Additionally, Garman made numerous false statements and/or omissions to Mr. Gibran, including but not limited to:

a. Garman falsely represented that he made "\$2 million" in the stock market. See testimony of Hajjar Gibran;

b. Garman falsely represented that he owned real estate in the State of Hawaii;

c. Garman falsely represented that he sold "his ranch" on the Big Island for \$2.5 million;

d. Garman falsely represented that he was the trustee of his aunt's estate and sold her house for \$250,000.00 profit;

e. Garman falsely represented that he inherited his father's wealthy estate;

f. Garman falsely represented that he was a "NASA" engineer;

- g. Garman falsely represented that he was a financial expert;
- h. Garman falsely represented that he would invest Mr. Gibran's money "offshore" or outside of the United States for tax advantage purposes in the Isle of Man;
- i. Garman falsely represented the he would invest Mr. Gibran's money in a "Jumbo Certificate of Deposit" with the Bank of Scotland;
- j. Garman failed to disclose his Citigroup 1995 default judgment for failure to pay his Citicorp Diners Club credit card;
- k. Garman failed to disclose that Mr. Gibran's investment monies were used to pay Garman's personal living expenses and fund his securities trading accounts at Morgan Stanley and Datek brokerages;
- l. Garman failed to disclose that he only had a high school education;
- m. Garman failed to disclose the he never held any position in the securities industry as a securities dealer, salesperson, investment adviser or investment adviser representative;
- n. Garman failed to disclose that the securities were not registered with the Office of the Commissioner and were not exempt from registration;
- o. Garman failed to disclose that he was acting either as an issuer for his own securities, a dealer, salesperson, investment adviser or investment adviser representative;
- p. Garman failed to disclose that he was not registered as a dealer, salesperson, investment adviser or investment adviser representative with the Office of the Commissioner nor was Garman exempt from registration.

The foregoing non-inclusive list of material misrepresentations and omissions clearly established that Respondents made numerous untrue statements of material fact and omitted to state material facts necessary to make statements made not misleading, and also engaged in acts and practices which operated as a fraud upon investors, in violation of § 485-25(a)(2) and (3), HRS.

C. BURDEN OF PROOF IS BY A PREPONDERANCE OF THE EVIDENCE.

The Legislature has provided that the standard of proof for administrative hearings under HRS § 91-10 that “[t]he degree or quantum of proof shall be a preponderance of the evidence.”

D. ADMINISTRATIVE PENALTY OF \$1,000,000 IS NOT EXCESSIVE.

The principles regarding the imposition of administrative penalties are set forth in *Blake v. State Personnel Board*, 25 Cal.App.3d 541, 553, 102 Cal.Rptr. 50 (1972):

It is settled that the propriety of a penalty imposed by an administrative agency is a matter resting in the sound discretion of the agency and that its decision will not be disturbed unless there has been an abuse of discretion. Legal discretion means an impartial discretion taking into account all relevant facts, together with legal principles essential to an informed and just decision. The term ‘judicial discretion’ has been defined as ‘an impartial discretion, guided and controlled in its exercise by fixed legal principles. It is not a mental discretion, to be exercised *ex gratia*, but a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.’ The fact that reasonable minds may differ as to the propriety of the penalty imposed will fortify the conclusion that the administrative body acted within the area of its discretion.

See also, *Nightingale v. State Personnel Board*, 7 Cal.3d 507, 515, 102 Cal.Rptr. 758, 498 P.2d 1006 (1972). An administrative penalty is excessive only if it is so “disproportionate to the offense as to shock one’s sense of fairness.” *Schillerstrom v.*

State, 180 Ariz. 468, 471, 885 P.2d 156, 159 (1994), *Culpepper v. State*, 187 Ariz. 431, 438, 930 P.2d 508, 515 (1996).

Pursuant to § 485-18.7, HRS an administrative penalty of not more than \$100,000.00 may be assessed for each violation of the Act.

In this case, from May 1998 through December 31, 2000, Respondents received \$545,000.00 from investors. NONE of the investors in this case received their investment monies back, notwithstanding demands made upon Garman to do so. Nor did Respondents make any effort to repay any portion of the five (5) investors their money back.

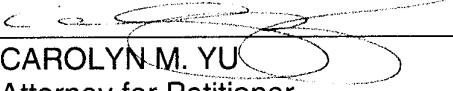
The Commissioner has discretion to assess an administrative penalty up to \$100,000.00 for each violation of the Act. Clearly, the evidence shows that Respondents induced these 5 families of investors, to invest their hard earned dollars and in Mr. Gibran's case, his life savings. The evidence presented shows violations of chapter 485 that far exceeds ten (10) violations or an equivalent of up to a \$1 Million penalty. Assuming arguendo, that a lower administrative penalty of \$10,000.00 per violation is assessed, a finding that Respondents committed 82 securities violations would still result in the assessment of an \$820,000.00 administrative penalty. Therefore, an administrative penalty of \$1 Million in this case is not excessive.

PETITIONER'S PROPOSED RECOMMENDED ORDER

For the foregoing reasons, the Hearing Officer should recommend that the Commissioner of Securities finds and concludes that by a preponderance of the evidence established that Respondents, violated §§ 485-8, 485-14, 485-25(a)(1), (a)(2) and (a)(3), HRS and that the Preliminary Order to Cease and Desist issued by the Commissioner on

February 9, 2009, and the sanctions assessed therein against Respondents, be affirmed in its entirety.

Dated: Honolulu, Hawaii NOV - 2 2009.



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