



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2011 DEC 15 P 2:18

HEARINGS OFFICE

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

In the Matter of:) SEU 2005-010
) SEU 2005-020
GLENN A. GATES AND)
GATES MOTOR CORPORATION,) COMMISSIONER'S FINAL ORDER AS TO
) GLENN A. GATES AND GATES MOTOR
Respondents.) CORPORATION
)
)

COMMISSIONER'S FINAL ORDER

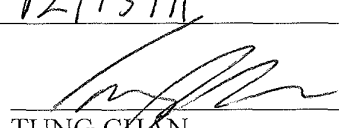
On November 10, 2010, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the parties.

On November 29, 2010, Glenn A. Gates and Gates Motor Corporation ("Respondents") filed written exceptions to the Hearings Officer's recommended decision. On December 7, 2010, the Securities Enforcement Branch of the Business Registration Division, Department of Commerce and Consumer Affairs, State of Hawaii ("Petitioner"), filed a statement in support of the Hearings Officer's recommended decision and a response to Respondents' written exceptions.

Upon review of the entire record of this proceeding, including the exceptions and statements in support, the Commissioner of Securities ("Commissioner") finds and concludes that Respondents violated Hawaii Revised Statutes §§ 485-8, 485-14, 485-25(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7).

For the violations found, the Commissioner orders that the May 15, 1999 Preliminary Order to Cease and Desist be and hereby is affirmed.

DATED: Honolulu, Hawaii, 12/15/11.


TUNG CHAN
Commissioner of Securities
Department of Commerce
and Consumer Affairs



DEPT. OF COMMERCE AND CONSUMER AFFAIRS
ATTORNEY GENERAL'S OFFICE

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

In the Matter of:	)	SEU-2005-010
	)	SEU-2005-020
GLENN A. GATES AND)	
GATES MOTOR CORPORATION,	)	HEARINGS OFFICER'S
	)	FINDINGS OF FACT,
Respondents.	)	CONCLUSIONS OF LAW,
	)	AND RECOMMENDED
	)	ORDER; EXHIBIT "A"
_____)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On January 22, 2009, the Commissioner of Securities, Department of Commerce and Consumer Affairs ("Commissioner"), issued a Preliminary Order to Cease and Desist and Notice of Right to Hearing against Respondent Glenn A. Gates ("Gates").

By letter dated February 18, 2009, Respondent Gates submitted a written request for hearing pursuant to the provisions of Hawaii Revised Statutes ("HRS") §485-18.7. The matter was thereafter set for hearing and a notice of hearing and pre-hearing conference was transmitted to the parties.

On May 15, 2009, the Commissioner issued an Amended Preliminary Order to Cease and Desist and Notice of Right to Hearing against Gates Motor Corporation ("Gates Corporation") in addition to Respondent Gates.

The hearing in the above-captioned matter was convened by the undersigned Hearings Officer in accordance with HRS Chapters 91, 92 and 485 on September 22, 2009 and continued on September 23, 2009 and February 25, 2010, and concluded on March 2, 2010. Rebecca Quinn, Esq. appeared for Petitioner Securities Enforcement Branch, Department of

Commerce and Consumer Affairs, State of Hawaii ("Petitioner"); Mark S. Kawata, Esq. appeared on behalf of Respondents Gates and Gates Corporation.

At the close of the hearing, the parties were directed to file written closing arguments and proposed findings of fact and conclusions of law. Petitioner filed its closing arguments on June 16, 2010; Respondents filed their closing arguments on July 1, 2010; and Petitioner filed a rebuttal brief on July 8, 2010. Petitioner submitted its proposed findings of fact and conclusions of law on July 21, 2010, a copy of which is attached hereto as Exhibit "A". No proposed findings and conclusions were submitted by Respondents.

Having reviewed and considered the evidence and argument 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

Upon review of the entire record of this proceeding, the Hearings Officer hereby adopts Petitioner's Proposed Findings of Fact as provided in Exhibit "A", as the Hearings Officer's Findings of Fact.

III. CONCLUSIONS OF LAW

Upon review of the entire record of this proceeding, the Hearings Officer hereby adopts Petitioner's Proposed Conclusions of Law as provided in Exhibit "A", as the Hearings Officer's Conclusions of Law

IV. RECOMMENDED ORDER

Based on the foregoing considerations, the Hearings Officer recommends that the Commissioner find and conclude that Petitioner established by a preponderance of the evidence that Respondents violated HRS §§485-8, 485-14, 485-25(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7) and that the Amended Preliminary Order to Cease and Desist issued by the Commissioner on May 15, 2009, and the sanctions assessed therein against Respondents, be affirmed in its entirety.

Dated at Honolulu, Hawaii: NOV 10 2010



CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs

Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order; In Re Glenn A. Gates, et al., SEU-2005-010 and 2005-020.

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DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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

In the Matter of:	)	Case Nos. SEU-2005-010 and
	)	SEU-2005-020
)	
GLENN A. GATES AND	)	PETITIONER'S PROPOSED FINDINGS
GATES MOTOR CORPORATION,	)	OF FACT, CONCLUSIONS OF LAW,
	)	AND RECOMMENDED DECISION;
	)	CERTIFICATE OF SERVICE
)	
Respondents.	)	Hearing Dates: September 22-23, 2009,
	)	February 25, 2010, and March 2, 2010
)	
	)	Hearings Officer: Craig H. Uyehara
)	
)	

**PETITIONER'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED DECISION**

Pursuant to § 16-201-40 of the Hawaii Administrative Rules (hereinafter "HAR")
and the Order of the Hearings Officer at the conclusion of the hearing in this matter on
March 2, 2010, Petitioner Securities Enforcement Branch, Business Registration
Division, Department of Commerce and Consumer Affairs, State of Hawaii. (hereinafter

EXHIBIT "A"

"Petitioner") submits and proposes the following Findings of Fact, Conclusions of Law and Recommended Decision regarding Respondents GLENN A. GATES and GATES MOTOR CORPORATION.

I. INTRODUCTION

On May 15, 2009, Tung Chan, Commissioner of Securities, Department of Commerce and Consumer Affairs, State of Hawaii (hereinafter "Commissioner") issued an Amended Preliminary Order to Cease and Desist and Notice of Right to Hearing (hereinafter "Order") against Respondents GLENN A. GATES (hereinafter "Gates") and GATES MOTOR CORPORATION (hereinafter "GMC" and together with Gates, "Respondents"). By written demand dated February 18, 2009, the named Respondents filed a written request for hearing pursuant to the provisions of Hawaii Revised Statutes ("HRS") § 485-18.7. The matter was set for hearing and the notice of hearing and pre-hearing conference was transmitted to the parties.

The hearing in the above-captioned matter was convened by Hearings Officer Craig H. Uyehara in accordance with HRS Chapters 91, 92, and 485 on September 22, 2009 and reconvened and concluded on March 2, 2010. Rebecca E. Quinn, Esq. and Carolyn M. Yu, Esq. appeared for Petitioner and Mark S. Kawata, Esq. appeared on behalf of Respondents.

At the close of the hearing, the parties were directed to file written closing arguments. Petitioner filed its argument on June 16, 2010. Respondents filed their closing argument on July 1, 2010. On July 8, 2010, Petitioner filed rebuttal argument in response to Respondents' closing argument. The Hearings Officer also requested that

the parties submit Proposed Findings of Fact, Conclusions of Law and Recommended Decision by July 22, 2010.

Petitioner hereby submits to the Hearings Officer its Proposed Findings of Fact, Conclusions of Law and Recommended Decision 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 "Office of the Commissioner"), administers and enforces the Hawaii Uniform Securities Act (hereinafter "the Act"), HRS § 485 (hereinafter "chapter 485").

2. Respondent Gates Motor Corporation ("GMC") is a Hawaii corporation with its last known business address at 1436 Auauki Street, Kailua, Hawaii. See *Hearing Exhibit 5*.

3. Respondent Glenn A. Gates ("Gates") was, at all times relevant herein, the founder, Chief Executive Officer, and Director for Respondent GMC. *Id.*

4. At all times material herein, beginning October 1999 and through December 2005, Respondent Gates was a resident of the State of Hawaii and Respondent GMC was a Hawaii corporation. Respondents engaged in the below described activities or conduct in or from the State of Hawaii. See *testimonies of Curt Hasegawa, Andre Carreira, Gwen Armstrong, Kenneth Butterbaugh, Garland Ulrich, and Cherie Mooreland*. See also *Hearing Exhibits 71-80*.

5. At all times material herein, beginning October 1999 and through December 2005, Respondents offered and/or sold stock in GMC ("securities") as defined under HRS § 485-1(13) in or from the state of Hawaii to investors.

6. At all times material herein, beginning on October 1999, Respondents established GMC, which received proceeds through or in connection with the offer and/or sale of stock in GMC. *See testimonies of Curt Hasegawa, Andre Carreira, Gwen Armstrong, Kenneth Butterbaugh, Garland Ulrich, and Cherie Mooreland. See also Hearing Exhibits 10a, 10b, and 11-80.*

7. At all times material herein, beginning October 1999 and through December 2005, the securities offered and sold by Respondents were administered under the direction and control of Respondents. *See testimonies of Curt Hasegawa, Andre Carreira, Gwen Armstrong, Kenneth Butterbaugh, Garland Ulrich, and Cherie Mooreland. See also Hearing Exhibits 71-80.*

8. At all times material herein, beginning October 1999 and through December 2005, Respondents obtained checks directly or indirectly from the investors who purchased their securities. *See testimonies of Curt Hasegawa, Andre Carreira, Gwen Armstrong, Kenneth Butterbaugh, and Cherie Mooreland. See also Hearing Exhibits 10a, 10b, and 11-70.*

9. Between October 1999 and through December 2005, Gates offered and sold stock in GMC to Andre Carreira. *See testimony of Curt Hasegawa and Andre Carreira. See also Hearing Exhibit 154.*

10. Between October 1999 and December 2005, Mr. Carreira invested \$1,000.00 in GMC. *Id.*

11. In or around June 2004, Mr. Carreira was issued 100 shares of GMC stock. *Id.*

12. Between October 1999 and December 2005, Gates offered and sold stock in GMC to Gwen Armstrong. *See testimony of Curt Hasegawa and Gwen Armstrong. See also Hearing Exhibit 80.*

13. Between October 1999 and December 2005, Ms. Armstrong invested \$5,000.00 in GMC. *Id.*

14. In or around February 2003, Ms. Armstrong was issued 500 shares of GMC stock. *Id.*

15. Between October 1999 and December 2005, Gates offered and sold stock in GMC to Kenneth Butterbaugh. *See testimony of Curt Hasegawa and Kenneth Butterbaugh. See also Hearing Exhibit 72.*

16. Between October 1999 and December 2005, Mr. Butterbaugh invested \$1,800.00 in GMC. *Id.*

17. In or around March 2002, Mr. Butterbaugh was issued 180 shares of GMC stock. *Id.*

18. Between October 1999 and December 2005, Gates offered and sold GMC stock to Garland Ulrich. *See testimony of Curt Hasegawa and Garland Ulrich. See also Hearing Exhibit 78.*

19. Between October 1999 and December 2005, Mr. Ulrich invested \$3,000.00 in GMC. *Id.*
20. In or around February 2003, Mr. Ulrich was issued 200 shares of GMC stock. *Id.*
21. In or around July 2003, Mr. Ulrich was issued 100 shares of GMC stock. *Id.*
22. Between October 1999 and December 2005, Gates offered and sold GMC stock to Cherie Moreland. *See testimony of Curt Hasegawa and Cherie Moreland. See also Hearing Exhibit 77.*
23. Between October 1999 and December 2005, Ms. Moreland invested \$8,000.00 in GMC. *Id.*
24. In or around October 1999, Ms. Moreland was issued 2,500 shares of GMC stock. *Id.*
25. In or around April 2000, Ms. Moreland was issued 1,500 shares of GMC stock. *Id.*
26. Between October 1999 and December 2005, Gates offered and sold stock in GMC to 445 investors from Hawaii, Canada, Singapore and the U.S. mainland. *See testimony of Curt Hasegawa. See also Hearing Exhibits 10a and 10b.*
27. Between October 1999 and December 2005, the 445 investors invested \$460,436.00 in GMC. *See testimony of Curt Hasegawa. See also Hearing Exhibits 10a and 10b.*

28. Between October 1999 and December 2005, the 445 investors were issued 587 shares of GMC stock.

29. At all times material herein, beginning October 1999 through December 2005, Respondents' securities were not registered with the Commissioner and were not exempt from registration. *See testimony of Curt Hasegawa. See also Hearing Exhibit 1.*

30. From October 1999 through December 2005, Respondents were acting either as an issuer of their own securities or as a dealer or salesperson of the securities. *See testimony of Curt Hasegawa, Andre Carreira, Gwen Armstrong, Kenneth Butterbaugh, Garland Ulrich, and Cherie Mooreland.*

31. From October 1999 through December 2005, 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 Curt Hasegawa. See also Hearing Exhibit 1.*

32. Respondents directly or indirectly made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of circumstances under which they were made, not misleading in connection with the offer, sale or purchase of their securities in violation of HRS § 485-25(a)(2):

- a. Respondents misrepresented to investors that GMC was exempted from registrations under Regulation D of the Securities Act of 1933;

- b. Respondents misrepresented to investors that after the first three years of manufacturing, Respondents would have produced 57,000 Gates motors;
 - c. Respondents misrepresented that they would produce 350,000 Gates motors by April 2009;
 - d. Respondents misrepresented that monies invested in GMC stock would be used for the development of Gates Motors and investors would share in future returns on the Gates Motor through GMC;
 - e. Respondents failed to disclose that Respondents' securities were not registered or exempt from registration with the Commissioner;
 - f. Respondents failed to disclose that Respondents were not registered or exempt from registration, as either securities dealers or salespersons, with the Commissioner;
 - g. Respondents failed to disclose that Respondent Gates had been previously convicted for felony theft in North Dakota; and
 - h. Respondents failed to disclose that investors' monies were used to pay for Respondent Gate's personal expenses;
33. Respondents did not file a copy of their advertising materials with the Commissioner.
34. Investors Andre Carreira, Gwen Armstrong, Garland Ulrich, Kenneth Butterbaugh, and Cherie Moreland have not received the repayment of their investments notwithstanding demands to Respondents.

*See testimony of Curt Hasegawa, Andre Carreira, Gwen Armstrong,
Kenneth Butterbaugh, Garland Ulrich, and Cherie Mooreland*

III. PROPOSED CONCLUSIONS OF LAW

Petitioner alleges in the Amended Preliminary Order to Cease and Desist filed on May 15, 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 HRS § 485-8;
2. Respondents were not registered as securities dealers and/or salespersons in violation of HRS § 485-14;
3. Respondents employed devices, schemes, and/or artifices to defraud in violation of HRS § 485-25(a)(1);
4. Respondents made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of HRS § 485-25(a)(2);
5. Respondents engaged in acts, practices and/or a course of business which operates or would operate as a fraud or deceit upon a person in violation of HRS § 485-25(a)(3);
6. Respondents in making the aforesaid representations, caused to be issued, circulated, or published advertising material which contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein made, in the light of the circumstances under which they were made, not misleading in violation of HRS § 485-25(a)(4)
7. Respondents, in making the aforesaid representations, caused to be issued, circulated, or published advertising material which was not previously filed with the Office of the Commissioner nor exempted by rule or order from said filing requirement in violation of HRS § 485-25(a)(7).

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

The standard of proof for administrative hearings is contained in HRS § 91-10 which states in relevant part that “[t]he degree or quantum of proof shall be a preponderance of the evidence.”

B. RESPONDENTS OFFERED AND SOLD SECURITIES TO INVESTORS

The definition of security contained in HRS § 485-1(13) of the Act clearly includes the term “stock” in its definition. As such, the GMC stock offered and sold by Respondents are securities as defined under HRS § 485-1(13) thereby making the securities transactions engaged in by the Respondents subject to regulation under the Act.

C. SECURITIES REGISTRATION

The preponderance of the evidence established that Respondents offered to sell and sold securities to Hawaii residents and nonresidents from October 1999 to December 2005. The evidence further established that these securities were not registered with the Commissioner. Therefore, Respondents violated HRS § 485-8.

D. SALESPERSON AND DEALER REGISTRATION

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 HRS § 485-14. Respondents’ active involvement in their solicitation, promotion, and sale of GMC stock constitutes the transaction of business involving securities in Hawaii. In making offers and sales of GMC stock to Hawaii residents and nonresidents, Respondents acted as securities salespersons or dealers

within the meaning of HRS §§ 485-1(2) and/or (3). According to the evidence, however, Respondents were not duly registered securities salespersons or dealers. Thus, Respondents violated HRS § 485-14.

E. SECURITIES FRAUD

The preponderance of the evidence established that Respondents violated five of the anti-fraud provisions delineated in HRS § 485-25(a) *et seq.* HRS provides in relevant part :

§ 485-25. Fraudulent and other prohibited practices.

- (a) 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;
 - (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 light of the circumstances under which they are made, not misleading;
 - (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
 - (4) To issue, circulate, or publish any advertising matter that contains an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein made, in the light of the circumstances under which they are made, not misleading;
* * * *
 - (7) To issue, circulate, or publish any advertising matter unless a copy thereof has been previously filed with the office of the commissioner, or unless the commissioner has by rule or order exempted the filing of any advertising material.

The foregoing provisions mirror portions of the fraud provisions of 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.

1. SECURITIES FRAUD UNDER HRS § 485-25(a)(1)

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 HRS § 485-6 or otherwise) of any security (whether or not of a class described in HRS § 485-4), in the State, directly or indirectly: (1) To employ any device, scheme, or artifice to defraud.”

The requirement for “scienter” in subsection (a)(1) of HRS § 485-25 may be satisfied by a showing of a reckless disregard for the truth. It is not necessary to find that a misrepresentation or omission of material fact was made willfully or maliciously in order to conclude that a violation of HRS § 485-25(a)(1) has occurred. Such a violation will be sustained if the misrepresentation or omission was made recklessly. Proof of such recklessness may be based upon inferences from circumstantial evidence. See *Securities & Exchange Commission v. Burns*, 816 F.2d 471 (9th Cir. 1987).

Here, the evidence demonstrates that Respondents’ sale of GMC stock was the device, scheme or artifice to defraud investors of their money. Gates directly and indirectly led investors to believe that he was the inventor of a revolutionary motor and that investor funds would be used to develop the revolutionary motor. The monies, however, were never used toward the development of the revolutionary motor. Instead, Gates used investor funds to pay for his personal expenses without the knowledge of investors. Moreover, Respondents issued documents resembling bona fide stock certificates to investors for the obvious purpose of facilitating an air of legitimacy and

authenticity to Respondents' investment scheme. Respondents' actions, in this regard, signify that Respondents employed their scheme to defraud investors with malicious intent.

Therefore, Respondents had the requisite scienter and should be found to have violated HRS § 485-25(a)(1).

2. SECURITIES FRAUD UNDER HRS §§ 485-25(a)(2) and (3)

A violation of HRS §§ 485-25(a)(2) and (a)(3) occurs when there is any untrue statement of a material fact or any omission to state a material fact. A fact is considered material for purposes of Hawaii securities laws "if there is a substantial likelihood that its disclosure would have been considered significant by [a] reasonable investor." *See, e.g., Basic Inc. v. Levinson*, 485 U.S. 224, 231, 108 S.Ct. 978, 983, 99 L.Ed. 2d 194 (1988). *See also, T.S.C. Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976). 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 HRS § 485-25(a)(1). However, scienter is not required to be pled or proven in order to establish violations under HRS §§ 485-25(a)(2) and (3). *Id.* at 104. As with HRS §§ 17(a)(2) and (a)(3) of the 1933 Act, scienter is not required for a violation of HRS §§ 485-25(a)(2) and (a)(3).

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 HRS § 485-6 or

otherwise) of any security (whether or not of a class described in HRS § 485-4), in the State, directly or indirectly”; HRS § 485-25(a)(2) states: “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”; HRS § 485-25(a)(3) states: “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 the Hawaii investors, including but not limited to:

- a. Respondents misrepresented to Hawaii, Canadian, Singapore and U.S. mainland investors that GMC was exempted from registration under Regulation D of the Securities Act of 1933;
- b. Respondents misrepresented to Hawaii, Canadian, Singapore and U.S. mainland investors that after the first three years of manufacturing, Respondents would have produced 57,000 Gates Motors;
- c. Respondents misrepresented that they would produce 350,000 Gates Motors by April 2009;
- d. Respondents misrepresented that monies invested in stock certificates of GMC would be used for the development of the Gates Motors and investors would share in future returns on the Gates Motor through GMC;

- e. Respondents failed to disclose that the GMC stock sold to Hawaii, Canadian, Singapore and U.S. mainland investors were “securities” that were required to be registered with the Office of Commissioner of Securities and were not registered or appropriately exempt from registration;
- f. Respondents failed to disclose that they were not registered in the State of Hawaii as a securities dealer, securities salesperson, investment adviser and/or investment adviser representative and were not exempt from registration;
- g. Respondent Gates failed to disclose that on January 23, 1992, he was convicted of felony theft in North Dakota;
- h. Respondents failed to disclose to Hawaii, Canadian, Singapore and U.S. mainland investors that investment monies were to be used to pay among other things:
 - Respondent Gates’ daily personal expenses;
 - Respondent Gates’ purchase of a truck and a Jeep;
 - The rental of Respondent Gates’ home in Hauula, Hawaii;
 - The utilities and cable bill of Respondent Gates’ home;
 - Respondent Gates’ daughter’s personal expenses;

- The rental of Respondent Gates' daughter's home;
- The purchase of a car for Respondent Gates' daughter.

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 HRS §§ 485-25(a)(2) and (3).

3. SECURITIES FRAUD UNDER HRS § 485-25(a)(4)

Pursuant to HRS § 485-25(a)(4), it is a fraudulent practice in Hawaii to issue, circulate, or publish any advertising material in connection with the offer, sale, or purchase of any security that contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statement therein made, in the light of the circumstances under which they are made, not misleading. The evidence established that Respondents' issued brochures to investors that contained untrue statements of material fact in violation of HRS § 485-25(a)(4).

4. SECURITIES FRAUD UNDER HRS § 485-25(a)(7)

It is a fraudulent practice in Hawaii to issue, circulate, or publish any advertising material in connection with the offer, sale, or purchase of any security unless a copy of the advertising material is first filed with the Commissioner or exempted therefrom under HRS § 485-25(a)(7). The evidence established that Respondents issued, circulated, and/or published printed brochures and a DVD. These materials, however, were not

previously filed with the Commissioner or exempted from said filing in violation of HRS § 485-25(a)(7).

F. 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 HRS § 485-18.7 an administrative penalty of not more than \$100,000 may be assessed for each violation of the Act.

The Commissioner has discretion to assess an administrative penalty up to \$100,000 for each violation of the Act. Clearly, the evidence shows that Respondents induced investors to invest their hard earned dollars in the development of a

revolutionary motor. Instead of developing the motor, Respondent Gates spent the monies on his personal expenses. As stated in Petitioner's opening argument, Respondents committed over 2,000 securities violations which far exceeds the ten (10) violations that would justify a \$1 Million penalty. Assuming arguendo, that a lower administrative penalty of \$10,000 per violation is assessed, a finding that Respondents committed 2,000 of the alleged securities violations would still result in the assessment of a \$20,000,000 administrative penalty. Therefore, an administrative penalty of \$1,000,000 in this case is not excessive.

PETITIONER'S PROPOSED RECOMMENDED ORDER

For the reasons set forth above, the Hearing Officer should recommend that the Commissioner of Securities find and conclude that Petitioner established by a preponderance of the evidence that Respondents, violated HRS §§ 485-8, 485-14, 485-25(a)(1), (a)(2), (a)(3), (a)(4), and (a)(7) and that the Amended Preliminary Order to Cease and Desist issued by the Commissioner issued on May 15, 2009, and the sanctions assessed therein against Respondents, be affirmed in its entirety.

Dated: Honolulu, Hawaii JUL 21 2010.



REBECCA E. QUINN
Attorney for Petitioner
Department of Commerce and Consumer Affairs
STATE OF HAWAII

STATE OF HAWAII


DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:	)	Case Nos. SEU-2005-010 and
	)	SEU-2005-020
)	
GLENN A. GATES AND)	
GATES MOTOR CORPORATION,	)	CERTIFICATE OF SERVICE
)	
Respondents.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a filed copy of the forgoing PETITIONER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED DECISION was served on the Respondents' attorney, through regular mail at his last known address on JUL 22 2010.

MARK S. KAWATA, ESQ.
Attorney for Respondents
1221 Kapiolani Blvd., Suite 808
Honolulu, Hawaii 96814



DONNA M. CURRIE
Legal Clerk
Department of Commerce and Consumer Affairs
State of Hawaii