

NEW APPLICATION

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

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BOB STUMP, Chairman
GARY PIERCE
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SUSAN BITTER SMITH

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

DOCKET NO. S-20896A-13-0378

BRIAN C. HAGEMAN, an unmarried man,

NOTICE OF OPPORTUNITY FOR HEARING

DELUGE, INC, a dissolved Delaware corporation,

REGARDING PROPOSED ORDER TO

HYDROTHERM POWER CORPORATION, a dissolved Delaware corporation,

CEASE AND DESIST, ORDER FOR

RESTITUTION, ORDER FOR

ADMINISTRATIVE PENALTIES AND

ORDER FOR OTHER AFFIRMATIVE

ACTION

Respondents.

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents BRIAN C. HAGEMAN, DELUGE, INC., AND HYDROTHERM POWER CORPORATION have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division alleges BRIAN C. HAGEMAN controlled DELUGE, INC., and HYDROTHERM POWER CORPORATION within the meaning of A.R.S. § 44-1999 so that he is jointly and severally liable under A.R.S. § 44-1999 to the same extent as DELUGE, INC., and HYDROTHERM POWER CORPORATION, for violations of the Securities Act.

Arizona Corporation Commission

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I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. BRIAN C. HAGEMAN (“HAGEMAN”) is an individual who at all relevant times has resided in Arizona and, since at least 1998, has been conducting business within or from Arizona in his individual capacity, and on behalf of DELUGE, INC. and HYDROTHERM POWER CORPORATION, both corporations organized under the laws of the state of Delaware, now dissolved. HAGEMAN has not been registered by the Commission as a securities salesman or dealer.

3. DELUGE, INC. (“DELUGE”) was a corporation which was organized under the laws of the state of Delaware on November 15, 1996, and was dissolved by the Delaware Division of Corporations on March 1, 2010, for failure to pay \$388,000 in taxes to the state of Delaware. Since at least 1998, DELUGE has been conducting business within or from Arizona. The Corporations Division of the Arizona Corporation Commission authorized DELUGE to transact business in Arizona, but its grant of authority was revoked in 2010. DELUGE has not been registered by the Commission as a securities salesman or dealer.

4. HYDROTHERM POWER CORPORATION (“HYDROTHERM”) was a corporation which was organized under the laws of the state of Delaware on May 26, 1997, and was dissolved by the Delaware Division of Corporations on March 1, 2010, for failure to pay \$368,000 in taxes to the state of Delaware. Since at least 1998, HYDROTHERM has been conducting business within or from Arizona. The Corporations Division of the Arizona Corporation Commission authorized HYDROTHERM to transact business in Arizona, but its grant of authority was revoked in 2009. HYDROTHERM has not been registered by the Commission as a securities

1 salesman or dealer.

2 5. At all relevant times, HAGEMAN was the president and CEO of DELUGE and
3 HYDROTHERM.

4 6. HAGEMAN, DELUGE, and HYDROTHERM may be referred to individually or
5 collectively as "Respondents" as the context so requires.

6 **III.**

7 **FACTS**

8 7. At all times relevant, Respondents have been offering and selling securities in
9 DELUGE and HYDROTHERM. According to HAGEMAN, HYDROTHERM is the parent
10 company of DELUGE. Both entities are in the business of developing a thermal hydraulic engine
11 known as the Natural Energy Engine ("NEE").

12 8. Since at least March 5, 2012, DELUGE has maintained a website at
13 www.delugeinc.com ("DELUGE website"). The DELUGE website provides the following
14 information on its "FAQ's" page:

15 Deluge, Inc. is the development and commercialization company for the Natural
16 Energy Engine™. Deluge, Inc. was incorporated in Delaware in 1997 with its home
17 office located in Scottsdale, Arizona. The President and CEO of Deluge, Inc. is Mr.
18 Brian Hageman and holds over forty (40) patents worldwide as the inventor of the
19 Natural Energy Engine.

20 9. The website contains an "Investors" page that encourages potential investors to
21 contact DELUGE with "questions about investment opportunities with Deluge . . ."

22 10. On March 5, 2012, a potential Arizona offeree ("Offeree-1") and resident input her
23 information into the form provided in the "Investor" page of the DELUGE website. She identified
24 herself as an Arizona investor interested in the energy investment. Offeree-1 had no previous
25 relationship with Respondents.

26 11. On March 6, 2012, HAGEMAN responded via email to Offeree-1, stating "[w]e
have various levels of investment for accredited investors."

1 12. On March 7, 2012, HAGEMAN emailed Offeree-1 providing a copy of the
2 information in the "FAQ's" page of the DELUGE website, an Executive Summary, and a
3 subscription agreement for the purchase of "common stock"¹ in HYDROTHERM. The Executive
4 Summary provided contact information for HAGEMAN, the DELUGE website, and an Arizona
5 telephone number. HAGEMAN explained in his email to Offeree-1 that HYDROTHERM was the
6 "parent company" of DELUGE, that HYDROTHERM was the patent holding company, and that
7 Offeree-1 would be "buying" into the patents.

8 13. The Subscription Agreement provided by HAGEMAN to Offeree-1 is for "common
9 stock" in HYDROTHERM at \$5 per share. HYDROTHERM identifies itself as a Delaware
10 corporation in the Subscription Agreement. No other written materials or information were
11 provided regarding the investment.

12 14. On March 16, 2012, another potential Arizona offeree ("Offeree-2") and resident
13 contacted HAGEMAN via email regarding investment opportunities in the NEE.

14 15. On March 16, 2012, Offeree-2 and HAGEMAN had a telephone conference to
15 discuss the investment opportunities. HAGEMAN stated that he had been selling stock in his
16 companies for 15 years, had 700 shareholders, and had brought in \$14 million in investments.
17 HAGEMAN stated that he sold common stock to almost 500 people in DELUGE and that he was
18 now selling stock in DELUGE'S parent company, HYDROTHERM. HAGEMAN told Offeree-2
19 that he would be receiving "common stock" in HYDROTHERM, which holds HAGEMAN'S
20 patents, and offered it at a discount of \$1 per share.

21 16. HAGEMAN told Offeree-2 that the return on investment with HYDROTHERM
22 would be slower, but other investments that paid more quickly had a higher risk. HAGEMAN also
23 stated that Offeree-2 would get 100% return on his investment within 3-5 years.

24 17. On June 15, 2013, another potential Arizona offeree ("Offeree-3") and resident
25 input his information into the form provided in the "Investor" page of the DELUGE website. He
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¹ Since March 1, 2010, neither HYDROTHERM nor DELUGE were incorporated in any state.

1 identified himself as an Arizona investor interested in the energy investment. Offeree-3 had no
2 previous relationship with Respondents.

3 18. On June 6, 2013, HAGEMAN responded to Offeree-3's email with two
4 attachments, a subscription agreement and a DELUGE licensing plan. HAGEMAN stated that
5 Offeree-3 needed to sign the subscription agreement and the minimum investment for DELUGE
6 "common stock" was \$25,000.

7 19. Investors who purchased the "common stock" had no responsibilities toward the
8 company other than investing money.

9 20. As of August 27, 2013, HAGEMAN has removed the "Investor" page of the
10 website.

11 21. DELUGE and HYDROTHERM have received limited revenue from the sale of
12 prototypes. However, the majority of income for the Respondents comes from new investors funds.

13 22. According to HAGEMAN, the funds raised are to be used for "company expenses to
14 advance the technology and to take care of company obligations."

15 23. HAGEMAN takes what he terms "shareholder loans" from the entities. There are no
16 written loan documents related to the "shareholder loans" and none of the "shareholder loans" have
17 been repaid. HAGEMAN stated that he is "taken care of" first then the expenses of the entities.

18 24. Besides the Delaware tax obligations, DELUGE has numerous outstanding
19 judgments against it for over \$350,000 due to nonpayment to vendors.

20 25. Since 1998, Respondents raised at least \$11 million from approximately 740
21 investors in both DELUGE and HYDROTHERM. No DELUGE or HYDROTHERM investor has
22 received return of their principal or dividends on their stock purchases.

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1 IV.

2 VIOLATION OF A.R.S. § 44-1841

3 (Offer or Sale of Unregistered Securities)

4 26. Since at least 1998 through March 10, 2010, Respondents have offered or sold
5 securities in the form of stock within or from Arizona. From March 10, 2010, through the present,
6 HAGEMAN has offered or sold securities in the form of investment contracts.

7 27. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
8 Securities Act.

9 28. This conduct violates A.R.S. § 44-1841.

10 V.

11 VIOLATION OF A.R.S. § 44-1842

12 (Transactions by Unregistered Dealers or Salesmen)

13 29. Respondents offered or sold securities within or from Arizona while not registered as
14 dealers or salesmen pursuant to Article 9 of the Securities Act.

15 30. This conduct violates A.R.S. § 44-1842.

16 VI.

17 VIOLATION OF A.R.S. § 44-1991

18 (Fraud in Connection with the Offer or Sale of Securities)

19 31. In connection with the offer or sale of securities within or from Arizona,
20 Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii)
21 making untrue statements of material fact or omitting to state material facts that are necessary in
22 order to make the statements made not misleading in light of the circumstances under which they are
23 made; or (iii) engaging in transactions, practices, or courses of business that operate or would
24 operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not
25 limited to, the following:
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VIII.**HEARING OPPORTUNITY**

Each respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

IX.**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona

1 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
2 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
3 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

4 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
5 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
6 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
7 addressed to Wendy Coy.

8 The Answer shall contain an admission or denial of each allegation in this Notice and the
9 original signature of the answering respondent or respondent's attorney. A statement of a lack of
10 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
11 denied shall be considered admitted.

12 When the answering respondent intends in good faith to deny only a part or a qualification
13 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
14 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

15 The officer presiding over the hearing may grant relief from the requirement to file an
16 Answer for good cause shown.

17 Dated this 5 day of November, 2013.

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20 Matthew J. Neubert
21 Director of Securities
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