

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING) Order Number S-11-0755-12-SC01
Whether there has been a violation of the)
Securities Act of Washington by:) STATEMENT OF CHARGES AND
PetroGates Inc.;) NOTICE OF INTENT TO ENTER ORDER
Davis Gates Smith;) TO CEASE AND DESIST, TO CHARGE
Respondents) COSTS, AND TO IMPOSE FINES

THE STATE OF WASHINGTON TO: PetroGates Inc.
Davis Gates Smith

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondents, PetroGates Inc. and Davis Gates Smith; have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such violations and to charge costs, and under RCW 21.20.395 to impose fines. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondents

1. PetroGates Inc. ("PetroGates") is a Delaware corporation formed in 2006 that is in the business of oil and gas exploration and development. PetroGates uses a business address in Midland, Texas.

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, TO CHARGE COSTS, AND TO IMPOSE FINES

1

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
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1 owned by another individual. Smith stated that the property was already being drilled and
2 would start producing oil shortly. Smith told the investor that she would receive a return on
3 her investment within a month, that her principal would be repaid within two to three months,
4 and that the investment would pay her monthly returns of thousands of dollars. Smith also
5 represented that the investor could expect monthly returns for 15 to 20 years. The investor
6 withdrew funds from a 401(k) retirement account in order to make her investment. Between
7 April and May 2010, the Washington investor deposited an additional \$90,000 into a bank
8 account in the name of PetroGates for the purchase of their investment.
9

10 6. Smith later provided the investor with a “Confidential Memorandum” regarding
11 the investment as well as a handwritten letter acknowledging the investor’s prior investments
12 with PetroGates. The letter indicated that when the “projects” were completed, the investment
13 would be worth “more than five times the original outlay by mid 2011.” [sic]

14 7. In July 2011, Smith sent an e-mail to the investor that stated that “Petrogates will
15 return the funds you invested and where [sic] wired into the Petrogates Inc account.”

16 8. In September 2011 the investor filed a civil action against Smith and PetroGates
17 alleging violations of the Securities Act among other allegations. That matter is still pending.
18 As of the date of this Statement of Charges the Respondents have not paid the investor any
19 return on her investment nor have they repaid any principal.
20

21 Misrepresentations and Omissions

22 9. In connection with the offer and sale of the oil and gas investments, the
23 Respondents failed to provide material information regarding the company, the Andrews
24

1 County oil and gas venture, and the Winkler County oil and gas venture, including, but not
2 limited to, financial statements, financial condition, and operational history.

3 10. In soliciting the investor's first investment, Respondents failed to disclose the
4 general and specific risks of investing in oil and gas investments including wells that may not
5 produce oil or gas, changes in prices and demand, failure to comply with government
6 regulations, changing regulations, and operational hazards. Respondents also failed to
7 disclose the risk that the investor could lose her entire investment.
8

9 11. The Respondents' projection that the investor's \$90,000 investment in the
10 Andrews County oil and gas venture would result in a return of five times the amount invested
11 within six months was misleading. The Respondents failed to provide a reasonable basis for
12 the projection and failed to provide any limitations on the projection.

13 12. The Respondents' projections that the investor would receive a return on her
14 investment in the Winkler County oil and gas venture within a month, that PetroGates would
15 pay back her principal within two to three months, and that the investment would pay her
16 monthly returns of thousands of dollars for 15 to 20 years was misleading. The Respondents
17 failed to provide a reasonable basis for the projections and failed to provide any limitations on
18 the projections.
19

20 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

21 CONCLUSIONS OF LAW

22 1. The offer or sale of the investments described above constitutes the offer or sale
23 of a security as defined in RCW 21.20.005 (14) and (17).
24

1 **AUTHORITY AND PROCEDURE**

2 This Order is entered pursuant to the provisions of RCW 21.20.390 and is subject to the
3 provisions of RCW 34.05. The Respondents may each make a written request for a hearing as
4 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
5 HEARING accompanying this order. If a Respondent does not request a hearing, the Securities
6 Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as
7 final, enter a permanent order to cease and desist permanent as to that Respondent, and impose
8 the fines and costs sought.
9

10 Dated and Entered this 11th day of March, 2013.

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13
14 WILLIAM M. BEATTY
15 Securities Administrator

16 Approved by:

17 

18 Suzanne E. Sarason
19 Chief of Enforcement

Presented by:

20 

21 Jack McClellan
22 Financial Legal Examiner
23
24