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## COMMISSIONERS

Lea Márquez Peterson - Chairwoman  
 Sandra D. Kennedy  
 Justin Olson  
 Anna Tovar  
 Jim O'Connor



ARIZONA CORPORATION COMMISSION

Matthew J. Neubert  
 Executive Director

Mark Dinell  
 Securities Division Director

## MEMORANDUM

**TO:** Lea Márquez Peterson - Chairwoman  
 Sandra D. Kennedy  
 Justin Olson  
 Anna Tovar  
 Jim O'Connor

**FROM:** Mark Dinell *wendycou*  
 Securities Division Director

**DATE:** May 14, 2021

**RE:** Charles O'Dowd and Paula M. O'Dowd (S-21153A-21-0118)

**CC:** Matthew J. Neubert, Executive Director

Attached for your consideration is a proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, Order for Other Affirmative Action, and Consent to Same ("Order") against Respondents Charles O'Dowd ("O'Dowd") and Paula M. O'Dowd (husband and wife).

The Order requires O'Dowd and spouse to pay restitution to the Commission in the principal amount of \$7,666,558.67. The Order requires O'Dowd and spouse to also pay a \$75,000 administrative penalty. The Order further requires O'Dowd to cease and desist from violating the Securities Act of Arizona.

From 2011, through 2019, O'Dowd and others offered and sold ABCO Energy, Inc.'s securities offerings in the form of common stock and/or convertible preferred stock within or from Arizona to eighty-one foreign investors.

The Order finds that O'Dowd offered and sold unregistered securities while unregistered as securities salesmen or dealers. The Order further finds that O'Dowd violated the anti-fraud provisions of the Securities Act of Arizona.

The Division recommends the Order as appropriate, in the public interest and necessary for the protection of the investors.

Originator: Michael Shaw

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman  
SANDRA D. KENNEDY  
JUSTIN OLSON  
ANNA TOVAR  
JIM O'CONNOR

In the matter of: )  
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)  
CHARLES O'DOWD and PAULA M. )  
O'DOWD, husband and wife, )  
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Respondents. )  
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DOCKET NO. S-21153A-21-0118

DECISION NO. \_\_\_\_\_

**ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME**

**BY: CHARLES O'DOWD and PAULA M. O'DOWD**

Respondents Charles O'Dowd and Paula M. O'Dowd elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Order"). Respondents Charles O'Dowd and Paula M. O'Dowd admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for purposes of this proceeding and any other proceeding in which the Commission is a party the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

**I.**

**FINDINGS OF FACT**

1. At all times relevant, Charles O'Dowd ("O'Dowd") has been married to Paula M. O'Dowd, and both are residents of Arizona. O'Dowd has not been registered with the Commission as a securities salesman or dealer.

...

1           2.       At all times relevant, David L. Shorey (“Shorey”) has been a resident of Arizona. Shorey  
2 has not been registered with the Commission as a securities salesman or dealer.

3           3.       ABCO Energy Inc. (“ABCO Energy”) is a Nevada for-profit corporation formerly  
4 known as Energy Conservation Technologies, Inc. (“ENYC”), which was incorporated by other  
5 individuals on July 29, 2004. In July of 2011, ENYC entered into a material definitive agreement with  
6 Westcap Energy, Inc. (“WCE”), a Nevada corporation, doing business as Westcap Solar and/or ABCO  
7 Solar, to exchange the common stock of ENYC for 100 percent of the common stock of WCE. At all  
8 times relevant, WCE was based in Tucson, Arizona, and WCE’s president and director was O’Dowd,  
9 and its chairman and CEO was Shorey.

10          4.       The stock exchange between ENYC and WCE resulted in a reverse merger. Prior to the  
11 reverse merger, ENYC had “filed a Regulation D offering with the SEC (U.S. Securities and Exchange  
12 Commission) ... and sold a number of restricted shares to fund the company [*sic*] operations.” ENYC  
13 also “registered with the OTC Pink Sheets (Over-The-Counter markets) to become [*sic*] publicly traded  
14 entity.” The principle reason for the reverse merger was so WCE could “become a publicly traded  
15 entity” with access to the capital markets, and WCE would manage the sales and operations of ENYC.

16          5.       ENYC was the survivor of the reverse merger; however, control of ENYC was “now in  
17 the hands of the management and majority shareholders” of WCE. On September 23, 2011, Shorey  
18 acted in his capacity as an officer of ENYC filed ENYC’s annual list of officers, directors, and registered  
19 agent and state business license application with the Nevada Secretary of State. In the filing, Shorey was  
20 listed as ENYC’s president, secretary, and treasurer. And, O’Dowd was listed as ENYC’s director.

21          6.       On October 31, 2011, Shorey acted in his capacity as an officer of ENYC and filed a  
22 Certificate of Amendment to Articles of Incorporation with the Nevada Secretary of State, which  
23 changed ENYC’s name to “ABCO Energy, Inc.” From at least 2011, through the present, ABCO Energy  
24 has been based in Tucson, Arizona, and all of ABCO Energy’s officers and employees were “officed”  
25 at ABCO Energy’s principal business address located in Tucson, Arizona.

26 ...

1           7.       From at least 2011, through the present, Shorey has been and/or has acted in the capacity  
2 of ABCO Energy's chief executive officer ("CEO") and chief financial officer ("CFO"). And, Shorey  
3 was indirectly the largest shareholder in ABCO Energy through his ownership of SSI Development,  
4 Inc., a Wyoming corporation. From at least 2011, through October of 2019, O'Dowd was and/or had  
5 acted in the capacity of ABCO Energy's president and director. At all times relevant, ABCO Energy  
6 held business accounts in Arizona at the Bank of America, N.A., and Western Alliance Bank, N.A.  
7 Shorey and O'Dowd were both signers on all ABCO Energy's business accounts.

8           8.       ABCO Energy formerly known as ENYC (hereinafter, "ABCO Energy") has not been  
9 registered with the Commission as a securities salesman or dealer.

10          9.       ABCO Solar Inc. ("ABCO Solar") is an Arizona for-profit corporation formerly known  
11 as Westcap Energy, Inc. ("WEI"), which was incorporated in the state of Arizona by Shorey on August  
12 5, 2008. From at least 2008, through 2011, Shorey was WEI's chief executive officer, director, and  
13 secretary. From at least 2010, through 2011, O'Dowd was WEI's president and director. On May 4,  
14 2011, Shorey as CEO of WEI filed an Article of Amendment with the Commission, which changed  
15 WEI's name to Westcap Solar, Inc. On July 7, 2011, O'Dowd as president of Westcap Solar, Inc., filed  
16 an Article of Amendment with the Commission, which changed Westcap Solar Inc.'s name to ABCO  
17 Solar, Inc.

18          10.       From at least 2011, through the present, ABCO Solar has been based in Tucson, Arizona.  
19 At all times relevant, Shorey has been and/or has acted in the capacity of ABCO Solar's CEO, CFO,  
20 president, and secretary. From at least 2011, through October of 2019, O'Dowd was and/or had acted  
21 in the capacity of ABCO Solar's CEO, president, director, and secretary. At all times relevant, ABCO  
22 Solar held business accounts in Arizona at the Bank of America, N.A., Wells Fargo Bank, N.A., and  
23 BBVA Compass Bank, N.A. Shorey and O'Dowd were both signers on all ABCO Solar's business  
24 accounts.

25          11.       From at least 2011, through the present, ABCO Solar has shared the same office space  
26 [located in Tucson, Arizona] with ABCO Energy. ABCO Solar is a wholly owned subsidiary of ABCO

1 Energy. From 2011, through the present, ABCO Energy has conducted business as ABCO Energy  
2 and/or as ABCO Solar.

3 12. ABCO Solar formerly known as WEI (hereinafter, "ABCO Solar") has not been  
4 registered with the Commission as a securities salesman or dealer.

5 13. At all times relevant, Paula M. O'Dowd ("P.M. O'Dowd") has been the spouse of  
6 Respondent O'Dowd. P.M. O'Dowd may be referred to as "Respondent Spouse." Respondent Spouse  
7 is joined in this action under A.R.S. §44-2031(C).

8 14. At all times relevant, O'Dowd was acting for his own benefit and on behalf of and for  
9 the benefit O'Dowd's and P.M. O'Dowd's marital community

#### 10 **A. Introduction**

11 15. In 2011, ABCO Energy, a Nevada corporation, based in Tucson, Arizona, which sold  
12 and installed photovoltaic and solar thermal products, entered into an agreement with Intuition  
13 Capital Corporation ("Intuition Capital"), a company based in the United Kingdom and/or Spain.  
14 Intuition Capital agreed to solicit foreign investors for ABCO Energy's securities offerings, which  
15 consisted of "4,000,000 restricted common shares priced at \$.40 USD."

16 16. In exchange, ABCO Energy agreed to pay Intuition Capital an estimated 65 percent  
17 of the "funds successfully raised through Intuition [*sic*] referrals." Thus, approximately 65 percent  
18 of all ABCO Energy's securities investments were contractually committed to the payments of  
19 commissions, leaving only approximately 35 percent available to ABCO Energy to obtain a return  
20 for the investors.

21 17. During the relevant time-period, from 2011 through 2019, O'Dowd and others offered  
22 and sold ABCO Energy's securities offerings in the form of common stock and/or convertible  
23 preferred stock within or from Arizona to eighty-one foreign investors. The investors collectively  
24 invested \$7,699,546.19 in ABCO Energy's securities offerings. O'Dowd and others via ABCO  
25 Energy's securities offerings and/or offering documents made numerous misrepresentations and  
26 omissions of material facts.

**B. Previous Commission's actions**

18. In 2013, the Commission issued Decision No. 73656 against Shorey and his company Cell Wireless Corporation and issued Decision No. 73775 against Shorey and his other company Westcap Energy, Inc., [later known as ABCO Solar].

Decision No. 73656

19. On October 21, 2010, the Division filed a Notice of Opportunity for Hearing (the "Notice") against Shorey, Cell Wireless Corporation ("CWC"), and others. CWC was a Nevada corporation, which had its principal place of business in Tucson, Arizona. Shorey was the president, director, chief financial officer, and secretary of CWC.

20. On February 6, 2013, the Commission issued Decision No. 73656, which ordered Shorey, CWC, and others to cease and desist from their actions in violation of A.R.S. §§ 44-1841, 44-1842, and 44-1991. The Decision further ordered Shorey, jointly and severally with CWC and others to pay restitution in the principal amount of \$130,000, and to pay a \$9,000 administrative penalty. As yet, the restitution in the amount of \$130,000 has not been paid.

21. The Commission found that CWC and others "committed fraud in the sale of securities, engaging in transactions, practices or a course business which involved untrue statements and omissions of material facts in violation of A.R.S. § 44-1991." Shorey was found to have directly or indirectly controlled CWC within the meaning of A.R.S. § 44-1999(B), and Shorey was jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as CWC was for its violations of A.R.S. § 44-1991.

Decision No. 73775

22. On March 8, 2011 and March 11, 2011, the Division respectively filed a Notice and an amended Notice against Shorey and Westcap Energy, Inc. ("WEI"), an Arizona corporation doing business as Westcap Solar.

23. On March 21, 2013, the Commission issued Decision No. 73775, against Shorey and WEI. The Decision ordered Shorey and WEI to cease and desist from their actions in violation of

1 A.R.S. §§ 44-1841, 44-1842, and 44-1991. The Decision further ordered Shorey, and WEI, jointly  
2 and severally, to make an offer of rescission [in the total amount of \$388,495] and pay an  
3 administrative penalty in the amount of \$10,000.

4 24. Based on the Findings of Fact contained in Decision No. 73775, WEI was an Arizona  
5 corporation, with its principal place of business in Tucson, Arizona. Shorey was the chief executive  
6 officer and a director of WEI. According to WEI's promotional materials, it was a "licensed sales  
7 and installation company with experienced installers, engineers, and electricians" that installed solar  
8 hot water systems for residential, commercial, and industrial customers.

9 25. In 2009, unbeknownst to O'Dowd, Shorey entered into an agreement with a company,  
10 Litchfield, to raise funds for WEI. In return, Litchfield would receive commissions equivalent to 7.5  
11 percent of the total funds invested in WEI. Shortly thereafter, Litchfield informed Shorey that a  
12 foreign-based company named Intuition Capital was able to locate investors in Europe for small  
13 private companies that were attempting to find investors. However, Intuition Capital required  
14 commissions equivalent to 65 percent of the total funds invested in WEI. In total, Shorey and/or WEI  
15 agreed to pay 72.5 percent in commissions to Litchfield and Intuition Capital, which would be paid  
16 from the investors' investment funds.

17 26. From January of 2010, through March of 2010, Shorey and WEI offered and sold  
18 securities in the form of preferred stock issued by WEI to 24 foreign investors. The investors invested  
19 a total of \$388,495 in exchange WEI promised 8 percent returns on investments for a term of one  
20 year, after which each share of preferred stock could be converted to ten shares of common stock  
21 when the company became publicly traded. From the \$388,495 WEI and Shorey raised from the  
22 investors they paid a total amount of \$281,714 (72.5 percent) in commissions to Litchfield and  
23 Intuition Capital.

24 27. It was found that both Litchfield and Intuition Capital were non-registered  
25 broker/dealers and the 72.5 percent in commissions paid to them by WEI were "outside the normal  
26 range of amounts, and such deviation from the information disclosed in the PPM was a material

1 fact.” Shorey and WEI failed to disclose to investors the “excessive” and “unreasonable” amounts  
2 of commissions paid to Litchfield and Intuition Capital.

3 28. The Commission found that Shorey and WEI “committed fraud in the offer of an  
4 unregistered security, engaging in transactions, practices, or a course of business which involved  
5 untrue statements and omissions of material facts in violation of A.R.S. § 44-1991.”

6 29. WEI’s securities offerings and its “excessive” payments of 72.5 percent commissions  
7 to Litchfield and Intuition Capital were very similar to ABCO Energy’s securities offerings and its  
8 payments of 65 percent commissions to Intuition Capital.

9 **C. Current action**

10 30. Since its inception, ABCO Energy has been an “installation contractor for alternative  
11 energy products that are used in the replacement of fossil fuel generation ... ABCO sells and installs  
12 Photovoltaic and Solar Thermal products that are purchased from both USA and offshore  
13 manufactures.” O’Dowd and others sought financing in order for the “the Company [ABCO Energy]  
14 to grow quicker by providing the Company the necessary capital to employ a sales and marketing  
15 team and to establish the Company as an immediate and long term leader in the industry.”

16 31. O’Dowd and others were determined to raise capital through foreign investors and  
17 engaged Intuition Capital to locate prospective foreign investors in exchange for commissions.

18 **D. Intuition Capital agreement**

19 32. In 2011, ABCO Energy executed a Contract for Services (the, “Contract”) with  
20 Intuition Capital [the same above-mentioned company that Shorey and WEI paid 65 percent in  
21 commissions to locate foreign investors for WEI’s securities offerings, *see* Decision No. 73775].  
22 According to the Contract, ABCO Energy “[w]ishes to engage the services of Intuition to advise and  
23 consult with the Company on certain business and corporate matters and [*sic*] in relation to the  
24 placement of the Company’s Regulation S offering to non-USA citizens ...consisting of 4,000,000  
25 restricted common shares priced at \$.40 USD.”

26 ...

1           33. In exchange for Intuition Capital’s services, ABCO Energy agreed to pay to Intuition  
2 Capital “as reimbursement of expenses for rent, telephone, admin salaries, sales salaries,  
3 **commissions**, printing, postage, and all other expenses ... under this agreement on a **non-**  
4 **accountable basis** (emphasis added).” The non-accountable expenses are “estimated to be 65% of  
5 the funds successfully raised through Intuition referrals, will be paid to Intuition within three days of  
6 receipt of cleared funds by ABCO Energy, Inc.”

7           34. At all times relevant, Intuition Capital was based in the United Kingdom and/or Spain,  
8 and was neither registered as broker or dealer with FINRA, nor registered to conducted regulated  
9 activity in the United Kingdom or Spain

10           **E. ABCO Energy’s securities offering**

11           35. Between 2011, through 2019, Intuition Capital located at least eighty-one prospective  
12 foreign investors [primarily based in the United Kingdom] who were interested in investing in ABCO  
13 Energy’s securities offerings. Each time a prospective investor was located, Intuition Capital  
14 provided Shorey with the prospective investor’s contact information, including their name, address,  
15 phone number, email address, and proposed amount of investment.

16           36. Once, Shorey received a prospective investor’s contact information Shorey sent the  
17 prospective investor, the following documents: an initial welcome letter (“Welcome Letter”); ABCO  
18 Energy’s Corporate Profile; ABCO Energy’s Subscription Agreement; and ABCO Energy’s PPM.  
19 According to some of ABCO Energy’s PPM’s, “[a]ll funds raised in the offering will be utilized by  
20 the needs” of ABCO Energy’s consolidated “family of companies,” including ABCO Solar to “grow  
21 and prosper to profitability.”

22           37. During the relevant time-period, from 2011 through 2019, O’Dowd and others offered  
23 and sold ABCO Energy’s securities offerings in the form of common stock and/or convertible  
24 preferred stock (“Preferred Stock”) within or from Arizona to at least eighty-one foreign investors  
25 (“Investors”). The Preferred Stock “was priced at \$5.00 and had a dividend requirement of 8%  
26

1 [interest] per annum, which ceased upon the conversion or when held for 12 months.” The Investors  
2 collectively invested \$7,699,546.19 in ABCO Energy’s securities offerings.

3 38. At all times relevant, ABCO Energy has conducted business as ABCO Energy and/or  
4 as ABCO Solar. ABCO Solar is a wholly owned subsidiary of ABCO Energy.

5 39. On September of 2011, Shorey sent a Welcome Letter to at least one Investor that  
6 was written on ABCO Solar’s letterhead. The Welcome Letter stated the following: (1) “Thank you  
7 so much for your interest in our company” and “interest in an investment;” (2) We are “preparing  
8 the company for a full listing on the NASD [National Association of Securities Dealers] Bulletin  
9 Board,” and your “investment will be put to good use;” and (3) We have attached a Subscription  
10 Agreement for your review ... complete the Subscription Agreement in full, as this will be used by  
11 the transfer agent to issue your stock certificates.”

12 40. On October of 2011, Shorey sent a follow-up letter to the above-mentioned Investor  
13 that was written on ABCO Solar’s letterhead. The follow-up letter stated the following: (1) “Thank  
14 you so much for your support and investment;” (2) The “funds you sent for your investment ... have  
15 arrived and cleared in our account;” (3) “Your restricted shares should be issued in the next sixty  
16 days;” (4) “We need the signed signature page of your agreement [Subscription Agreement];” and  
17 (5) If you have any questions about the company or your investment, please do not hesitate to write  
18 or call.”

19 41. ABCO Energy’s Subscription Agreements that Shorey sent to Investors contained  
20 and/or stated the following information: (1) The price per share of ABCO Energy’s stock, which  
21 fluctuated throughout the entire offering; (2) Wire transfer instructions for Investors to wire their  
22 funds to ABCO Solar’s business account held in Arizona or ABCO Energy’s [dba ABCO Solar]  
23 business account held in Arizona; and (3) At least one of the Subscription Agreements stated, “[t]his  
24 Subscription Agreement and the undersigned’s investment shall be governed by and construed in  
25 accordance with the laws of the State of Arizona;”

26 ...

1           42.     During the relevant time-period, the majority of the Investors' funds were wire  
2 transferred into ABCO Solar's business accounts held in Arizona, and the remainder of the Investors'  
3 funds were wire transferred into ABCO Energy's business accounts held in Arizona. According to  
4 O'Dowd, once an Investor's funds are wired directly to ABCO Energy's business account or ABCO  
5 Solar's business account, then ABCO Energy or ABCO Solar wired Intuition Capital their  
6 commissions within a week, which was paid upfront from the Investor's funds.

7           43.     According to ABCO Energy's PPM's, the company reserved the right "to pay  
8 commissions to registered brokers or dealers registered with the National Association of Securities  
9 Dealers (which is now FINRA) and other international registration jurisdictions" in connection with  
10 the sale of shares. Further, the company may also "pay finder's fees for introductions to persons or  
11 entities" that purchase the shares in this offering, and the "fees would be within the range of amounts  
12 normally paid in similar situations."

13           44.     Contrary to the above-statement, at all times relevant, Intuition Capital: (1) Was not  
14 a registered broker or dealer with FINRA; (2) Was not registered to sell securities in Arizona; and  
15 (3) Was not registered to conduct regulated activity in the United Kingdom or Spain. Further, ABCO  
16 Energy's contracted payments of 65 percent in commissions to Intuition Capital were "excessive"  
17 and not within the "normal range" of amounts paid in similar situation.

18           **F. ABCO Energy's and ABCO Solar's management team**

19           45.     ABCO Energy's PPM, dated August of 2011, under the Management Team section  
20 stated that the "Management team is comprised of proven professionals, with expertise and success  
21 in complimentary fields." The "team has successfully started new companies, taken companies  
22 public, sold private companies to public companies..." In the PPM, O'Dowd was listed as ABCO  
23 Energy's president and director and Shorey was listed as ABCO Energy's CFO and director.

24           46.     In May of 2012, Shorey allegedly sustained "an injury" that caused him to voluntarily  
25 retire or resigned his CFO, secretary, and director positions with ABCO Energy.

26 ...

1           47.     However, from 2012 through the present, Shorey has acted in the capacity as the CEO  
2 and CFO of ABCO Energy and ABCO Solar. Shorey is listed as an officer of ABCO Solar with the  
3 Arizona Registrar of Contractors. Shorey's name and roles in ABCO Energy and ABCO Solar were  
4 intentionally removed from all subsequent offering documents and public filings. Shorey's removal  
5 was in name only and was done for "appearances only" because of the Division's Notices that were  
6 filed against Shorey and his companies in 2010 and 2011, and later because of the Commission's  
7 Decisions issued against Shorey and his companies WEI and CWC.

8           48.     Since at least February of 2013, Shorey and his company CWC have been subject to  
9 cease desist orders from violating the Securities Act. Since at least March of 2013, Shorey and his  
10 other company WEI [later known as ABCO Solar] have been subject to cease desist orders from  
11 violating the Securities Act.

12           49.     In March of 2013, January of 2017, January of 2018, and January of 2019, O'Dowd  
13 and others respectively issued updated ABCO Energy PPM's. None of those PPM's listed or  
14 mentioned Shorey's name and intentionally did not disclose the Commission's actions against  
15 Shorey.

16           **G. O'Dowd admissions**

17           50.     On June 4, 2019, and on October 3, 2019, O'Dowd testified under oath and made the  
18 following admissions:

- 19           • Shorey was removed as ABCO Energy's and ABCO Solar's CEO and CFO in name  
20           only, Shorey still actively controlled ABCO Energy;
- 21           • Shorey's role and control of ABCO Energy was not disclosed to Investors in the  
22           offering documents and was not disclosed public filings with the SEC;
- 23           • The non-disclosures in ABCO Energy's offering documents of Shorey's role as CFO  
24           of ABCO Energy was done intentionally;

25 ...

26 ...

- 1 • Shorey's name was not listed in ABCO Energy's offering documents "because of  
2 appearances ... if someone queried David's [Shorey] name they would see some  
3 record" of the Commission's Decisions;
- 4 • Shorey stated to O'Dowd that ABCO Energy's negotiated payments of 65 percent in  
5 commissions to Intuition Capital was "excessive;"
- 6 • "Intuition Capital acted under the S-1 [SEC Form S-1], which we had filed, to  
7 promote ABCO Solar or ABCO Energy into foreign markets;" and
- 8 • The 65 percent commissions ABCO Energy paid to Intuition Capital from the  
9 Investors' funds would have been something important for the Investors to know.

#### 10 **H. ABCO Energy's Going Concerns (2014 through 2019)**

11 51. Since 2011, ABCO Energy has been required on regular basis to submit quarterly  
12 financial statements (10-Q) and annual audited financial statements (10-K) to the SEC. ABCO  
13 Energy's audited 10-K filings for the years 2014 through 2019, indicated a "going concern" with the  
14 company's financial health. "The Company has incurred accumulated deficits, recurring operating  
15 losses since inception and negative cash flows from operations."

16 52. ABCO Energy's audited 10-K financial statements from 2014 through 2019, all  
17 contain the following same or similar language in its Note 3:

18 The Company will continue as a going concern, which contemplates the recoverability of  
19 assets and the satisfaction of liabilities in the normal course of business. Since its inception,  
20 the Company has been engaged substantially in financing activities and developing its  
21 business plan and marketing. The Company incurred a loss of \$1,381,077, the net cash flow  
22 used in operation was \$664,840 and its accumulated net losses from inception through the  
23 period ended December 31, 2019 is \$6,561,508, which raises substantial doubt about the  
24 Company's ability to continue as a going concern. In addition, the Company development  
25 activities since inception have been sustained through capital contributions from  
26 shareholders.

27 53. In stark contrast to the "going concern" indicated in ABCO Energy's audited 10-K  
28 financial statements from 2014 through 2109, ABCO Energy's offering documents and  
29 correspondences with Investors represented ABCO Energy's financial health as upbeat. For example,

1 ABCO Energy's January of 2018, PPM represented that "ABCO has been increasing its sales  
2 turnover for the past two years and has booked more than \$1,450,000 USD in sales for 2017. This is  
3 an increase of more than 200% over 2016 and is the result of new residential sales programs ... we  
4 enter into our 2018 year with a backlog of more than \$400,000 in unfinished work that will lead to  
5 higher sales and better started year."

6 54. In addition, on May 15, 2014, O'Dowd sent a letter, on ABCO Energy's letterhead,  
7 to an Investor regarding his interest in the investing in ABCO Energy's securities offerings. O'Dowd  
8 wrote, "we are pleased to announce that we have been growing at a remarkable rate since our  
9 inception and have doubled our sales every year." O'Dowd representations to the Investor are  
10 contradicted by ABCO Energy's audited 10-K financial statements.

11 55. During the relevant time-period, from 2014 through 2019, O'Dowd and others have  
12 failed to disclose to the Investors the "going concern" of the company's dire financial health.

13 56. From 2011 through 2019, the Investors collectively invested \$7,699,546.19 and have  
14 only received back \$32,987.52. The remaining principal amount owed is \$7,666,558.67.

#### 15 **I. Misrepresentations and Omission of Material Facts**

16 57. O'Dowd and others failed to disclose to the Investors the Commission's Actions  
17 under Decision Nos. 73775, and 73656 against Shorey.

18 58. O'Dowd and others failed to disclose to the Investors that approximately 65 percent  
19 of all their investments in ABCO Energy were contractually committed to the payments of  
20 commissions, leaving only approximately 35 percent available to ABCO Energy to obtain a return  
21 for the Investors.

22 59. O'Dowd and others failed to disclose to Investors that from 2012 through at least  
23 2019, Shorey acted in the capacity of ABCO Energy's and ABCO Solar's CEO and CFO.

24 60. O'Dowd and others failed to disclose to Investors that for the years 2014 through  
25 2019, ABCO Energy's annual audited 10-K financial statements indicated a "going concern" of the  
26 company's financial stability and health.





1 amount of \$7,666,558.67 as a result of the conduct set forth in the Findings of Fact and Conclusions  
2 of Law. Payment is due in full on the date of this Order. Payment shall be made to the "State of  
3 Arizona" to be placed in an interest-bearing account controlled by the Commission. Any principal  
4 amount outstanding shall accrue interest at the rate of ten percent per annum from the date of  
5 purchase until the date of this Order, subject to any legal offsets, pursuant to A.A.C. R14-4-308(C).

6 IT IS FURTHER ORDERED that the restitution ordered in the preceding paragraph will  
7 accrue interest, as of the date of the Order, at the rate of the lesser of (i) ten percent per annum or (ii)  
8 at a rate per annum that is equal to one per cent plus the prime rate as published by the board of  
9 governors of the federal reserve system in statistical release H. 15 or any publication that may  
10 supersede it on the date that the judgment is entered.

11 The Commission shall disburse the funds on a pro-rata basis to investors shown on the records  
12 of the Commission. Any restitution funds that the Commission cannot disburse because an investor  
13 refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor  
14 because the investor is deceased shall be disbursed on a pro-rata basis to the remaining investors  
15 shown on the records of the Commission. Any funds that the Commission determines it is unable to  
16 or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

17 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent O'Dowd, as  
18 his sole and separate obligation, and Respondents O'Dowd and P.M. O'Dowd, as a community  
19 obligation, shall, jointly and severally pay an administrative penalty in the amount of \$75,000 as a  
20 result of the conduct set forth in the Findings of Fact and Conclusions of Law. Payment is due in full  
21 on the date of this Order. Payment shall be made to the "State of Arizona." Any amount outstanding  
22 shall accrue interest as allowed by law.

23 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be  
24 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments  
25 shall be applied to the penalty obligation.

26 ...

1 For purposes of this Order, a bankruptcy filing by any Respondent shall be an act of default.  
2 If any Respondent fails to comply with this Order, any outstanding balance may be deemed in default  
3 and shall be immediately due and payable.

4 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the  
5 Commission may bring further legal proceedings against the Respondent, including application to  
6 the superior court for an order of contempt.

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1 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this  
2 Order shall be deemed binding against any Respondent under this Docket Number who has not  
3 consented to the entry of this Order.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6  
7 \_\_\_\_\_  
8 CHAIRWOMAN MÁRQUEZ PETERSON COMMISSIONER KENNEDY

9  
10 \_\_\_\_\_  
11 COMMISSIONER OLSON COMMISSIONER TOVAR COMMISSIONER O'CONNOR

12 IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,  
13 Executive Director of the Arizona Corporation Commission,  
14 have hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

17 \_\_\_\_\_  
18 MATTHEW J. NEUBERT  
19 EXECUTIVE DIRECTOR

20 \_\_\_\_\_  
21 DISSENT

22 \_\_\_\_\_  
23 DISSENT

24 This document is available in alternative formats by contacting Carolyn D. Buck, ADA  
25 Coordinator, voice phone number (602) 542-3931, e-mail [cdbuck@azcc.gov](mailto:cdbuck@azcc.gov).

26 (MS)

**CONSENT TO ENTRY OF ORDER**

1  
2 1. Respondents Charles O’Dowd (“O’Dowd”) and Paula M. O’Dowd (“Respondent  
3 Spouse”) may collectively be referred to as “Respondents.” Respondents admit the jurisdiction of  
4 the Commission over the subject matter of this proceeding. Respondents acknowledge that they have  
5 been fully advised of their right to a hearing to present evidence and call witnesses and both  
6 Respondents knowingly and voluntarily waive any and all rights to a hearing before the Commission  
7 and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the  
8 Arizona Administrative Code. Respondents acknowledge that this Order to Cease and Desist, Order  
9 for Restitution, Order for Administrative Penalties, and Consent to Same (“Order”) constitutes a  
10 valid final order of the Commission.

11 2. Respondents knowingly and voluntarily waive any right under Article 12 of the  
12 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting  
13 from the entry of this Order.

14 3. Respondents acknowledge and agree that this Order is entered into freely and  
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. Respondents have been represented by an attorney in this matter, they have each  
17 reviewed this order with their attorney, Brian Schulman, and understand all terms it contains.  
18 Respondent O’Dowd and Respondent Spouse both acknowledge that their attorney has apprised  
19 them of their rights regarding any conflicts of interest arising from dual representation. Respondent  
20 O’Dowd and Respondent Spouse each acknowledge that they have each given their informed consent  
21 to such representation.

22 5. Respondents admit only for purposes of this proceeding and any other proceeding in  
23 which the Commission is a party the Findings of Fact and Conclusions of Law contained in this  
24 Order. Respondents agree that they shall not contest the validity of the Findings of Fact and  
25 Conclusions of Law contained in this Order in any present or future proceeding in which the  
26 Commission is a party.

1           6.       Respondents further agree that they shall not deny or contest the Findings of Fact and  
2 Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding, or  
3 (b) non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)").  
4 They further agree that in any such proceedings, the Findings of Fact and Conclusions of Law  
5 contained in this Order may be taken as true and correct and that this Order shall collaterally estop  
6 them from re-litigating with the Commission or any other state agency, in any forum, the accuracy  
7 of the Findings of Fact and Conclusions of Law contained in this Order. In the event Respondents  
8 pursue bankruptcy protection in the future, they further agree that in such bankruptcy proceeding,  
9 pursuant to 11 U.S.C. § 523(a)(19), the following circumstances exist:

10           A.       The obligations incurred as a result of this Order are a result of the conduct set forth  
11 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona  
12 state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

13           B.       This Order constitutes a judgment, order, consent order, or decree entered in a state  
14 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by  
15 Respondents pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine, penalty,  
16 citation, restitution payment, disgorgement payment, attorney fee, cost or other payment owed by  
17 Respondents pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).

18           7.       By consenting to the entry of this Order, Respondents agree not to take any action or  
19 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of  
20 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual  
21 basis.

22           8.       While this Order settles this administrative matter between Respondent O'Dowd and  
23 the Commission, Respondent O'Dowd understands that this Order does not preclude the Commission  
24 from instituting other administrative or civil proceedings based on violations that are not addressed  
25 by this Order.

26 ...

1           9.       Respondent O'Dowd understands that this Order does not preclude the Commission  
2 from referring this matter to any governmental agency for administrative, civil, or criminal  
3 proceedings that may be related to the matters addressed by this Order.

4           10.       Respondent O'Dowd understands that this Order does not preclude any other agency  
5 or officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal  
6 proceedings that may be related to matters addressed by this Order.

7           11.       Respondent O'Dowd agrees that he will not apply to the state of Arizona for  
8 registration as a securities dealer or salesman or for licensure as an investment adviser or investment  
9 adviser representative until such time as all restitution and penalties under this Order are paid in full.

10          12.       Respondent O'Dowd agrees that he will not exercise any control over any entity that  
11 offers or sells securities or provides investment advisory services within or from Arizona until such  
12 time as all restitution and penalties under this Order are paid in full.

13          13.       Respondent O'Dowd agrees that he will continue to cooperate with the Securities  
14 Division including, but not limited to, providing complete and accurate testimony at any hearing in  
15 this matter and cooperating with the state of Arizona in any related investigation or any other matters  
16 arising from the activities described in this Order.

17          14.       Respondents acknowledge that any restitution or penalties imposed by this Order are  
18 community obligations.

19          15.       Respondents consent to the entry of this Order and agree to be fully bound by its terms  
20 and conditions.

21          16.       Respondents acknowledge and understand that if they fail to comply with the  
22 provisions of the order and this consent, the Commission may bring further legal proceedings against  
23 them, including application to the superior court for an order of contempt.

24          17.       Respondents understand that default shall render them liable to the Commission for  
25 its costs of collection, including reasonable attorneys' fees and interest at the maximum legal rate.

26 ...

1           18.     Respondents agree and understand that if they fail to make any payment as required  
2 in the Order, any outstanding balance shall be in default and shall be immediately due and payable  
3 without notice or demand. Respondents agree and understand that acceptance of any partial or late  
4 payment by the Commission is not a waiver of default by the Commission.

5

6

\_\_\_\_\_  
**Respondent Charles O'Dowd**

7

8 STATE OF ARIZONA        )  
  ) ss  
9 County of                    )

10 SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_,  
11

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\_\_\_\_\_  
NOTARY PUBLIC

13 My commission expires:  
14 \_\_\_\_\_  
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\_\_\_\_\_  
**Respondent Spouse Paula O'Dowd**

18

19 STATE OF ARIZONA        )  
  ) ss  
20 County of                    )

21 SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_,  
22

23

\_\_\_\_\_  
NOTARY PUBLIC

24 My commission expires:  
25 \_\_\_\_\_  
26

1 SERVICE LIST FOR: Charles O'Dowd et al.

2

Brian Schulman, Esq.

3

Weiss Brown

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6263 N Scottsdale Road, #340

5

Scottsdale, AZ 85250

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*Attorney for Respondents Charles O'Dowd and Paula O'Dowd*

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman  
SANDRA D. KENNEDY  
JUSTIN OLSON  
ANNA TOVAR  
JIM O'CONNOR

In the matter of:  
  
CHARLES O'DOWD and PAULA M.  
O'DOWD, husband and wife,  
  
Respondents.

DOCKET NO. S-21153A-21-0118  
  
**CERTIFICATION OF SERVICE OF  
PROPOSED OPEN MEETING  
AGENDA ITEM**

On this 14 day of May, 2021, the foregoing document was filed with Docket Control as a Securities Division Memorandum & Proposed Order, and copies of the foregoing were mailed on behalf of the Securities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Brian Schulman, Esq.  
Weiss Brown  
6263 N Scottsdale Road, Suite 340  
Scottsdale, AZ 85250  
*Attorney for Respondents Charles O'Dowd and Paula M. O'Dowd*

By:   
Emie Bridges, Executive Assistant