

ORIGINAL

NEW APPLICATION



0000123776

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

2011 MAR -8 A 11: 07

MAR - 8 2011

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY
nr

In the matter of:

DAVID SHOREY AND MARY JANE SHOREY, husband and wife,

WESTCAP ENERGY INC., an Arizona corporation, d/b/a Westcap Solar,

Respondents.

DOCKET NO. S-20790A-11-0104

NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED OF ORDER TO CEASE AND DESIST, FOR RESTITUTION, AND FOR ADMINISTRATIVE PENALTIES

**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 David Shorey, Westcap Energy Inc. d/b/a Westcap Solar, and respondent spouse Mary Jane Shorey 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 also alleges that David Shorey is a person controlling Westcap Energy Inc. 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 Westcap Energy Inc. for violations of the Securities Act.

I.

JURISDICTION

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

1 **II.**

2 **RESPONDENTS**

3 2. David Shorey (“SHOREY”) is an individual who resided in Pima County, Arizona for
4 all times relevant. SHOREY is also a certified public accountant (license number 6724-R).

5 3. Westcap Energy Inc. (“WEI”) is an Arizona corporation with its principal place of
6 business located at 6959 E. Wild Canyon Pl., Tucson, Arizona 85750.

7 4. Westcap Solar is a trade name registered with the Arizona Secretary of State. The
8 Westcap Solar trade name is owned by WEI.

9 5. WEI conducts business as Westcap Solar and represents that it offers full-service
10 solutions for solar power systems. The services include obtaining the necessary permits, helping
11 buyers fill out the right documentation, and providing design, installation, and inspection services.

12 6. SHOREY is the chief executive officer and a director of WEI.

13 7. WEI and SHOREY may be referred to collectively as “Respondents.”

14 8. Mary Jane Shorey (“M. SHOREY”) was at all relevant times the spouse of Respondent
15 SHOREY. M. SHOREY may be referred to collectively as “Respondent Spouse.” Respondent Spouse
16 is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of
17 the marital community.

18 9. At all times relevant, Respondent SHOREY was acting for his own benefit and for the
19 benefit or in furtherance of his and Respondent Spouse’s marital community.

20 **III.**

21 **FACTS**

22 10. On or about October 9, 2009, SHOREY executed an engagement agreement with
23 Litchfield Enterprises Inc. (“Litchfield”). Litchfield is a Colorado corporation with a principal
24 place of business in Aurora, Colorado.

25 11. According to its website, Litchfield assists private and public companies to secure
26 funding at various stages of their development.

1 12. Patrick L. Moore is the chairman and chief executive officer of Litchfield. Patrick
2 L. Moore resides in Colorado and is not a licensed securities salesman with the Commission.

3 13. Timothy J. Moore (CRD No. 1106074) is the president of Litchfield. Timothy J.
4 Moore resides in Colorado and/or Georgia, and has not been licensed with the Commission as a
5 securities salesman since February 2007.

6 14. Pursuant to the engagement agreement, Litchfield agreed to consult with WEI and
7 devise a program to raise capital, of up to \$1,000,000, for WEI. Litchfield would identify potential
8 funding sources, consult with WEI in preparation of an offering memorandum to be delivered to the
9 potential funding sources, and consult with WEI in the preparation of an agreement between WEI
10 and potential investors.

11 15. Pursuant to the engagement agreement, WEI agreed to issue a dividend paying
12 convertible preferred stock and seek to become a publicly traded company.

13 16. Pursuant to the engagement agreement, WEI agreed to pay Litchfield a consulting
14 fee of ten percent (10%) of the total funds raised, issue Litchfield restricted stock of WEI when
15 WEI became a publicly traded entity, enter into a mutually agreed upon investor relation program
16 with Litchfield, and to allow Litchfield to oversee "distribution of potential finders' fees or
17 commissions to any funding source" that Litchfield introduced to WEI.

18 17. SHOREY, individually and/or on behalf of WEI, signed the engagement agreement.

19 18. WEI produced a memorandum titled "Private Placement" ("PPM") regarding
20 200,000 shares of eight percent (8%) Series A preferred stock ("WEI Stock") at five dollars (\$5.00)
21 per share.

22 19. The PPM set forth the following:

23 a) That the board of directors are authorized to determine the "designations,
24 preferences, voting power (or no voting power), relative, participating, optional, or other special
25 rights and privileges" with respect to each series of preferred stock. As a result, each WEI Stock
26 share would:

- 1 (i) Be sold for five dollars with all proceeds going to WEI;
2 (ii) Pay interest (sometimes referred to as a dividend by WEI) at eight percent
3 (8%) annually and the interest paid quarterly to the holder of record. The
4 dividends will be paid out of available funds; and
5 (iii) Be convertible into ten shares of WEI common stock twelve months from the
6 purchase date because WEI will attempt to become a publicly traded
7 company as a result of a merger or acquisition;

8 b) That the WEI Stock shares would be offered by the officers and directors of
9 WEI, that such persons would not receive any commissions in connection with such sales, and that
10 WEI would pay commissions to registered brokers or dealers registered with the National
11 Association of Securities Dealers, which is now the Financial Industry Regulatory Authority
12 (“FINRA”); and

13 c) That each purchaser, based on their percentage ownership, would receive a
14 proportionate share of restricted common stock in the publicly traded company.

15 20. The PPM also contained a “Use of Proceeds” breakdown that detailed how the
16 planned \$1,000,000 would be expended. The use of proceeds breakdown does not list or detail a
17 commission or payment amount to be paid to Litchfield.

18 21. Based on information and belief, SHOREY, directly or indirectly, engaged Intuition
19 Capital Corporation (“Intuition”) to solicit potential investors for WEI Stocks. Litchfield introduced
20 SHOREY to Intuition.

21 22. Based on information and belief, Intuition’s principal place of business is located
22 outside of the United States.¹

23 23. From on or about March 2, 2010, through August 31, 2010, residents of the United
24 Kingdom (hereafter U.K. Investors) received unsolicited telephone calls from individuals who
25

26 ¹ Since at least May 28, 2009, the registrant contact, technical contact, administrative contact, and billing contact for the domain address of www.intuitioncapitalcorp.com is Rodrigo Merino and the address listed is Liberia, Costa Rica.

1 identified themselves as agents or employees of Intuition. Certain U.K. Investors also
2 communicated by electronic mail message to admin@intuitioncapitalcorp.com.

3 24. The agents or employees of Intuition told certain U.K. Investors that WEI stock was
4 available for sale, that WEI stock would become publicly traded by merger or acquisition, and that
5 a profit would be made by converting to common stock before WEI became publicly traded.

6 25. U.K. Investors who expressed interest in purchasing the WEI stock were contacted
7 by SHOREY and/or provided information about the WEI Stock.

8 26. SHOREY, by electronic mail, provided certain U.K. Investors with the PPM, a WEI
9 corporate profile describing their solar business, a series A convertible preferred stock subscription
10 agreement ("subscription agreement"), and a welcome letter from SHOREY as Chairman and CEO
11 of WEI.

12 27. In the welcome letters, SHOREY stated that "[a]s an investor in our 8% Series 'A'
13 Convertible Preferred Stock you will be getting in on the ground floor of the Westcap business
14 expansion. [...]. Your investment will grow as we accelerate our business expansion."

15 28. At least one U.K. Investor was told that WEI would merge within a year of his
16 investment. The U.K. Investor was quoted a return on investment of thirty percent (30%) to fifty
17 percent (50%) upon the stock going public.

18 29. The welcome letters also directed the U.K. Investors to complete and fax the
19 subscription agreements.

20 30. The subscription agreements contained statements that requested the signed
21 documents be faxed to a 520 area code, which is assigned to Arizona, or scanned and emailed to
22 dshorey@westcapenergy.com.

23 31. The U.K. Investors executed subscription agreements that stated how many shares
24 they were purchasing.

25 32. The subscription agreements contained wire transfer instructions to a Wells Fargo
26 bank account located in Tucson, Arizona. The Wells Fargo bank account is in the name of WEI.

1 33. The subscription agreements also stated that they “shall be enforced, governed and
2 construed in accordance with the laws of the State of Arizona.”

3 34. From on or about March 2, 2010, through August 31, 2010, Respondents offered
4 and sold “8% Series ‘A’ Convertible Preferred Stock” to approximately 25 U.K. Investors for a
5 total of at least \$388,570.

6 35. The \$388,570 was deposited into the WEI Wells Fargo bank account and SHOREY
7 is the signatory on the account.

8 36. At least \$217,000 was forwarded to Litchfield from the WEI Wells Fargo bank
9 account that received all U.K. Investors’ funds.

10 37. Respondents failed to disclose to the U.K. Investors that WEI would pay ten percent
11 (10%) of all funds raised to Litchfield as a finder’s fee or commission and/or that more than fifty
12 percent (50%) of the monies raised would be distributed to Litchfield.

13 38. Approximately \$26,000 was transferred, from the WEI Wells Fargo bank account
14 that received all U.K. Investors’ funds, to another Westcap Energy bank account to conduct WEI
15 business operations or to pay WEI expenses.

16 39. As of July 2010, the U.K. Investors had only received approximately \$2,700 in
17 quarterly interest payments from WEI.

18 40. To date, WEI has not become a publicly traded entity in the United States.

19 41. At all relevant times, Litchfield was not a registered dealer federally or with the state
20 of Arizona.

21 42. At all times relevant, Respondents were not registered as dealers and SHOREY was
22 not registered as a salesman with the Commission.

23
24
25
26

1 IV.

2 VIOLATION OF A.R.S. § 44-1841

3 (Offer or Sale of Unregistered Securities)

4 43. From on or about March 2, 2010, through August 31, 2010, Respondents offered or
5 sold securities in the form of stocks and/or investment contracts, within or from Arizona.

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

8 45. This conduct violates A.R.S. § 44-1841.

9 V.

10 VIOLATION OF A.R.S. § 44-1842

11 (Transactions by Unregistered Dealers or Salesmen)

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

14 47. This conduct violates A.R.S. § 44-1842.

15 VI.

16 VIOLATION OF A.R.S. § 44-1991

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

18 48. In connection with the offer or sale of securities within or from Arizona, Respondents
19 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements
20 of material fact or omitted to state material facts that were necessary in order to make the statements
21 made not misleading in light of the circumstances under which they were made; or (iii) engaged in
22 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
23 offerees and investors. Respondents' conduct includes, but is not limited to, the following:

24 a) Misrepresented to U.K. Investors that the WEI Stock shares would be offered
25 by the officers and directors of WEI, that such persons would not receive any commissions in
26 connection with such sales, and that WEI would pay commissions to registered brokers or dealers

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 85007, within 30 calendar days after the date of service of this Notice. 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>.

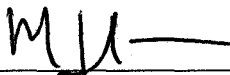
Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Phong (Paul)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

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

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

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

Dated this 8 day of March, 2011.


Matthew J. Neubert
Director of Securities