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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

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COMMISSIONERS

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

DOCKETED BY

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IN THE MATTER OF:

DOCKET NO. S-20648A-09-0010

ENERGETICS, INC., a Nevada corporation;

STEVEN P. GIUFFRIDA and MICHELLE
GIUFFRIDA, husband and wife;

DECISION NO. 72266

RODNEY PETERSON and VIRGINIA
PETERSON, husband and wife,

RESPONDENTS.

OPINION AND ORDER

DATES OF PRE-HEARING CONFERENCES:

February 25, April 2, May 7, and November 19, 2009; and May 20, 2010

DATE OF HEARING:

September 28, 2010

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

Ms. Aikaterine Vervilos, Staff Attorney, on
behalf of the Securities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On January 12, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Energetics, Inc. ("Energetics"), Stephen P. Giuffrida and Michelle Giuffrida, husband and wife (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of notes and/or investment contracts.

The Respondents were duly served with a copy of the Notice.

1 On January 23, 2009, a request for hearing was filed by the Respondents.

2 On January 27, 2009, by Procedural Order, a pre-hearing conference was scheduled on
3 February 25, 2009.

4 On February 25, 2009, the Division and Respondents appeared with counsel to discuss issues
5 arising from the Notice and stipulated to a status conference being scheduled after certain documents
6 were reviewed.

7 On February 26, 2009, by Procedural Order, a status conference was scheduled for April 2,
8 2009.

9 On March 24, 2009, counsel for Respondents filed an Application for Withdrawal as Counsel
10 of Record ("Application") pursuant to A.A.C. R14-3-104(E) and consistent with ER 1.16 stating that
11 Respondents had failed to meet their financial obligation for counsel's services. Counsel further
12 stated that he had provided notice to the Respondents of pending matters related to the case, such as
13 discovery, and the previously scheduled Examination Under Oath of Mr. Giuffrida. Notice of the
14 Application was also provided to Respondents.

15 On April 1, 2009, by Procedural Order, the Application of counsel was granted.

16 On April 2, 2009, the status conference was held with the Division present with counsel and
17 Mr. Giuffrida appearing on his own behalf. The Division indicated that the parties were attempting to
18 reach a resolution in the proceeding, and requested that another status conference be scheduled in
19 approximately 30 days.

20 On April 3, 2009, by Procedural Order, a status conference was scheduled on May 7, 2009.

21 On May 7, 2009, at the status conference, the Division appeared with counsel and attorney
22 Jeffrey Proper entered an appearance on behalf of the Respondents. The parties indicated that they
23 were attempting to resolve the issues in the proceeding and the Division requested that a hearing be
24 scheduled in the fall. By Procedural Order, a hearing was scheduled to commence on October 13,
25 2009.

26 On July 15, 2009, the Division filed a Motion to Amend the Notice filed on January 12, 2009,
27 by adding Rodney and Jane Doe Peterson as Respondents.
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1 On July 30, 2009, counsel for the Giuffrida Respondents and Energetics filed a response
2 indicating that they did not oppose the amendment of the Notice. Subsequently, by Procedural Order,
3 the Division's Motion to Amend the Notice was granted, and Rodney and Jane Doe Peterson,
4 husband and wife, were added as Respondents. It was further ordered that the hearing commence on
5 October 13, 2009, with additional days of hearing on October 14 and 15, 2009, as ordered previously.

6 On August 18, and 31, 2009, the Mr. and Mrs. Giuffrida and Energetics filed a request for
7 hearing and an Answer to the Amended Complaint, respectively.

8 On September 3, 2009, by Procedural Order, it was ordered that all prior orders remain in
9 effect with respect to the commencement of the hearing and hearing dates.

10 On September 8, 2009, the Division and Mr. and Mrs. Giuffrida and Energetics filed a Joint
11 Stipulation to Continue Hearing and the Exchange of Witness Lists and Exhibits due to the joinder of
12 new Respondents and because the Division, pursuant to A.A.C. R14-4-303, required additional time
13 to provide service by publication of the Notice in this proceeding and to allow time for the filing of a
14 request for a hearing by the newly-named Respondents. The parties further requested that a status
15 conference be scheduled after November 9, 2009, to allow for service by publication of the Notice
16 and any subsequent request for hearing.

17 On September 9, 2009, by Procedural Order, the Joint Stipulation was granted and the hearing
18 date of October 13, 2009, was vacated along with the related date for the exchange of documents and
19 witness lists. A status conference was scheduled on November 19, 2009.

20 On September 28, 2009, Attorney Ron Kilgard of Keller Rohrback, P.L.C. filed a request for
21 hearing on behalf of Respondent Rodney Peterson.

22 On September 30, 2009, by Revised Procedural Order, the newly added Respondent, Rodney
23 Peterson, was provided with notice of the present status of the proceeding and the status conference
24 scheduled on November 19, 2009.

25 On October 23, 2009, a Notice of Appearance and Motion for an Extension of Time was filed
26 by a new attorney on behalf of Respondents Rodney and Virginia Peterson. Therein, it was
27 represented that Attorney Maureen Beyers of Osborn Maledon, P.A. would be substituting in place of
28

1 Mr. Peterson's first attorney who she indicated had withdrawn as counsel. Further, Ms. Beyers
2 requested the following extensions of time: to produce documents by October 28, 2009; to file an
3 Answer by November 23, 2009; and for Respondent Rodney Peterson to appear for an examination
4 under oath on December 3, 2009.

5 The Division's counsel indicated telephonically that there were no objections to the requested
6 extensions of time.

7 On October 29, 2009, by Procedural Order, the requested extensions were granted, and
8 Attorney Ron Kilgard was permitted to withdraw from the representation of the Peterson
9 Respondents.

10 On November 19, 2009, at the status conference, the Division and Respondents appeared
11 through counsel. Although the parties were discussing a possible resolution of the proceeding, the
12 Division requested that a hearing be scheduled in the interim. The parties stipulated to a three day
13 hearing to commence on May 4, 2010. The parties also agreed to an exchange of Witness Lists and
14 copies of Exhibits prior to the hearing.

15 On November 20, 2009, by Procedural Order, a hearing was scheduled to commence on May
16 4, 2010, and other procedural matters were also addressed.

17 On April 9, 2010, the Division filed a Motion to Amend Caption to replace "Jane Doe
18 Peterson" with "Virginia Peterson," the correct name of Respondent Peterson's spouse.

19 On April 12, 2010, by Procedural Order, the caption was amended to reflect the correct name
20 of Mr. Peterson's spouse.

21 On April 23, 2010, the Division filed a Motion to Continue ("Motion") the hearing scheduled
22 on May 4, 2010, because a tentative settlement had been reached with the Peterson Respondents and
23 a Consent Order was submitted for Commission approval at its May 13, 2010 Open Meeting. The
24 Division indicated that the remaining Respondents did not object to the Motion. The Division also
25 requested that a pre-hearing conference be scheduled after the Commission's May 13, 2010 Open
26 Meeting to review the status of the proceeding.

27 On April 27, 2010, by Procedural Order, the hearing was continued and a pre-hearing
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1 conference was scheduled on May 20, 2010.

2 On May 17, 2010, the Commission issued Decision No. 71697, which approved a Consent
3 Order with respect to the Peterson Respondents.

4 On May 20, 2010, the Division and the respective Respondents appeared through counsel.
5 Counsel for the Peterson Respondents was granted leave to withdraw from the proceeding. Counsel
6 for the Division and counsel for Energetics and the Giuffrida Respondents agreed to the scheduling of
7 a hearing in September to avoid conflicts with other matters.

8 On May 24, 2010, by Procedural Order, a hearing with respect to Energetics and the Giuffrida
9 Respondents was scheduled on September 28 and 29, 2010.

10 On August 25, 2010, counsel for the Energetics and Giuffrida Respondents filed a Motion to
11 Withdraw from the proceeding and represented that the Respondents had been advised of the
12 upcoming hearing.

13 On August 31, 2010, the Division filed a response to the pending Motion to Withdraw of
14 Respondents' counsel. The Division did not object to the withdrawal of counsel.

15 On September 2, 2010, by Procedural Order, counsel for the Energetics and Giuffrida
16 Respondents was granted leave to withdraw and the hearing was ordered to be held as previously
17 scheduled.

18 On September 23, 2010, Mr. Giuffrida filed a request for a six-month continuance citing
19 personal difficulties as the reason for his request. The Division filed a response objecting to his
20 request and pointed out the age of the proceeding, the untimely nature of the request, and the fact that
21 the Division would still be required to proceed against Mrs. Giuffrida and Energetics if Mr.
22 Giuffrida's request was granted.

23 On September 27, 2010, by Procedural Order, Mr. Giuffrida's request for a six-month
24 continuance was denied. It was further ordered that the hearing be held as previously ordered.

25 On September 28, 2010, the hearing was convened before a duly authorized Administrative
26 Law Judge of the Commission at its offices in Phoenix, Arizona. The Division appeared with
27 counsel. There was no appearance entered either on behalf of Energetics or Mr. and Mrs. Giuffrida.
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1 Following the presentation of evidence, the matter was taken under advisement pending submission
2 of a recommended Opinion and Order to the Commission. In lieu of a closing brief, the Division was
3 granted leave to file a proposed form of Opinion and Order.

4 On November 30, 2010, the Division submitted its filing.

5 * * * * *

6 Having considered the entire record herein and being fully advised in the premises, the
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9 1. Stephen P. Giuffrida is an individual who, at all relevant times herein, was a resident
10 of Maricopa County, Arizona.

11 2. Michelle Giuffrida is an individual who, at all relevant times herein, was a resident of
12 Maricopa County, Arizona.

13 3. Mr. and Mrs. Stephen Giuffrida were husband and wife at all relevant times herein and
14 were acting for their own benefit and for the benefit or in furtherance of their marital community.

15 4. According to the Division's investigation, Energetics is a Nevada corporation
16 incorporated on or about June 28, 2006, with its principal place of business in Scottsdale, Arizona.
17 (Ex. S-5)

18 5. Based on documentary evidence, Respondents Energetics and Mr. Giuffrida offered
19 and sold to investors an opportunity to participate in the development of certain oil wells by
20 Energetics, initially under the terms of an assignment of a lease agreement known as the Sentell Oil I
21 Lease ("Sentell Lease"). (Exs. S-3, S-8, S-24, S-27, and S-29)

22 6. According to the terms of a letter to Energetics from the manager of Sovereign
23 Advisory, LLC ("Sovereign"), a Nevada limited liability company, Energetics acquired the rights to
24 develop the Sentell Lease pursuant to the terms of an assignment of lease dated July 31, 2007, for
25 \$50,000. However, it was apparent from the terms of the letter that Energetics had defaulted on the
26 lease. Subsequently, Energetics consummated an Asset Purchase Agreement with Sovereign in April
27 2008 to purchase the Sentell Lease for a total of \$370,000 with an initial payment of \$50,000 in cash.
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1 (Exs. S-8D and S-14)

2 7. The offering materials which were utilized by Energetics informed prospective
3 investors and actual investors that the investment opportunity was comprised of two parts: a
4 promissory note purportedly secured by a UCC-1 filing which was to include the lease and existing
5 surface equipment; and a royalty agreement. (Exs. S-3, S-6, S-8, S-24, S-27 and S-29)

6 8. Respondent Energetics and Mr. Giuffrida's Answer, filed on September 2, 2009,
7 admitted that the Respondents were promising an interest rate of 11 percent per year with the
8 maturity date of one year on the Energetics notes. It was further admitted that the royalty agreement
9 acknowledged that the investors would be paid a percentage of the total profit received from the
10 production of oil from the wells included in the Sentell Lease.

11 9. In support of the allegations raised in the Notice with respect to Respondents' alleged
12 violations of the Act, the Division called as its witnesses, Mr. Rodney Peterson, who was also a
13 Respondent in this proceeding,¹ and Mr. Gary Clapper, a special investigator with the Division.

14 10. Mr. Clapper testified that he first became familiar with the Respondents, Energetics
15 and Mr. Giuffrida, when he was assigned an "ad shopping case" to investigate as the result of an
16 advertisement on Craig's List which was seeking investors. (Tr. 39: 3-10)

17 11. Mr. Clapper identified a copy of an advertisement for Energetics that he first saw on
18 the Phoenix Craig's List on the internet in the financial services section. (Tr. 39: 14-23) (Ex. S-2)

19 12. According to Mr. Clapper, the ad first appeared on October 23, 2008. The ad stated
20 that Energetics was offering an investment in a one year note with 11 percent deferred interest which
21 was guaranteed regardless of early payback. The ad stated that the note would be collateralized by a
22 UCC filing in the lender's name on a 370-acre oil lease along with surface equipment and what was
23 termed "an oil royalty interest." Mr. Clapper testified that the ad further promised an incentive bonus
24 for an additional 15 to 35 percent based on oil prices for the lifetime of the wells which could be up to
25 50 years according to the ad. The ad specified that investors were being sought to make a minimum
26 investment of \$25,000 to \$75,000 maximum. (Tr. 40: 2-13) (Ex. S-2)

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28 ¹ In Decision No. 71697 (May 17, 2010) the Commission approved a Consent Order with respect to the Peterson Respondents and ordered restitution and the payment of an administrative penalty.

1 13. The ad for Energetics on Craig's List contained a contact number and Energetics'
2 website address as www.energetics-inc.com. (Tr. 40-41: 25-1)

3 14. Mr. Clapper responded to the Craig's List ad by email and requested further information
4 from Energetics about the offering. (Tr. 41: 15-17)

5 15. On October 27, 2008, Mr. Clapper received a return email from Mr. Giuffrida, and
6 therein Mr. Giuffrida indicated that he would prefer to speak to Mr. Clapper personally and provided
7 Mr. Clapper with his office and mobile phone numbers. (Tr. 42: 4-9) (Ex. S-2)

8 16. Subsequently, Mr. Clapper secured offering materials from Energetics and Mr.
9 Giuffrida. These materials reflected the company's name and its address on East Bell Road in
10 Scottsdale, Arizona. They also contained Energetics' phone number and web address. (Tr. 43: 5-25)

11 17. Mr. Clapper described the offering materials which provided a company overview of
12 Energetics and the project, which involved the three wells in Caddo Parish, Louisiana, and the
13 projections for oil production along with the gross revenues projected per barrel. The materials
14 further described the so-called Sentell 2008-1 joint venture involving the wells in Caddo Parish. (Tr.
15 44: 1-15)

16 18. The projections included with the materials were in the form of a spreadsheet which
17 reflected the expected rate of return on the wells depending upon the price of oil per barrel. The
18 materials further reflect that Energetics was the joint venture manager. (Tr. 44-45: 18-2) (Ex. S-3)

19 19. Testifying further, Mr. Clapper described a form which explained the offering and
20 promoted a prospective investor's return on his investment. According to the form, Energetics was
21 seeking a lender to provide \$300,000 for funding to rework two of the existing wells and to refurbish
22 surface equipment as part of the project. (Tr. 45: 15-25)

23 20. Mr. Clapper also described a sample of a promissory note reflecting Energetics as the
24 obligor with its address on East Bell Road in Scottsdale, Arizona. Mr. Clapper stated that the note
25 further explained the offering to have an 11 percent return. (Tr. 46: 19-24)

26 21. The promissory note included Respondent Giuffrida's name, with the title of president
27 for the obligor, Energetics. (Tr. 47: 17-20) (Ex. S-3)

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1 22. Mr. Clapper also described another apparent offering involving a joint venture with
2 Energetics to develop a 521-acre mineral lease in east Texas also involving oil wells. Mr. Clapper
3 did not receive any copies of promissory notes or royalty agreements related to the east Texas
4 offering. (Tr. 48: 12-20)

5 23. Mr. Clapper testified that he downloaded Respondent Energetics' website on October
6 27, 2008. (Tr. 49: 3-14)

7 24. According to Mr. Clapper, the website was freely available on the internet and did not
8 require the use of a password or any other data to access the information on the website. (Tr. 49: 20-21)

9 25. On the website, Respondent Rodney Peterson was featured as the president of
10 Energetics and Respondent Stephen P. Giuffrida was listed as vice president of operations. (Ex. S-4)

11 26. The website provided general information concerning the opportunity to invest in the
12 Energetics offering involving a 370-acre lease. The investment was described as an investment in oil
13 and gas and also featured a section whereby an individual who viewed the website and provided their
14 name, email address, and phone number could be contacted. (Ex. S-4)

15 27. Mr. Clapper verified that the email address for Mr. Giuffrida was the same email
16 address from which he received his response from Mr. Giuffrida when he had used an email address,
17 "bigreturns4me@yahoo.com" which was reflected on Ex. S-2. (Tr. 52: 1-3)

18 28. During his testimony Mr. Clapper identified a number of promissory notes and royalty
19 agreements between Energetics and the individuals who were termed "lenders" and referencing the
20 financing of oil and gas production from a 370-acre lease in Caddo Parrish, Louisiana. (Exs. S-8B
21 and S-8C)

22 29. Testifying further, Mr. Clapper stated that none of the investors that he spoke with
23 mentioned that they knew that Energetics' interest in the Sentell Lease located in Caddo Parish,
24 Louisiana was in default prior to their investing. (Tr. 62: 18-20)

25 30. Reading from Respondent Giuffrida's Examination Under Oath ("EUO"), Mr. Clapper
26 testified that Mr. Giuffrida stated that he had been employed with Energetics since April of 2008.
27 (Tr. 64: 16-22) (Ex. S-9)

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1 31. Additionally, Mr. Clapper read a statement by Mr. Giuffrida that he had been married
2 to his wife, Michelle, for approximately four years. (Tr. 65: 10-19)

3 32. During Mr. Clapper's investigation, he found that no investors received any actual oil
4 production information. Instead, they had received only projections made in company materials. (Tr.
5 66: 18-24)

6 33. Testifying further, Mr. Clapper referred to portions of Mr. Giuffrida's EUO where Mr.
7 Giuffrida described how checks from the Energetics account were written to both himself and
8 Respondent Peterson in the amount \$5,000 as "advances" for "personal needs." (Tr. 70: 1-18)

9 34. Mr. Clapper identified deposits made into the Energetics' account at Washington
10 Mutual in the same amounts which corresponded to the copies of investors' promissory notes from
11 Energetics. (Tr. 75: 20-24)

12 35. Mr. Clapper stated that he had reviewed the production history of the wells located on
13 the Sentell Lease in Caddo Parish, Louisiana using materials from the Louisiana Department of
14 Natural Resources. (Tr. 76: 7-19)

15 36. Mr. Clapper testified that the Division's investigation found that all of the wells in the
16 lease area produced only approximately 20 barrels of oil in a year and this information could have
17 been verified before investor funds were used for an investment in the lease. (Tr. 77-78: 9-2)

18 37. According to Mr. Clapper, there was no information provided by Energetics to the
19 investors about the limited production history of the wells before they invested. (Tr. 78: 7-9)

20 38. Mr. Clapper testified that during the course of the Division's investigation of
21 Commission records, it was found that neither Energetics nor Stephen Giuffrida was registered as a
22 dealer or salesman, respectively, and that the notes and royalty agreements were not registered as
23 securities with the Division. (Tr. 79: 18-25) (Ex. S-1)

24 39. Counsel for the Division represented on the record that Respondent Peterson's brother,
25 Roger and his wife, Deborah Peterson, who invested \$100,000 with Energetics, were not seeking any
26 restitution for their investment, but the Division indicated that their loss should be considered in the
27 penalty portion of the proceeding.
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1 40. Based on the record, of the approximate \$225,000 invested with Respondents, only
2 \$50,000 was transferred to Sovereign on the lease payment. Mr. Clapper testified that the remaining
3 monies were expended for personal expenses of the individual Respondents and that Mr. Giuffrida
4 transferred some of the funds to companies owned by his relatives to try and seek further investors.
5 (Tr. 83: 3-12)

6 41. Mr. Peterson testified that he had been chief operating officer of Energetics from
7 approximately April through September 2008, and also had been a director of the Company along
8 with Respondent Stephen Giuffrida. (Tr. 12: 10-24)

9 42. According to Mr. Peterson, Mr. Giuffrida acted as the corporate secretary of
10 Energetics. (Tr. 13: 13-18)

11 43. Mr. Peterson further testified that he had not been involved in the formation of
12 Energetics as a corporation and owned no stock in the Company. (Tr. 13-14: 22-1)

13 44. Mr. Peterson had been hired as the Company's president by Respondent Giuffrida's
14 father, Mr. Frank Giuffrida. (Tr. 14: 17-23)

15 45. Mr. Peterson testified that he had been involved in the day-to-day operations of
16 Energetics along with Respondent Giuffrida at the office of Energetics. (Tr. 15: 5-13)

17 46. Based on the record, Respondent Giuffrida was involved in a variety of administrative
18 tasks, such as working on the Company's website or information technology assignments or whatever
19 his father needed him to do.

20 47. According to Mr. Peterson, Mr. Giuffrida primarily acted at the direction of his father
21 who provided directions in an informal setting since only Mr. Peterson and Respondent Giuffrida
22 worked in the office along with Respondent Giuffrida's father, Frank Giuffrida, when he was in town.
23 (Tr. 16: 8-24)

24 48. Mr. Peterson further testified that Respondent Giuffrida's father maintains a residence
25 in Arizona, but lives in New York. (Tr. 17:1-2)

26 49. Mr. Peterson described Energetics' business activities as being involved in the
27 development of oil and gas wells on the Sentell Lease in the State of Louisiana. He stated that
28

1 Respondent Giuffrida had made two to three trips to Louisiana in order to check on the progress for
2 the remediation of the existing wells which were located on the lease. (Tr. 17: 12-23)

3 50. Mr. Peterson testified that when Energetics began operations it had no cash, but
4 subsequently, the company acquired cash as a direct result of funds that came in the form of
5 investments with the company. (Tr. 20: 1-13)

6 51. While president of Energetics, Mr. Peterson recalled only three investors who invested
7 with the Company. (Tr. 21: 1-3)

8 52. According to Mr. Peterson, the primary use for the invested funds was to develop and
9 reestablish oil production on the Sentell Lease in Caddo Parrish, Louisiana. (Tr. 21: 16-18)

10 53. Mr. Peterson indicated that while there were ten wells located on the lease, only three
11 of them were capable of production. (Tr. 21: 19-22)

12 54. Mr. Peterson confirmed that during April 2008, Energetics entered into the Asset
13 Purchase Agreement to purchase the Sentell Lease in Caddo Parrish, Louisiana. (Tr. 22: 8-14)

14 55. At the time of the purchase of the lease by Energetics, Mr. Peterson stated that only
15 one well was operating, and that the other wells were old and had electrical and pump failure
16 problems. (Tr. 22: 17-24)

17 56. During the period that Mr. Peterson was president of Energetics, he recalled that there
18 was only one sale of oil to a "crude purchaser." (Tr. 23: 7-11)

19 57. Mr. Peterson estimated that during his employment at Energetics, of the 74 barrels
20 produced from wells on the Sentell Lease, less than half was pumped from the wells, with the
21 remainder coming from oil which had been stored in storage tanks. (Tr. 25: 8-13)

22 58. Mr. Peterson recalled that Mr. Frank Giuffrida gave him an incomplete production
23 history from the Louisiana Department of Natural Resources for the wells on the Sentell Lease.
24 (Tr. 25-26: 19-10)

25 59. Mr. Peterson did not know whether a petroleum engineer by the name of Farrell, who
26 invested \$5,000 with Energetics, was provided with information concerning the production history of
27 the wells on the Sentell Lease. (Tr. 27-28: 15-7)

28

60. Mr. Peterson stated Energetics was a start-up company when he began work even though it had been incorporated previously. At the time he began work, he did not invest any money in the company. (Tr. 28-19: 13-10)

61. Mr. Peterson further testified that he did not have any knowledge of whether any investors were provided with any financial information on the Company before they invested.
(Tr. 29: 11-16)

62. After reviewing Exhibit S-24, a list of three investors who invested \$200,000 in the Sentell Lease, Mr. Peterson testified that he was unaware of any other investors.² (Tr. 30: 18-24)

63. Mr. Peterson further testified that he had first met Respondent Giuffrida's father, Frank Giuffrida, at a conference in approximately 1998. Subsequently, they established a business relationship and Mr. Peterson ended up financing one of Mr. Giuffrida's properties in Arizona.³ (Tr. 33-34: 23-23)

64. Mr. Peterson explained that the plan for Energetics was to borrow money from investors by means of promissory notes and as wells were developed on the Sentell Lease, the notes would be paid back out of a subsequent offering to raise up to \$5 million to drill 12 or more additional wells on the lease property. (Tr. 36-37: 19-3)

65. Based upon the record, a preponderance of the evidence establishes that Respondents, Energetics and Stephen Giuffrida, committed multiple violations of the Act by offering and selling securities in the form of notes in a fraudulent manner and utilized investor funds for personal expenses for Mr. Giuffrida and for his wife, benefitting the marital community. Respondent Stephen Giuffrida's actions resulted in losses to investors of \$225,000.

66. Respondents presented no evidence to rebut the evidence presented by the Division and they should be held liable for restitution and an administrative penalty.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et seq.*

² There was also another investor who invested \$25,000 in the Energetics offering.

³ At that time, Mr. Peterson had been working for 15 years in residential and commercial loans.

1 2. The investment in the form of notes offered and sold by Respondents Energetics and
2 Stephen Giuffrida is a security within the meaning of A.R.S. § 44-1801.

3 3. The security was neither registered nor exempt from registration, in violation of
4 A.R.S. § 44-1841.

5 4. Respondents acted as a dealer and/or a salesman within the meaning of A.R.S. § 44-
6 1801(9) and (22).

7 5. The actions and conduct of Respondents constitute the offer of securities within the
8 meaning of A.R.S. § 44-1801(15).

9 6. Respondents offered and sold an unregistered security within or from Arizona in
10 violation of A.R.S. § 44-1841.

11 7. Respondents offered and sold a security within or from Arizona without being
12 registered as a dealer and/or salesman in violation of A.R.S. § 44-1842.

13 8. Respondents committed fraud in the offer of an unregistered security, engaging in
14 transactions, practices or a course of business which involved untrue statements and omissions of
15 material facts in violation of A.R.S. § 44-1991.

16 9. Respondent Stephen P. Giuffrida directly or indirectly controlled Energetics within the
17 meaning of A.R.S. § 44-1999. Therefore, Respondent Stephen P. Giuffrida is jointly and severally
18 liable under A.R.S. § 44-1999 to the same extent as Energetics for its violations of A.R.S. § 44-1991.

19 10. Respondents Energetics and Stephen P. Giuffrida have violated the Act and should
20 cease and desist pursuant to A.R.S. § 44-2032 from any future violations of A.R.S. §§ 44-1841,
21 44-1842 and 44-1991 and all other provision of the Act.

22 11. The actions and conduct of Respondents Energetics and Stephen P. Giuffrida
23 constitute multiple violations of the Act and are grounds for an Order of restitution pursuant to
24 A.R.S. § 44-2032 and for an Order assessing administrative penalties pursuant to A.R.S. § 44-2036.

25 12. The marital community of Respondents Stephen P. Giuffrida and Michelle Giuffrida
26 should be included in the Order of restitution and penalties ordered hereinafter.

27 ...

28

ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Energetics, Inc. and Stephen P. Giuffrida shall cease and desist from their actions described hereinabove in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Energetics, Inc. and Stephen P. Giuffrida and Michelle Giuffrida, to the extent allowable pursuant to A.R.S. § 25-215, jointly and severally, shall make restitution in the amount of \$225,000 which restitution shall be made pursuant to A.A.C. R14-4-308 subject to legal set-offs by the Respondents and confirmed by the Director of Securities, said restitution to be made within 60 days of the effective date of this Decision.

IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the rate of 10 percent per year for the period from the dates of investment to the date of payment of restitution by Respondents Energetics, Inc., Stephen P. Giuffrida and Michelle Giuffrida.

IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be deposited into an interest-bearing account(s), if appropriate, until distributions are made.

IT IS FURTHER ORDERED that the Commission shall disburse the funds on a *pro-rata* basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time of distribution, shall be disbursed on a *pro-rata* basis to the remaining investors shown on the records of the Commissions. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the State of Arizona.

IT IS FURTHER ORDERED pursuant to authority granted to the Commission under A.R.S. § 44-2036, Respondents Energetics, Inc., Stephen P. Giuffrida, and Michelle Giuffrida, to the extent allowable pursuant to A.R.S. § 25-215, jointly and severally, shall pay as and for administrative penalties: for the violation of A.R.S. § 44-1841, the sum of \$7,500; for the violation of A.R.S. § 44-

1 1842, the sum of \$7,500; and for the violation of A.R.S. § 44-1991, the sum of \$10,000, for a total of
2 \$25,000. The payment obligations for these administrative penalties shall be subordinate to any
3 restitution obligations ordered herein and shall become immediately due and payable only after
4 restitution payments have been paid in full or upon Respondents' default with respect to
5 Respondents' restitution obligations.

6 IT IS FURTHER ORDERED that pursuant to authority granted to the Commission under
7 A.R.S. §§ 44-2036, that Respondents Energetics, Inc., Stephen P. Giuffrida, and Michelle Giuffrida,
8 to the extent allowable pursuant to A.R.S. § 25-215, jointly and severally, shall pay the administrative
9 penalty ordered hereinabove in the amount of \$25,000 by either cashier's check or money order
10 payable to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit
11 in the general fund for the State of Arizona. Payment is due in full on the date of this order. Any
12 amount outstanding shall accrue interest as allowed by law.

13 IT IS FURTHER ORDERED that if Respondents Energetics, Inc., Stephen P. Giuffrida, and
14 Michelle Giuffrida fail to pay the administrative penalty ordered hereinabove, any outstanding
15 balance plus interest at the maximum level amount may be deemed in default and shall be
16 immediately due and payable, without further notice.

17 IT IS FURTHER ORDERED that if any of the Respondents Energetics, Inc., Stephen P.
18 Giuffrida and Michelle Giuffrida fail to comply with this Order, any outstanding balance shall be in
19 default and shall be immediately due and payable without notice or demand. The acceptance of any
20 partial or late payment by the Commission is not a waiver of default by the Commission.

21 IT IS FURTHER ORDERED that default shall render Respondents Energetics, Inc., Stephen
22 P. Giuffrida and Michelle Giuffrida liable to the Commission for its cost of collection and interest at
23 the maximum legal rate.

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1 IT IS FURTHER ORDERED that if any of the Respondents Energetics, Inc., Stephen P.
 2 Giuffrida and Michelle Giuffrida fail to comply with this Order, the Commission may bring further
 3 legal proceedings against the Respondent(s), including application to the Superior Court for an Order
 4 of Contempt.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
 8 
 9 CHAIRMAN


 COMMISSIONER

10 
 11 COMMISSIONER


 COMMISSIONER


 COMMISSIONER

12
 13
 14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
 15 Executive Director of the Arizona Corporation Commission,
 16 have hereunto set my hand and caused the official seal of the
 17 Commission to be affixed at the Capitol, in the City of Phoenix,
 18 this 15 day of April, 2011.

19 
 ERNEST G. JOHNSON
 EXECUTIVE DIRECTOR

20
 21 DISSENT _____

22
 23 DISSENT _____
 24 MES:db

1 SERVICE LIST FOR:

ENERGETICS, INC.; STEVEN P. GIUFFRIDA AND
MICHELLE GIUFFRIDA, HUSBAND AND WIFE

2
3 DOCKET NO.:

S-20648A-09-0010

4 ENERGETICS, INC.

5 5425 East Bell Road, Suite 101
6 Scottsdale, AZ 85254

7 Michelle Giuffrida

8 13543 East Bayview Drive
9 Scottsdale, AZ 85259

10 Steven P. Giuffrida

11 P.O. Box 390
12 Port Jefferson Station, NY 11776

13 Matt Neubert, Director

14 Securities Division

15 ARIZONA CORPORATION COMMISSION

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