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3 STATE OF OREGON
4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
5 DIVISION OF FINANCE AND CORPORATE SECURITIES

6 In the Matter of:

Case No. S-14-0025

7 Derek Dunmyer,

8 Respondent.

9 ORDER TO CEASE AND DESIST,
10 ORDER ASSESSING CIVIL PENALTY,
11 ORDER DENYING EXEMPTIONS,
12 BAR FROM FINANCIAL SERVICES
13 BUSINESS ACTIVITIES, AND
14 CONSENT TO ENTRY OF ORDER

15 WHEREAS the Director of the Department of Consumer and Business Services
16 (hereinafter, “the Director”) has investigated the business activities of Derek Dunmyer
17 (hereinafter, “Dunmyer” or “Respondent”), and the Director has determined that Dunmyer
18 sold unregistered securities in Oregon in violation of the Oregon Securities Law, ORS
19 Chapter 59 and OAR Chapter 441;

20 WHEREAS Dunmyer wishes to resolve and settle this matter with the Director;

21 NOW THEREFORE, as evidenced by the authorized signature subscribed on this
22 Order, Dunmyer hereby CONSENTS to entry of this Order to Cease and Desist, Order
23 Assessing Civil Penalty, Order Denying Exemptions, Bar From Financial Services Business
24 Activities, and Consent to Entry of Order (“Order”) upon the Director’s Findings of Fact and
25 Conclusions of Law as stated hereinafter.

26 **FINDINGS OF FACT**

The Director FINDS that:

1. At all times material to this order, Dunmyer was the owner, president and secretary of Absolute General Contracting, Inc. (“AGCI”). AGCI was an Oregon corporation with a principal place of business in Albany, Oregon. The purported business purpose of AGCI





1 included building residential housing developments.

2 2. Zurcrown, P.C. d/b/a Zurcrown (hereinafter, "Zurcrown") was licensed in
3 Oregon as a state investment adviser by the Department of Consumer and Business Services,
4 Division of Finance and Corporate Securities ("DFCS") from May 30, 2003, to December 31,
5 2010. Zurcrown's license number in Oregon is IA-1999. The Investment Adviser
6 Registration Depository number for Zurcrown is #126640. Zurcrown's principal place of
7 business was in Albany, Oregon.

8 3. Scott A. Whitney ("Whitney") was the president of Zurcrown. From June 18,
9 2003, to December 31, 2010, Whitney was licensed in Oregon to work for Zurcrown as an
10 investment adviser representative. Whitney's Central Registration Depository ("CRD")
11 number is #2376633.

12 4. Randy A. Gray ("Gray") was the vice-president and authorized representative of
13 Zurcrown. Gray was licensed in Oregon to work for Zurcrown as an investment adviser
14 representative from May 30, 2003, to December 31, 2010. Gray's CRD number is #4661082.

15 5. Between July 23, 2008 and August 29, 2008, Whitney and Gray raised more than
16 \$3.3 million from multiple investors who were clients of Zurcrown. All of the investors
17 invested through an individual retirement account. Dunmyer was aware that Gray and
18 Whitney had solicited that money on behalf of Dunmyer and AGCI.

19 6. In exchange for their funds, the investors collectively received, through their IRA,
20 a promissory note issued by AGCI and three trust deeds. Dunmyer also personally guaranteed
21 the obligations of AGCI under the promissory note.

22 7. The investors understood their funds would be used to build a residential housing
23 development in Oregon. The investors were promised returns on their investments of twelve
24 percent per annum for a term of five years. The investors relied on the purported expertise of
25 others for their investment to be successful, and the investors did not have substantial power
26 to affect the success of the investment.



1 17. Dunmyer sold an unregistered security to Oregon investors, in violation of ORS
2 59.055.

3
4 **ORDER**

5 18. Pursuant to ORS 59.245(4), Dunmyer must CEASE AND DESIST from:

- 6 A. Selling unregistered securities, in violation of ORS 59.055; and
7 B. Violating any provision of the Oregon Securities Law.

8 19. The Director, pursuant to ORS 59.045(2), hereby DENIES Dunmyer the use of the
9 securities and transactions exemptions that would otherwise be available to him under ORS
10 59.025, and ORS 59.035, respectively.

11 20. Dunmyer is permanently BARRED from all of the following financial services
12 business activities in Oregon:

- 13 A. applying for, holding, or renewing any investment adviser, investment adviser
14 representative, broker-dealer or securities salesperson license in the State of Oregon;
15 B. applying to register or renew any securities in the State of Oregon; and
16 C. applying for, holding, or renewing any license or registration required by the
17 Director in Oregon, including but not limited to insurance, consumer finance, collection
18 agency, manufactured structure dealer, or mortgage lending.

19 21. The Director, pursuant to ORS 59.995, hereby ASSESSES a civil penalty against
20 Dunmyer of \$3,000,000.00 (three million dollars) for violations of ORS 59.055.

21 22. The Director SUSPENDS the collection of the civil penalty assessed in
22 paragraph 21 so long as Dunmyer complies with all terms of this Order and complies with the
23 restitution ordered in the criminal case, *State of Oregon v. Derek Dunmyer*, Marion County
24 Circuit Court case #11C-47330, and continues to make restitution payments after the
25 conclusion of the criminal case until the victims or their estate receives all restitution owed;
26 PROVIDED HOWEVER, the civil penalty will be immediately due and payable upon a

1 determination by the Director that Dunmyer: has failed to comply with the restitution ordered
2 in the criminal case; has failed to make restitution payments after the conclusion of the
3 criminal case, before the victims or their estate receives all restitution owed; or has violated
4 any term of this Order or any provision of the Oregon Securities Law.

5 The entry of this Order in no way limits further remedies which may be available to
6 the Director under Oregon law.

7 IT IS SO ORDERED this 12th day of June, 2014.

8 PATRICK M. ALLEN, Director
9 Department of Consumer and Business Services

10 /s/ David Tatman
11 David C. Tatman, Administrator
12 Division of Finance and Corporate Securities
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1 **Consent of Derek Dunmyer to Entry of Order**

2 I, Derek Dunmyer, state that I am a resident of the State of Oregon, that I have read
3 the foregoing Order and that I know and fully understand the contents hereof; that I have been
4 advised of the right to a hearing, and that I am represented by counsel in this matter. I
5 voluntarily consent to the entry of this Order without any force or duress, expressly waiving
6 any right to a hearing in this matter; that I understand that the Director reserves the right to
7 take further actions against me to enforce this Order or to take appropriate action upon
8 discovery of other violations of Oregon law by me; and that I will fully comply with the terms
9 and conditions stated herein.

10 I understand that this Order is a public document.

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13 /s/ Derek Dunmyer
DEREK DUNMYER

14 State of: Oregon

15 County of: Marion

16 SUBSCRIBED AND SWORN to before me this 11th day of June, 2014.

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18
19 /s/ Kelli L Hartle
20 Signature of Notary Public

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