

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING) Order Number S-07-044-07-SC01
5 whether there has been a violation of the)
6 Securities Act and the Franchise Investment) STATEMENT OF CHARGES AND NOTICE
7 Protection Act of Washington by:) OF INTENT TO ENTER ORDER TO CEASE
8) AND DESIST; TO IMPOSE FINES; TO
9) CHARGE COSTS; TO DENY
EZ Show, Inc., Bernie Day, Gordon Lee) INVESTMENT ADVISER APPLICATION;
Powers, Jr.;) AND TO DENY INVESTMENT ADVISER,
Investment Adviser) INVESTMENT ADVISER
Representative, Securities) REPRESENTATIVE, SECURITIES
Broker-Dealer, and Securities) BROKER-DEALER, AND SECURITIES
Salesperson License) SALESPERSON LICENSE
Respondents)

10 THE STATE OF WASHINGTON TO: EZ Show, Inc.
11 Bernie Day
12 Gordon Lee Powers, Jr.

13 **STATEMENT OF CHARGES**

14 Please take notice that the Securities Administrator of the State of Washington has reason
15 to believe that Respondents, EZ Show, Inc.; Bernie Day; and Gordon Lee Powers, Jr., have
16 violated the Securities Act of Washington and the Franchise Investment Protection Act of
17 Washington and that their violations justify the entry of an order of the Securities Administrator
18 under RCW 21.20.110, RCW 21.20.390, and RCW 19.100.248 against each. The Securities
19 Administrator finds as follows:

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24 DENY INVESTMENT ADVISER, INVESTMENT ADVISER REPRESENTATIVE, SECURITIES
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Securities Division
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1 **TENTATIVE FINDINGS OF FACT**

2 *Respondents*

3 1. EZ Show, Inc. (“EZ Show”) is a Delaware corporation with its principal place of business
4 in King County, Washington. EZ Show is registered with the Washington Secretary of
5 State as a foreign corporation doing business in Washington.

6 2. Bernie Day (“Day”) is the president and chief operating officer of EZ Show.

7 3. Gordon Lee Powers, Jr. (“Powers”) was registered as a securities salesperson in the State
8 of Washington from March 1993 to December 2006. His National Association of Securities
9 Dealers (“NASD”) securities salesperson identification number is 2335716. Between May 2004
10 and December 2006, Powers was employed at Linsco/Private Ledger (“Linsco”) a securities
11 broker-dealer and a member of the NASD. Powers had approximately 80-100 clients while
12 employed at Linsco. Powers is not currently licensed as an investment adviser, investment
13 adviser representative, securities broker-dealer, or securities salesperson. In February 2007
14 Powers applied to the Securities Division to be licensed individually as an investment adviser.

15 *Background*

16 4. While employed as a securities salesperson, Powers had an idea of creating electronic
17 multimedia commercials that could be emailed to prospective clients. On May 19, 2003, a
18 Nevada limited liability company was formed called Open the Door Media, LLC (“Open the
19 Door Media”) to develop the idea into a business. Powers was a managing member of Open the
20 Door Media.

21 5. The name of the limited liability company, Open the Door Media, was changed to EZ

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1 Show, LLC. EZ Show registered with the Washington Secretary of State as a limited liability
2 company on January 25, 2005. On April 8, 2006, EZ Show was converted to a Delaware
3 corporation.

4 6. Powers originally had a 48% ownership interest in EZ Show that was subsequently
5 diluted to 42% as of January 2006. He also served as the Chairman of the Board of Directors.

6 *Nature of the Conduct*

7 REGULATION D OFFERING

8 7. Between December 2004 and September 2006, EZ Show sold approximately \$1.2 million
9 of membership units to 47 investors. At least thirty-six of the investors were Washington
10 residents. The characteristics of a membership unit were similar to stock.

11 8. Approximately \$800,000 of membership units were sold to 31 investors by Powers. At
12 least 18 of the investors he solicited were his clients from Linsco.

13 9. Prior to investing in EZ Show, investors were given a business plan and a subscription
14 agreement compiled by Day. Powers provided the business plan and subscription agreement to
15 the investors that he solicited. At the time of investment, Day signed the subscription agreement
16 as chief operating officer of EZ Show.

17 10. The business plan stated that there were few risks to “EZ Show domination of the
18 market” and that the risks were: (1) a growth burst beyond expectation, (2) competition, and (3)
19 EZ Show software challenges to the delivery of the EZ Show presentation. These were the only
20 risks disclosed in the business plan.

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1 11. The business plan disclosed that EZ Show had obtained patents covering its technology
2 but failed to disclose what technology the patents covered and when they were to expire.

3 12. The business plan contained an unaudited financial statement that projected over \$200
4 million in gross profit in 2006. EZ Show has never earned a profit.

5 13. The subscription agreement given to investors stated that the membership units “are
6 being offered and sold to the investor pursuant to Rule 504 under Regulation D”. Further, the
7 heading on the subscription agreement said “RULE 504 REGULATION D OFFERING” in
8 bolded, capital letters.

9 14. A Regulation D exemption filing must be made within 15 days of the first sale of the
10 securities.

11 15. On November 6, 2006, EZ Show made a Regulation D, Rule 506 exemption filing with
12 the Washington Securities Division for an offering of \$275,000 of convertible promissory notes.
13 EZ Show has never registered or made a claim of an exemption from registration for the sales of
14 the membership units.

15 16. In section A of the Regulation D, Rule 506 exemption filing, Day and Powers are listed
16 as beneficial owners of EZ Show. Day is also listed as a director of EZ Show.

17 17. Day signed the Regulation D, Rule 506 exemption filing as president of EZ Show.

18 FAILURE TO DISCLOSE OUTSIDE BUSINESS ACTIVITIES AND/OR PRIVATE
19 SECURITIES TRANSACTIONS

20 18. The sales of EZ Show membership units between December 2004 and September 2006
21 were not reported to Linsco. The sales were not recorded in Linsco’s books or records.

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1 19. On February 25, 2004, Powers signed a Linsco compliance memorandum that stated that
2 written authorization must be obtained from Linsco prior to participating in any private securities
3 transactions. The memorandum defined a private securities transaction as any securities
4 transaction outside the regular course or scope of employment *including new offerings of*
5 *securities which are not registered with the Securities and Exchange Commission.* Powers failed
6 to disclose to Linsco that he was a managing member of Open the Door Media and/or EZ Show.

7 20. On February 27, 2004, Powers signed a Linsco Representative Agreement that contained
8 the following clause: Representatives “shall not engage in any outside business activity without
9 prior written notification and approval from Linsco/Private Ledger.” Powers disclosed to Linsco
10 on the agreement that he was using the business name of Private Wealth Management. Powers
11 failed to disclose that he was a managing member of Open the Door Media or EZ Show.

12 21. On December 6, 2004, Powers received a Report of Outside Business Activity from
13 Linsco that instructed him to submit an Outside Business Activity Form for any outside business
14 activity he was involved in that was not listed on the report. The report listed his business name
15 and sales of non-variable insurance. Powers signed the report and faxed it back to Linsco.
16 Powers failed to disclose to Linsco that he was a managing member of Open the Door Media
17 Media or EZ Show.

18 22. On February 18, 2005, Powers submitted an Outside Business Activity Form to Linsco
19 requesting approval of a change of his business name from Private Wealth Management to
20 Capital Security. Powers failed to disclose to Linsco that he was a managing member and/or the
21

1 chairman of the board of EZ Show and that he had participated in securities transactions outside
2 his regular scope or course of employment with Linsco.

3 23. On May 23, 2005, Powers signed a Linsco Financial Adviser Compliance Questionnaire
4 with the following representations:

- 5 a. His salesperson registration application (“Form U-4”), a document filed with the
6 NASD, was current.
- 7 b. He was not involved in any outside business activities.
- 8 c. He was aware that all proposed outside business activities must be submitted for
9 approval and that written approval must be obtained prior to engaging in the
10 activity.
- 11 d. He was not involved in any outside business or investment opportunity involving
12 customers and/or non-customers.

13 24. Powers failed to report to Linsco on the Financial Adviser Compliance Questionnaire that
14 he was a managing member and/or the chairman of the board of EZ Show and that he had
15 participated in securities transactions outside his regular scope or course of employment with
16 Linsco.

17 25. On June 6, 2006, Powers signed a Linsco Branch Manager and Financial Adviser
18 Compliance Questionnaire with the following representations:

- 19 a. He was not involved in any outside business activities i.e. DBA name, *any activity*
20 *generating revenue or income not paid through LPL*, outside insurance sales,

1 *board member* or any leadership position *in any organization*, an affiliation with a
2 bank program, etc.

3 b. He was aware that all proposed outside business activities must be submitted
4 through the online Compliance Express Tool and approval of the activity from the
5 Compliance Department must be obtained prior to engaging in the activity.

6 c. He was not involved in any outside business relationships or investment
7 opportunities involving clients and/or non-clients.

8 26. Powers failed to report to Linsco on the Branch Manager and Financial Adviser
9 Compliance Questionnaire that he was a managing member and/or the chairman of the board of
10 EZ Show and that he had participated in securities transactions outside his regular scope or
11 course of employment with Linsco.

12 27. Powers amended his Form U-4 nineteen (19) times between May 2004 and May 2006.
13 With each amendment Powers failed to report that he was a managing member of Open the Door
14 Media or EZ Show and/or the chairman of the board of EZ Show.

15 28. Each of the nineteen times Powers amended his Form U-4 between May 2004 and May
16 2006, Powers also failed to disclose that during that time period he had participated in securities
17 transactions outside the regular scope or course of employment with Linsco.

18 EZ SHOW DIRECTORIES

19 29. In addition to selling the membership units from December 2004 to September 2006,
20 Powers also sold to his Linsco clients an opportunity to engage in a business of creating and
21 distributing multimedia commercials using EZ Show's proprietary software solution and selling

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1 advertising space in an EZ Show online business directory. Powers received a 20% commission
2 for these sales.

3 30. The purchasers received an EZ Show business plan and a directory licensing agreement
4 compiled by Day. The directory licensing agreements were signed by Day as chief operating
5 officer of EZ Show and by the purchasers.

6 31. EZ Show provided the purchasers a marketing plan that set price specifications for the EZ
7 Show products and services sold, that provided promotional and/or advertising materials, and
8 that provided for operational and technical assistance.

9 32. The purchasers paid EZ Show a fee of approximately \$50,000 plus 60% of their sales of
10 EZ Show's products and services for the opportunity.

11 33. Each of the nineteen times Powers amended his Form U-4 between May 2004 and May
12 2006, Powers failed to disclose his participation in these sales as an outside business activity.

13 **REGISTRATION STATUS**

14 34. The membership units described above are not registered as securities in the State of
15 Washington and have not previously been so registered. Furthermore, there was no notice of a
16 claim of exemption filed with the State of Washington.

17 35. EZ Show is not currently and has not previously been registered to offer or sell franchises
18 in the state of Washington.

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1 **MISREPRESENTATIONS AND OMISSIONS**

2 36. The statements that EZ Show had patents covering its technology were misleading
3 because EZ Show did not disclose what technology was covered by the patents in order for the
4 investors to determine if the patents protected technology important to EZ Show’s business.

5 37. The EZ Show financial statement that projected over \$200 million in gross profit in 2006
6 was misleading because EZ Show failed to provide a reasonable basis for its projections and
7 failed to disclose the limitations of the projections.

8 38. EZ Show failed to disclose information necessary for investors to make an informed
9 decision about investing in the membership units including the amount of the debt outstanding, a
10 detailed explanation of the specific uses of the funds generated by the sale of the membership
11 units including the approximate amounts for each use, the remuneration paid to the officers and
12 directors, the background and experience of the officers and directors, the name of the chief
13 financial officer and/or treasurer, the name and address of counsel who have passed on the
14 legality of the sale of the membership units, a copy of the opinion of counsel in respect to the
15 legality of the sale of the membership units, a balance sheet, and a profit and loss statement.
16 Also, the information EZ Show disclosed about the members of the management team was
17 misleading because EZ Show failed to disclose that the management team did not have
18 experience in the creation, the hosting, or the use of multimedia commercials for online
19 advertising.

20 39. EZ failed to disclose general and specific risks relating to the investment in membership
21 units and the sales of the EZ Show directories including, but not limited to, the risk of being

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1 unable to hire qualified employees, the risk of loss of key employees, the risk of the termination
2 of key relationships, the risk of not raising enough capital, the risk of being unable to obtain
3 customers, the risk of being unable to properly distribute the product, the risk of patent
4 infringement, the risk of being unable to obtain no cost or low cost open source software, the risk
5 of being unable to achieve a low cost licensing model, the risk of being unable to sell enough
6 licenses, the risk of being unable to achieve a low cost of inventory accumulation to sell as a part
7 of the rich media production suite, the risk of software and hardware crashes, the risk of not
8 being able to keep up with the changes in technology, the risk of being unable to obtain a hosting
9 service, the risk of its product not being compatible with operating systems and/or other
10 software, and the risk of lawsuits.

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

12 **CONCLUSIONS OF LAW**

13 *Securities Act Violations*

14 40. The membership units described above are securities in the form of investment contracts,
15 stocks, or risk capital as defined by RCW 21.20.005(12).

16 41. The offer and/or sale of membership units described above constitutes the offer or sale of
17 a security as defined in RCW 21.20.005(10).

18 42. The offer and/or sale of said securities was made in violation of RCW 21.20.010 because,
19 as set forth above, in connection with the offer and sale of a security Respondents made untrue
20 statements of material facts and/or omitted to state material facts necessary in order to make the
21 statements made, in light of the circumstances in which they were made, not misleading.

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1 43. Respondents, EZ Show, Inc.; Bernie Day; and Gordon Lee Powers, Jr., have violated
2 RCW 21.20.140 by offering and/or selling an unregistered security in the form of membership
3 units.

4 44. Respondent, Gordon Lee Powers, Jr., failed to update his NASD Form U-4. Such
5 conduct is a violation of WAC 460-22B-060 and is grounds for the denial of an investment
6 adviser application and for the denial of a securities broker-dealer, securities salesperson,
7 investment adviser, or investment adviser representative license pursuant to RCW
8 21.20.110(1)(g).

9 45. Respondent, Gordon Lee Powers, Jr., made filings of Form U-4 on which he falsely
10 stated that he was not involved in an outside business activity or an investment opportunity
11 outside the scope of his employment at Linsco. These filings, made with the Department of
12 Financial Institutions through the Central Registration Depository, were false or misleading in a
13 material respect, in violation of RCW 21.20.350, and each false filing is an independent ground
14 for the denial of an investment adviser application and the denial of a securities broker-dealer,
15 securities salesperson, investment adviser, or investment adviser representative license pursuant
16 to RCW 21.20.110(1)(a) and (1)(b).

17 46. Respondent, Gordon Lee Powers, Jr., effected a securities transaction not recorded on the
18 regular books or records of the broker-dealer that he represented without written authorization by
19 the broker-dealer. Such conduct is a dishonest or unethical business practice as defined by WAC
20 460-22B-090(2) and is grounds for the denial of an investment adviser application and the denial
21

1 of a securities broker-dealer, securities salesperson, investment adviser, or investment adviser
2 representative license pursuant to RCW 21.20.110(1)(g).

3 47. Respondent, Gordon Lee Powers, Jr., failed to comply with NASD Conduct Rule 3030,
4 which requires securities salespersons to obtain written authorization from their broker-dealer
5 before being employed or accepting compensation outside the scope of his relationship with the
6 broker-dealer. Such conduct is a dishonest or unethical business practice as defined by WAC
7 460-22B-090(19) and is grounds for the denial of an investment adviser application and the
8 denial of a securities broker-dealer, securities salesperson, investment adviser, or investment
9 adviser representative license pursuant to RCW 21.20.110(1)(g).

10 48. Respondent, Gordon Lee Powers, Jr., failed to comply with NASD Conduct Rule 3040
11 which requires securities salespersons to obtain written authorization from their broker-dealer
12 before participating in a private securities transaction. Such conduct is a dishonest or unethical
13 business practice as defined by WAC 460-22B-090(19) and is grounds for the denial of an
14 investment adviser application and the denial of a securities broker-dealer, securities salesperson,
15 investment adviser, or investment adviser representative license pursuant to RCW
16 21.20.110(1)(g).

17 *Franchise Investment Protection Act Violations*

18 49. The offer and/or sale of the directory licenses described above in paragraphs 29-33
19 constitutes the offer and/or sale of a franchise as defined in RCW 19.100.010(4), RCW
20 19.100.010(15), and RCW 19.100.010(16).

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1 50. The offer and/or sale of the above-described franchise was in violation of RCW
2 19.100.020, the registration requirement provision of the Franchise Investment Protection Act,
3 because no registration for offers and/or sales is or has been effective with the Securities
4 Division.

5 51. The offer and/or sale of the above-described franchise was made in violation of RCW
6 19.100.080, the disclosure document provision of the Franchise Investment Protection Act,
7 because Respondents did not provide the purchasers with an Uniform Franchise Offering
8 Circular that contained all material information about the franchise opportunity including, but
9 not limited to, that the purchasers were buying a franchise, a description of the patents held by
10 EZ Show including the duration and the technology covered by the patent, the number of the
11 other EZ Show franchises that were owned and/or operated, and audited financial statements.

12 52. The offer and/or sale of the above-described franchise opportunity was made in violation
13 of RCW 19.100.170 because Respondents either made an untrue statement of material fact or
14 omitted to state a material fact necessary in order to make the statements made, in light of the
15 circumstances under which they were made, not misleading.

16 **NOTICE OF INTENT TO ORDER THE RESPONDENTS TO CEASE AND DESIST**

17 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities
18 Administrator intends to order that Respondents, EZ Show, Inc.; Bernie Day; and Gordon Lee
19 Powers, Jr., and their agents and employees, each cease and desist from violations of RCW
20 21.20.010, RCW 21.20.140, RCW 19.100.020, RCW 19.100.080, and RCW 19.100.170.

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1 **NOTICE OF INTENT TO IMPOSE FINES**

2 Pursuant to RCW 21.20.110(1) and RCW 21.20.395, and based upon the Tentative
3 Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that
4 Respondent, Gordon Powers, shall be liable for and pay a fine of \$10,000.

5 **NOTICE OF INTENT TO CHARGE COSTS**

6 Pursuant to RCW 21.20.110(7) and RCW 21.20.390(5), and based upon the Tentative
7 Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that
8 Respondent, Gordon Lee Powers, Jr., shall be liable for and pay the costs, fees, and other
9 expenses incurred in the conduct of the investigation of this matter in an amount not less than
10 \$2,500. Respondent, EZ Show, Inc., shall be liable for and pay the costs, fees, and other
11 expenses incurred in the conduct of the investigation of this matter in an amount not less than
12 \$1,000.

13 **NOTICE OF INTENT TO DENY INVESTMENT ADVISER APPLICATION**

14 Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and
15 Conclusions of Law, the Securities Administrator intends to order that the investment adviser
16 application of Gordon Powers, filed in February 2007 with the Department of Financial
17 Institutions, be denied.

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1 **NOTICE OF INTENT TO DENY INVESTMENT ADVISER, INVESTMENT ADVISER**
2 **REPRESENTATIVE, SECURITIES BROKER-DEALER, AND SECURITIES**
3 **SALESPERSON LICENSE**

4 Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and
5 Conclusions of Law, the Securities Administrator intends to order that the investment adviser,
6 investment adviser representative, securities broker-dealer, and securities salesperson license of
7 Gordon Powers be denied for a period of ten (10) years.

8 **AUTHORITY AND PROCEDURE**

9 This Statement of Charges is entered pursuant to the provisions of Securities Act and the
10 Franchise Investment Protection Act and is subject to the provisions of RCW 34.05. The
11 respondents, EZ Show, Inc., Bernie Day, and Gordon Lee Powers, Jr.; may each make a written
12 request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND
13 OPPORTUNITY FOR HEARING accompanying this order.

14 If respondent Gordon Lee Powers, Jr. does not request a hearing, the Securities
15 Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as
16 final as to him; enter a permanent order to cease and desist as to him; impose the fines and costs
17 sought as to him; deny his investment adviser application; and deny his investment adviser,
18 investment adviser representative, securities broker-dealer, and securities salesperson license for
19 a period of ten (10) years.

20 If respondent EZ Show, Inc. does not request a hearing, the Securities Administrator
21 intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final as to EZ

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1 Show, Inc., enter a permanent order to cease and desist as to EZ Show, Inc., and impose the costs
2 sought as to EZ Show, Inc.

3 If respondent Bernie Day does not request a hearing, the Securities Administrator intends
4 to adopt the above Tentative Findings of Fact and Conclusions of Law as final as to her, enter a
5 permanent order to cease and desist as to her, and impose the costs sought as to her.

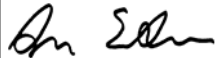
6 Dated and Entered this 20th day of August, 2007

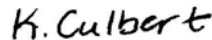
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8 MICHAEL E. STEVENSON
9 Securities Administrator

10 Approved by:

Presented by:

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12 Suzanne Sarason
13 Chief of Compliance

Kristen Culbert
Financial Legal Examiner

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