

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER



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MARK SENDROW
DIRECTOR

SECURITIES DIVISION
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ARIZONA CORPORATION COMMISSION

OPEN MEETING ITEM
MEMORANDUM

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

FROM: Mark Sendrow *MS*
Director of Securities

DATE: November 13, 2001

RE: Mark Aaron Sutter, S-03301A-01-0000

CC: Brian C. McNeil, Executive Secretary

Arizona Corporation Commission

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Accompanying this memorandum is a proposed Order Revoking Securities Salesman Registration ("Order"), regarding Mark Aaron Sutter.

Mr. Sutter received personal service of a notice of opportunity for hearing on September 28, 2001. Like all such notices prepared by the Securities Division, the notice served upon Mr. Sutter advised him that if he failed to request a hearing within the time period specified in the notice, the Commission could, without a hearing, enter an order against Mr. Sutter granting the relief requested by the Division in the notice.

Mr. Sutter has failed to request a hearing within the time period allowed him by the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.*, and the related procedural rules. Accordingly, the proposed Order would make findings of fact and conclusions of law consistent with the allegations and proposed conclusions of the Division that were contained in the notice of opportunity for hearing, and grant the relief that the Division requested, i.e., the revocation of Mr. Sutter's registration as a securities salesman.

Mr. Sutter has been a registered securities salesman in Arizona since at least 1989. He was most recently associated with Heritage West Securities, Inc., until his termination on March 16, 2000. Since that time, his registration has been in suspension because he has not been associated with a dealer firm.

On February 9, 2001, NASD Regulation, Inc. ("NASD") revoked Mr. Sutter's NASD registration, in connection with NASD Complaint Number C3A000015. The ground for the NASD revocation was Mr. Sutter's failure to pay a \$26,000 fine (including disgorgement of financial benefits received through misconduct in the amount of \$11,000), which Mr. Sutter had agreed to pay pursuant to an Acceptance, Waiver & Consent ("AWC"). The NASD had accepted the AWC on June 28, 2000. In the AWC, Mr. Sutter had, without admitting or denying the alleged violations, consented to entry of findings that he had: (1) during the period from January 1, 1996, to February 28, 1997, participated in private securities transactions without providing prior written notice to Heritage West, and (2) during the period from April 1997 to April 1998, failed to disclose to Heritage West that he was the beneficial owner of common stock of EvenTemp Corporation that was held in the account of another person.

The proposed Order would make findings of fact that include the facts just summarized, and would revoke Mr. Sutter's Arizona securities salesman registration, on three alternative grounds: (1) the existence of the NASD revocation order, (2) findings that Mr. Sutter (a) lacks integrity and is not of good business reputation, and (b) has engaged in dishonest or unethical practices in the securities industry, based upon the facts found by the NASD, as well as Mr. Sutter's failure to pay the \$26,000 fine that he agreed to pay.

The Division believes that the proposed Order would protect the interests of investors and serve the best interests of the people of Arizona. The Division requests that the Commission approve the proposed Order.

Originator: Amy Leeson

Ass't AG: Moira McCarthy

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

In the matter of:)
)
MARK AARON SUTTER)
(CRD #1913698))
6823 East Bonita)
Scottsdale, Arizona 85253,)
)
Respondent.)
)

DOCKET NO. S-03301A-01-0000
DECISION NO. _____
**ORDER REVOKING
SECURITIES SALESMAN
REGISTRATION**

**I.
INTRODUCTION**

On September 26, 2001, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order of Revocation and for Other Affirmative Action ("Notice"), against Mark Aaron Sutter ("SUTTER").

**II.
FINDINGS OF FACT**

1. Pursuant to A.R.S. § 44-1972, A.A.C. R14-4-306, and A.R.S. § 44-1962, the Notice advised SUTTER that he would be afforded an opportunity for a hearing regarding the allegations made in the Notice, if he requested a hearing in a writing filed with Docket Control of the Commission within ten days after receiving service of the Notice. The Notice further advised SUTTER that, if he failed to request a hearing within the time period specified, the Commission could, without a hearing, enter an order against him granting the relief requested by the Division in the Notice.

1 2. On September 28, 2001, the Division effected personal service of the Notice upon
2 SUTTER at the address shown in the caption above.

3 3. More than ten days have passed, and SUTTER has failed to request a hearing.

4 4. SUTTER has been a registered securities salesman in Arizona since at least 1989.
5 He was associated with Heritage West Securities, Inc., from May 6, 1997, through March 16, 2000,
6 and since that time he has not been registered in association with a dealer. Consequently, his
7 registration is currently in suspension pursuant to A.R.S. § 44-1949. SUTTER applied for
8 registration in association with Rosenthal Collins Securities, L.L.C., on or about March 28, 2000,
9 but that application was terminated on or about October 19, 2000, without having resulted in a
10 registration. SUTTER's last known address is 6823 E. Bonita, Scottsdale, Arizona 85253.

11 5. On or about February 9, 2001, NASD Regulation, Inc. ("NASD"), revoked
12 SUTTER's NASD registration, in connection with NASD Complaint Number C3A000015.

13 6. The ground for the NASD revocation was SUTTER's failure to pay a \$26,000 fine
14 that he had agreed to pay, pursuant to an Acceptance, Waiver & Consent, which the NASD had
15 accepted on June 28, 2000 (the "AWC"). The \$26,000 fine included disgorgement of financial
16 benefits received by SUTTER in the amount of \$11,000. In the AWC, SUTTER had, without
17 admitting or denying the alleged violations, consented to the entry of findings that he had:

18 a. During the period from January 1, 1996, to February 28, 1997, participated
19 in private securities transactions, with respect to notes and common stock of EvenTemp
20 Corporation, without providing prior written notice to the dealer firm with which he was
21 associated at the time of the transactions, and

22 b. During the period from April 1997 to April 1998, failed to disclose to the
23 dealer firm with which he was associated that he was the beneficial owner of common
24 stock of EvenTemp Corporation that was held in the account of another person.

25 7. The NASD is a self-regulatory organization ("SRO") in the securities industry, and
26 it is registered as such under the Securities Exchange Act of 1934.

1 IT IS ORDERED, pursuant to A.R.S. § 44-1962, that MARK AARON SUTTER's
2 registration as a securities salesman is revoked.

3 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
4

5
6 CHAIRMAN COMMISSIONER COMMISSIONER

7 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
8 Executive Secretary of the Arizona Corporation
9 Commission, have hereunto set my hand and caused the
10 official seal of the Commission to be affixed at the
11 Capitol, in the City of Phoenix, this _____ day of
12 _____, 2001.

13
14
15 _____
16 BRIAN C. McNEIL
17 Executive Secretary

18 DISSENT

19 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,
20 voice phone number 602-542-3931, E-mail shood@cc.state.az.us.

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