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COMMISSIONER



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ARIZONA CORPORATION COMMISSION
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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DIRECTOR

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MEMORANDUM

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

OPEN MEETING ITEM

FROM: Mark Sendrow *MS*
Director of Securities

Arizona Corporation Commission
DOCKETED

DATE: June 6, 2001

JUN 13 2001

RE: Gregory Alan Newton, Docket #S-03451A-01-0000

DOCKETED BY	
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CC: Brian C. McNeil, Executive Secretary

Attached is a proposed consent Order of Revocation, Order for Administrative Penalties and Consent to Same ("Order") against respondent Gregory Alan Newton ("Newton") in the above-referenced matter. Newton has waived issuance and service of a Notice of Opportunity for Hearing and service thereof on him by consenting to submittal of the proposed Order directly to the Commission for its disposition. The Securities Division will hold in custody the initial \$1,000 payment toward the administrative penalty pending action on the proposed Order by the Commission in Open Meeting.

The Order arises from a dishonest or unethical practice by Newton. While a registered securities salesman for registered dealer Merrill Lynch, Pierce, Fenner & Smith ("firm"), Newton deposited a \$20,000 client check in his personal account and spent the proceeds for personal uses in direct violation of the firm's policies. A year elapsed before Newton disclosed his misconduct to the firm, which thereafter discharged him. The client has been made whole by the firm in regard to the funds transfer.

The proposed Order revokes Newton's salesman registration, bars him from reapplying for registration for five years and imposes an administrative penalty of \$10,000 to be paid over 24 months. These sanctions will serve to deter such dishonest or unethical practices.

WMS: mck

Originator: Mark C. Knops



Merrill Lynch



CHASE
90 Presidential Plaza
Syracuse, N.Y. 13202

50-943
213

Date

30193

06/07/01

**Office
Disbursement Account**

5210 E. Williams Circle
Suite 900
Tucson, AZ 85711

Account Number

**Merrill Lynch,
Pierce, Fenner & Smith Inc.**

Check Number

Type

Amount

PAY

\$1000.00**

To The Order Of

STATE OF ARIZONA

Patricia Ann Soracco
[Signature]

Code 3103 (Rev. 2-88)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 WILLIAM A. MUNDELL
4 Chairman
5 JIM IRVIN
6 Commissioner
7 MARC SPITZER
8 Commissioner

9 **In the matter of**

10 GREGORY ALAN NEWTON
11 5475 N. Via Del Arbolito
12 Tucson, AZ 85750,
13 **Respondent.**

)
) DOCKET NO. S-03451A-01-0000

)
)
)
) DECISION NO. _____

)
) **ORDER OF REVOCATION, ORDER FOR**
) **ADMINISTRATIVE PENALTIES AND**
) **CONSENT TO SAME**
)
)

13 Respondent GREGORY ALAN NEWTON ("NEWTON") elects to permanently waive any
14 right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. §
15 44-1801 *et seq.* ("Securities Act") with respect to this Order of Revocation, Order for
16 Administrative Penalties and Consent to Same ("Order"). NEWTON admits the jurisdiction of the
17 Arizona Corporation Commission ("Commission"); admits the Findings of Fact and Conclusions
18 of Law contained in this Order; and consents to the entry of this Order by the Commission.

19 **I.**

20 **FINDINGS OF FACT**

21 1. From April 1996 until February 2001, NEWTON was employed in Arizona as a
22 registered representative and "Financial Consultant" for Merrill Lynch, Pierce, Fenner & Smith
23 Incorporated ("Firm"), a securities dealer registered in Arizona. During this period, NEWTON was
24 registered with the Commission as a securities salesman.

25 2. On January 25, 2000, NEWTON received a check for \$20,000 from a client of the Firm
26 who was a seventy-five years-old widow living alone in Arizona. The payor on the check was the

1 client and the check was drawn on the client's personal bank account that held funds belonging to
2 the client. NEWTON thereafter deposited the check in his own bank accounts and spent the
3 proceeds for his personal uses.

4 3. At the time of NEWTON'S receipt and deposit of the client check, his Firm's current
5 "Compliance Outline For Private Client Financial Consultants" expressly prohibited Financial
6 Consultants from certain "Financial Arrangements With Clients" including "depositing clients
7 personal funds ... in employee accounts" as well as "receiving gifts or gratuities in excess of
8 industry regulations or Firm policies." Moreover, the Compliance Outline required a Financial
9 Consultant to discuss in advance with a Firm manager any "financial involvement with a client"
10 that was not a part of normal duties.

11 4. The amount of the client check deposited by NEWTON exceeded the Firm's policy as
12 to the amount of a gift or gratuity a Financial Consultant could receive from a client. NEWTON
13 knew when he deposited the check that his Firm's policy prohibited him from receiving a client
14 gift or gratuity in the amount of the check.

15 5. NEWTON failed to disclose to the Firm in advance his deposit of the client check into
16 his own bank accounts. The check deposit and use of proceeds without prior disclosure to his
17 manager violated Firm policy recited in the Compliance Outline.

18 6. On July 27, 2000, NEWTON certified in his Annual Review Memorandum to the Firm
19 that he had read and understood the information contained in the Compliance Outline.

20 7. NEWTON did not disclose to the Firm his deposit and personal use of the proceeds
21 until he responded in February 2001 to a complaint from the same client. By that time, NEWTON
22 had made personal use of all the proceeds of the check.

23 8. NEWTON was discharged by the Firm on February 26, 2001 for violating Firm policy
24 by having a financial arrangement with a client that was undisclosed to the Firm.

25 9. Pursuant to A.R.S. § 44-1949, NEWTON'S registration with the Commission as a
26 securities salesman has been automatically suspended since his discharge from the Firm.

1 10. By his deposit of the check, his personal use of all its proceeds and his knowing
2 nondisclosure to the Firm, NEWTON engaged in a dishonest or unethical practice in the securities
3 industry.

4 **II.**

5 **CONCLUSIONS OF LAW**

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

8 2. NEWTON'S conduct subjects him to an order of revocation pursuant to A.R.S. § 44-
9 1962(A)(10).

10 3. NEWTON'S conduct is grounds for administrative penalties under A.R.S. § 44-2036.

11 **III.**

12 **ORDER**

13 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and NEWTON'S
14 consent to the entry of this Order, the Commission finds that the following relief is appropriate, in
15 the public interest, and necessary for the protection of investors:

16 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that NEWTON'S registration with this
17 Commission as a securities salesman is revoked.

18 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that NEWTON shall not
19 apply to this Commission for registration as a securities salesman for a period of five years from
20 the date of this Order.

21 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that NEWTON shall pay an
22 administrative penalty in the amount of \$10,000. Payment shall be made as follows: \$1,000 on the
23 date of this Order; \$2,500 at the end of six, twelve and eighteen months respectively from the end
24 of the month of the date of this Order; and \$1,500 at the end of twenty-four months from the end of

25 ...

26 ...

1 the month of the date of this Order. All payments shall be timely delivered to the Securities
2 Division of this Commission in the form of a cashier's check or money order payable to the "State
3 of Arizona."

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
6
7

8 CHAIRMAN

COMMISSIONER

COMMISSIONER

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

15 _____
16 BRIAN C. McNEIL
17 Executive Secretary

18 _____
19 DISSENT

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

22 MCK
23
24
25
26

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent GREGORY ALAN NEWTON ("NEWTON"), an individual, admits the
3 jurisdiction of the Commission over the subject matter of this proceeding. NEWTON
4 acknowledges that he has been fully advised of his rights to a notice of opportunity for a hearing
5 and to a hearing to present evidence and call witnesses. NEWTON knowingly and voluntarily
6 waives any and all rights to a notice of opportunity for a hearing and service thereof, to a hearing
7 before the Commission and to all other rights otherwise available under Article 11 of the Securities
8 Act and Title 14 of the Arizona Administrative Code. NEWTON acknowledges that this Order of
9 Revocation, Order of Administrative Penalty and consent to entry of order ("Order") constitutes a
10 valid final order of the Commission and knowingly and voluntarily consents to its terms and
11 conditions.

12 2. NEWTON knowingly and voluntarily waives any right under Article 12 of the
13 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
14 resulting from the entry of this Order.

15 3. NEWTON acknowledges and agrees that this Order is entered into freely and
16 voluntarily and that no promise was made or coercion used to induce such entry.

17 4. NEWTON acknowledges that, he has been represented by counsel in this matter, he has
18 reviewed this Order with his attorney and understands all terms it contains.

19 5. NEWTON admits the Findings of Fact and Conclusions of Law contained in this Order.

20 6. By consenting to the entry of this Order, NEWTON agrees not to take any action or to
21 make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
22 Fact or Conclusion of Law in this Order or creating the impression that this Order is without
23 factual basis.

24 7. While this Order settles the matter between NEWTON and the Commission regarding
25 his deposit of a \$20,000 check received from a client of his registered securities dealer employer
26 on January 25, 2000, his use of its proceeds and his nondisclosure to that employer of this funds

1 transfer, NEWTON understands that this Order does not preclude the Commission from instituting
2 other administrative proceedings based on violations that are not addressed by this Order.

3 8. NEWTON understands that this Order does not preclude the Commission from
4 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
5 that may be related to the matters addressed by this Order.

6 9. NEWTON understands that this Order does not preclude any other agency or officer of
7 the state of Arizona or its subdivisions from instituting administrative, civil or criminal
8 proceedings that may be related to matters addressed by this Order.

9 10. NEWTON agrees that he will not apply to the state of Arizona for registration as a
10 securities salesman for five years from the date of this Order and that he will pay a \$10,000
11 administrative penalty imposed by this Order.

12 11. NEWTON consents to the entry of this Order and agrees to be fully bound by its terms
13 and conditions. If NEWTON breaches any provision of this Order, the Commission may vacate
14 this Order and initiate an administrative proceeding against him addressing these matters.

15
16 
17 _____
GREGORY ALAN NEWTON

18 SUBSCRIBED AND SWORN TO BEFORE me this 5th day of June, 2001.

19
20 
21 _____
NOTARY PUBLIC

22 My Commission Expires:

