

**OPEN MEETING ITEM**

(For 2/21/02 Open Mtg)

ORIGINAL

WILLIAM A. MUNDELL  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

MARC SPITZER  
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

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**MEMORANDUM**

**TO:** Chairman William A. Mundell Arizona Corporation Commission  
 Commissioner Jim Irvin  
 Commissioner Marc Spitzer

**FROM:** Mark Sendrow *MS*  
 Director of Securities

**DATE:** February 6, 2002

**RE:** Brian Lloyd Gibbons, S-03470A-01-0000

**CC:** Brian C. McNeil, Executive Secretary

**DOCKETED**

FEB 06 2002

DOCKETED BY	<i>ms</i>
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Accompanying this memorandum is a proposed Order Revoking Securities Salesman Registration ("Order"), regarding Brian Lloyd Gibbons.

Mr. Gibbons received personal service of a notice of opportunity for hearing on December 27, 2001. Like all such notices prepared by the Securities Division, the notice served upon Mr. Gibbons 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. Gibbons granting the relief requested by the Division in the notice.

Mr. Gibbons 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. Gibbons's registration as a securities salesman.

Mr. Gibbons has been a registered securities salesman in Arizona since at least December 1987. He was most recently associated with Donald & Co. Securities, Inc., until his termination on September 18, 2001. Mr. Gibbons's Arizona registration expired on December 31, 2001, pursuant to A.R.S. § 44-1947(B). Nonetheless, pursuant to A.R.S. §§ 44-1963(D) and 44-1947(D), the Commission has the power to bring this action, and to suspend or revoke Mr. Gibbons's registration as a securities salesman.

Mr. Gibbons's disciplinary history includes at least three serious events during a ten-year period. Each of these events resulted in formal NASD proceedings and sanctions against Mr. Gibbons. Two of the three proceedings involved Mr. Gibbons's failure to pay amounts that he owed to customers pursuant to NASD arbitration awards. The other involved Mr. Gibbons having made inaccurate and misleading statements to NASD staff, in response to their requests for information. The misstatements concerned \$30,000 in compensation that Mr. Gibbons had received as a result of securities sales away from his dealer firm. ("Selling away" is a violation of both NASD rules and the Arizona Securities Act.) Mr. Gibbons's disciplinary history is described in greater detail in the proposed Order.

On July 26, 2001, the NASD suspended Mr. Gibbons from association with NASD member firms, in connection with NASD Non-Summary Suspension Proceeding No. ARB010001. The July 26 decision and suspension resulted from Mr. Gibbons's failure to pay the amount he owed to a customer on September 30, 2000, pursuant to an agreement between them compromising an arbitration award. The evidence shows that Mr. Gibbons had sufficient income and assets to have paid all or a substantial portion of what he owed (approximately \$90,000), but he chose to spend those resources on luxuries for himself and his wife instead. The NASD suspension is for an indefinite term, until such time as Mr. Gibbons provides evidence that he has paid what he owes, has secured a new compromise agreement from the customer, or has filed a petition or been discharged in bankruptcy.

The proposed Order would make findings of fact and conclusions of law, and would revoke Mr. Gibbons's Arizona securities salesman registration, on two alternative grounds: (1) Mr. Gibbons is lacking in integrity, and (2) Mr. Gibbons has engaged in dishonest and unethical practices in the securities industry.

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



1           2.       On December 27, 2001, the Division effected personal service of the Notice upon  
2 GIBBONS at the address shown in the caption above.

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

4           4.       GIBBONS first became a registered securities salesman in Arizona on or about  
5 December 10, 1987. He has been registered in association with: The Stuart-James Company,  
6 Incorporated (December 10, 1987 - November 23, 1990), First American Biltmore Securities, Inc.  
7 (September 20, 1991 - October 18, 1991), Franklin-Lord, Inc. (December 12, 1991 - April 3, 1992),  
8 Franklin-Lord, Inc. (May 11, 1992 - August 5, 1993), Dickinson & Co. (January 18, 1994 -  
9 February 20, 1997), and Donald & Co. Securities, Inc. (August 19, 1997 - September 18, 2001).  
10 GIBBONS's Arizona registration was automatically suspended on September 18, 2001, because he  
11 was no longer associated with a registered dealer, pursuant to A.R.S. § 44-1949. His registration  
12 expired on December 31, 2001, pursuant to A.R.S. § 44-1947(B). Nonetheless, pursuant to A.R.S.  
13 §§ 44-1963(D) and 44-1947(D), the Commission has the power to bring this action and to revoke  
14 GIBBONS's registration as a securities salesman. GIBBONS's last known address is 11126 E.  
15 Carol Avenue, Scottsdale, Arizona 85259.

16           5.       On October 2, 1991, the National Association of Securities Dealers Regulation, Inc.  
17 ("NASD") commenced case #3A910102 against GIBBONS. In its decision rendered February 14,  
18 1992, the NASD found that GIBBONS had failed to pay an arbitration award in the amount of  
19 \$43,793 that had been obtained against him by a customer. GIBBONS was censured, fined \$5,000,  
20 and assessed costs. In addition, the NASD ordered that unless GIBBONS paid the amount of the  
21 award, or reached a settlement with the customer, within 30 days, GIBBONS would be barred from  
22 association with NASD member firms.

23           6.       GIBBONS failed to pay the award or reach agreement with the customer, and was  
24 barred from association with NASD member firms on or about March 16, 1992, pursuant to the  
25 terms of the February 14 order.

1           7.       Subsequently, the NASD accepted a late appeal from GIBBONS, permitting him to  
2 be associated with NASD member firms pending disposition of the appeal.

3           8.       On September 14, 1992 the NASD affirmed the sanctions, but held the industry bar  
4 in abeyance, allowing an additional 30 days for GIBBONS to negotiate with the customer an  
5 arrangement for paying the arbitration award. GIBBONS finally complied and the NASD lifted the  
6 threat of industry bar on October 14, 1992.

7           9.       On September 14, 1994, the NASD commenced case #3A940038 against  
8 GIBBONS. In its decision rendered April 13, 1995, the NASD found that GIBBONS had provided  
9 inaccurate and misleading information to the NASD staff in response to their requests for  
10 information. The NASD found that GIBBONS had made misrepresentations to staff concerning  
11 \$30,000 in compensation he had received as a result of securities sales away from his dealer firm.

12           10.      In the April 13, 1995 decision, the NASD censured GIBBONS, fined him \$10,000,  
13 assessed costs against him, and suspended him from association with NASD member firms for 30  
14 days.

15           11.      GIBBONS appealed the decision to the United States Securities and Exchange  
16 Commission ("SEC"), which sustained the findings and sanctions in all respects on May 8, 1996, in  
17 SEC Release #34-37170.

18           12.      GIBBONS then appealed to the United States Court of Appeals for the Ninth Circuit.  
19 The Court affirmed the findings and sanctions on or about April 25, 1997.

20           13.      GIBBONS's suspension began on June 16, 1997, and continued through the close of  
21 business on July 15, 1997.

22           14.      On or about June 12, 1995, the NASD rendered a decision in favor of customer  
23 Joanne A. DuPont, and against GIBBONS and Franklin-Lord, Inc. ("Franklin-Lord"), in arbitration  
24 case #94-00508 before the NASD. The award directed GIBBONS and Franklin-Lord, jointly and  
25 severally, to pay DuPont the sum of \$365,029.00 as compensatory damages, plus interest at the rate  
26 of 10% per annum, accruing on outstanding amounts from the date of the award until the damages

1 should be paid in full. GIBBONS received notice of the award, and the award was confirmed by a  
2 judgment of the Superior Court, Maricopa County, in or about June 1995.

3 15. On February 21, 1996, in a proceeding unrelated to the DuPont matter, the  
4 Commission revoked Franklin-Lord's Arizona securities dealer registration. This action, among  
5 others, was taken in Commission Decision No. 59513, and the Commission denied the respondents'  
6 Application for Rehearing and Review on April 24, 1996, in Decision No. 59607.

7 16. On or about August 4, 1997, DuPont and GIBBONS entered into a settlement  
8 agreement (the "DuPont Settlement"). GIBBONS agreed to pay, and DuPont agreed to accept in  
9 satisfaction of the award against GIBBONS, the principal amount of \$100,000.00, plus simple  
10 interest of 10% per annum. As part of the DuPont Settlement, GIBBONS promised to pay the sum  
11 of \$5,000 by September 30, 1997, to make 36 consecutive monthly payments of not less than \$1,000  
12 each beginning on September 30, 1997, and to make a final, "balloon" payment on September 30,  
13 2000, of the entire balance then outstanding plus any accrued interest.

14 17. On or about August 8, 1997, GIBBONS and Donald & Co. Securities, Inc. ("Donald  
15 & Co."), consented to several special terms and conditions in connection with their application to  
16 the Commission to permit GIBBONS to be registered as a securities salesman in Arizona in  
17 association with Donald & Co. (the "Special Terms").

18 18. In the Special Terms, GIBBONS expressly consented that his Arizona securities  
19 salesman's registration was "contingent upon his timely payment of the amounts set forth in [the  
20 DuPont Settlement]."

21 19. GIBBONS did not timely pay all amounts due pursuant to the DuPont Settlement.

22 20. In particular, GIBBONS failed to make the balloon payment that was due on  
23 September 30, 2000.

24 21. As of September 30, 2000, approximately \$90,000 was due and owing from  
25 GIBBONS to DuPont pursuant to the DuPont Settlement.

26



1 GIBBONS of his opportunity to request a hearing, and advised him what the effect would be of his  
2 failure to do so.

3 4. GIBBONS failed to request a hearing within the time limit specified by the statute  
4 and rules just cited.

5 5. Grounds exist to revoke GIBBONS's registration as a securities salesman in  
6 Arizona pursuant to A.R.S. § 44-1962. Specifically, GIBBONS:

7 (a) Is lacking in integrity, as specified in A.R.S. § 44-1962(A)(4), in that he:

8 (1) Failed to pay timely the amounts he owed under the NASD's  
9 arbitration award in favor of DuPont;

10 (2) Failed to pay timely the amounts he owed under the DuPont  
11 Settlement;

12 (3) Failed to pay timely the amounts he owed under the DuPont  
13 Settlement, despite having agreed that his Arizona securities  
14 salesman registration was contingent upon his compliance with  
15 the terms of the DuPont Settlement; and

16 (4) Conducted himself in a manner demonstrating lack of integrity  
17 over several years' time, in that he (i) failed to pay timely the  
18 amounts he owed under the NASD's arbitration award against  
19 him in 1992, (ii) provided inaccurate and misleading information  
20 to NASD staff in response to their requests for information  
21 concerning his securities business activities, and (iii) failed to pay  
22 timely the amounts he owed as detailed in paragraphs 5(a)(1)  
23 through 5(a)(3) above; and

24 (b) Has engaged in dishonest and unethical practices in the securities industry,  
25 as specified in A.R.S. § 44-1962(A)(10), in that he:  
26

- 1 (1) Failed to pay timely the amounts he owed under the NASD's  
2 arbitration award in favor of DuPont;
- 3 (2) Failed to pay timely the amounts he owed under the DuPont  
4 Settlement;
- 5 (3) Failed to pay timely the amounts he owed under the DuPont  
6 Settlement, despite having agreed that his Arizona securities  
7 salesman registration was contingent upon his compliance with  
8 the terms of the DuPont Settlement; and
- 9 (4) Conducted himself in a manner demonstrating dishonest and  
10 unethical practices in the securities industry over several years'  
11 time, in that he (i) failed to pay timely the amounts he owed under  
12 the NASD's arbitration award against him in 1992, (ii) provided  
13 inaccurate and misleading information to NASD staff in response  
14 to their requests for information concerning his securities business  
15 activities, and (iii) failed to pay timely the amounts he owed as  
16 detailed in paragraphs 5(b)(1) through 5(b)(3) above.

17 **IV.**

18 **ORDER**

19 **THEREFORE**, on the basis of the Findings of Fact and Conclusions of Law set forth above,  
20 the Commission finds that the following Order is appropriate, in the public interest, and necessary  
21 for the protection of investors:

22 ...

23 ...

24 ...

25 ...

26 ...

1 IT IS ORDERED, pursuant to A.R.S. § 44-1962, that BRIAN LLOYD GIBBONS'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 \_\_\_\_\_, 2002.

13 \_\_\_\_\_  
14 BRIAN C. McNEIL  
15 Executive Secretary

16 \_\_\_\_\_  
17 DISSENT

18 This document is available in alternative formats by contacting Shelly M. Hood, Executive  
19 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail  
20 [shood@cc.state.az.us](mailto:shood@cc.state.az.us).

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