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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

Arizona Corporation Commission

DOCKETED

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AZ CORP COMMISSION  
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In the matter of:

JAMES T.M. VERBIC  
(CRD # 2125770)  
7880 N. 71<sup>st</sup> Street  
Paradise Valley, Arizona 85253

Respondent.

DOCKET NO. S-03435A-01-0000

**DIVISION'S MOTION FOR  
PRE-HEARING CONFERENCE,  
AND FOR ORDER EXCLUDING  
PARTICULAR WITNESSES AND  
EXHIBITS PROPOSED BY  
RESPONDENT, AND DIRECTING  
EXPEDITED PROCEDURE,  
AND FOR OTHER PRE-HEARING  
RELIEF**

The Securities Division requests that a pre-hearing conference be held at the Hearing Officer's earliest convenience, among the following times:

September 25, 2002, at any time prior to 2:45 p.m.

September 26, 2002, after noon

September 30, 2002, at any time other than 10:00 – 10:45 a.m. or 1:00 – 1:30 p.m.

October 1, 2002, at any time

The Division believes that the conference is necessary, because settlement negotiations between the parties have not been successful. The hearing is scheduled to commence October 16, 2002.

The Division is unavailable to continue the hearing between October 18 and November 1, 2002, due to vacation plans. Respondent has listed 11 witnesses that he intends to call; accordingly it

does not appear likely that the hearing can be finished in two days. The Division requests that the

Commission schedule not fewer than four additional hearing days, after November 1, 2002, to be

chosen during the pre-hearing conference.

1 The Division further requests that an order be entered, excluding from the hearing the  
2 following particular witnesses and exhibits that the Respondent has included in his list dated  
3 August 1, 2002:

4 1. Witnesses Richard Pello, Bruce Schwartz, Carol Kennedy, Ron Scott, and Doug  
5 Smith, on the ground that none of them has knowledge pertinent to the matters at issue in  
6 this administrative action. Indeed, the Hearing Officer has previously ruled that the  
7 relationships between Gary Paster and the securities salesmen he did business with in  
8 California, prior to moving his account to Respondent's management, are not relevant and  
9 not a proper subject for inquiry. Those salesmen are Carol Kennedy and Ron Scott. Bruce  
10 Schwartz is an insurance salesman from Skokie, Illinois, who has no knowledge  
11 concerning any of the issues in this action. Respondent's proposed Exhibit 8 reveals that  
12 Mr. Schwartz's testimony would be aimed solely at tarring Mr. Paster. A wish to show that  
13 a non-party witness is a "bad guy" does not permit the Respondent to call witnesses who  
14 know nothing about the issues that are actually raised by the pleadings in the case. Richard  
15 Pello was a Merrill Lynch executive. On page 17, lines 19-22 of Respondent's proposed  
16 Exhibit 21, Pello testified under oath that he had no first-hand knowledge or involvement  
17 in the issues that are raised by this action. (His deposition was taken in the context of  
18 Respondent's lawsuit against the attorney who represented both Merrill Lynch and himself  
19 in an NASD arbitration.) Finally, there is no evidence that Doug Smith has any knowledge  
20 relevant to the issues in this action. Let Respondent make an offer of proof concerning this  
21 witness, or withdraw his name.

22 2. Irrelevant exhibits: 1, 6, 7, 8. Pleadings from other litigation, which are not  
23 evidence and which are hearsay at best: 15, 17, and "Attachment 1" to exhibit 19.  
24 Respondent's Request for Hearing and Response to Notice of Opportunity for Hearing in  
25 this action, which is not evidence and is already in the record as a pleading filed with  
26 Docket Control: exhibit 19. Hearsay: exhibit 14. Irrelevant: exhibit 21. (If Respondent

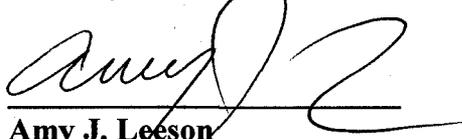
1 identifies the portions he actually intends to offer in evidence, the Division may  
2 reconsider.) Irrelevant for the most part, and violative of persons' privacy interests:  
3 exhibit 18. The Division has included an appropriately redacted copy of this item in the  
4 Division's exhibit book. Accordingly, Respondent should be directed to remove exhibit 18  
5 from his book, or to redact it in the same way. Alternatively, the exhibit ought to be kept  
6 under seal and the parties directed to maintain it confidentially, to protect the interests of  
7 non-parties.

8 The Division further requests that Respondent's proposed exhibit 16 be kept under seal and  
9 the parties directed to maintain it confidentially, to protect the interests of non-parties.

10 The Division further requests expedited consideration of its requests, because the hearing is  
11 three weeks away and these decisions ought to be made in advance of commencement of the  
12 hearing.

13 DATED this 24th day of September, 2002.

14  
15 **Janet Napolitano**  
16 Attorney General for the State of Arizona

17 

18 **Amy J. Leeson**  
19 Special Assistant Attorney General  
20 Attorneys for the Securities Division of the  
21 Arizona Corporation Commission

22 Original and 13 copies  
23 filed with Docket Control  
24 on September 24, 2002.

25 A copy of the foregoing faxed and  
26 mailed on September 24, 2002 to:  
Michael Ference, Esq.  
Sichenzia, Ross, Friedman & Ference, L.L.P.  
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Counsel for Respondent

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