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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF:)
) DOCKET NO.
MICHAEL J. BLAKE (CRD#2022161), a) S-20898A-13-0395
married man)
) PREHEARING
) CONFERENCE
_____ Respondent.)

At: Phoenix, Arizona
 Date: January 16, 2014
 Filed: **JAN 30 2014**

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Arizona Corporation Commission
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 Karen L. Kessler, RPR
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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 2 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 11:00 a.m., on the 16th of
6 January, 2014.

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BEFORE: MARC E. STERN, Administrative Law Judge

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10 APPEARANCES:

11

For the Arizona Corporation Commission Securities
12 Division:

13

Mr. Phong Paul Huynh
Staff Attorney, Securities Division
14 1300 West Washington Street
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16 For the Applicant:

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KAREN L. KESSLER, RPR
Certified Reporter
Certificate No. 50821

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1 ALJ STERN: We're on the record in the matter of
2 Michael J. Blake in Docket No. S-20898A-13-0395. My
3 name is Marc Stern. I'll preside over this proceeding
4 this morning.

5 And at this time we will take appearances. And
6 on behalf of the Securities Division.

7 MR. HUYNH: Good morning, Your Honor. Phong
8 Paul Huynh on behalf of the Division.

9 ALJ STERN: And on behalf of the respondent.

10 MR. SALCIDO: Michael Salcido for Respondent
11 Blake.

12 ALJ STERN: All right. This thing seems pretty
13 straight forward, but I guess there is always two sides
14 to every story.

15 Mr. Huynh, what is the situation as far as the
16 Division is concerned with this respondent?

17 MR. HUYNH: Your Honor, the Division recently
18 submitted a proposal to respondent and respondent's
19 counsel, and so, you know, we haven't had a chance to,
20 you know, fully discuss any situations or questions
21 regarding the proposal, but the way that we see it, it
22 would be a pretty straight forward matter.

23 I only anticipate a one day hearing on this
24 case. And so the Division is open to either scheduling
25 that hearing now or a brief status conference to allow

1 the parties to see if we can reach a conclusion and then
2 set the date, depending on how long out hearing dates
3 are right now.

4 ALJ STERN: Well, for a one day hearing we can
5 probably do things pretty easily. It seems like the
6 facts are pretty straight forward, and if I understand
7 things correctly from reviewing the notice, the Division
8 wants to revoke his registration as a salesman based on
9 a FINRA action.

10 MR. HUYNH: Correct. And deny an investment
11 advisor representative license.

12 ALJ STERN: And after that expiration, I guess,
13 he can reapply and go through this again, right?

14 MR. HUYNH: Correct, Your Honor.

15 ALJ STERN: Mr. Salcido, what's your situation
16 on this?

17 MR. SALCIDO: Well, Your Honor, I guess, I mean,
18 obviously the FINRA order was issued and it did suspend
19 him as a broker/dealer from October to October, but you
20 know, our position is that -- I mean, on one hand, you
21 have discretion as to whether or not this is sufficient
22 to deny his application as an investment advisor,
23 because you have to find that, not only is there an
24 order in place, but that it's in the public interest to
25 deny his application as an investment advisor

1 representative.

2 And our position is that the FINRA action
3 states, you know, obviously that he's out as a salesman.
4 I mean, I think, I don't know what we can do, whether we
5 withdraw it or you deny it or put it on hold, he's not
6 applying as a salesman anymore. But the SEC and FINRA
7 know that he wants to be an investment advisor
8 representative, and they did not object to him becoming
9 an investment advisor representative. In fact, the SEC
10 approved his registration. So we're saying there's
11 really no reason for the Division to pile on at this
12 point, once FINRA and the SEC have allowed him to become
13 an investment advisor representative.

14 MR. HUYNH: Your Honor, just a point of
15 clarification. FINRA only has oversight over
16 broker/dealers and registered representatives, not
17 investment advisor, investment advisory representatives.
18 So that's why they can't really, you know, approve,
19 necessarily, the investment advisor representative
20 application, per se.

21 And, you know, Mr. Salcido is correct in regards
22 to the application of the statute, and we believe the
23 facts presented by Division will show the public
24 interest aspect of it without a problem.

25 So we're open in regards to continuing

1 discussions with Mr. Salcido and his client. But short
2 of that, we're open to setting that one day hearing, if
3 it's sufficient for the, for you, Your Honor, to move
4 this matter along.

5 MR. SALCIDO: Your Honor, may I add one more
6 thing?

7 ALJ STERN: Sure.

8 MR. SALCIDO: The statute they're citing, A.R.S.
9 Section 44-3201(10), talks about that in order to deny
10 an application for an investment advisor representative,
11 the Commission has to find that it's in the public
12 interest and -- and the subsection 10 says -- subject to
13 an order, true, of an SRO, true, denying, revoking or
14 suspending, true, of license or membership. But then it
15 says as a broker or dealer in securities -- not the case
16 here -- or as an investment advisor representative; not
17 the case, sir. The statute in question doesn't even
18 apply because his suspension was as a security salesman,
19 and that's not mentioned in 44-3201(10).

20 So maybe the Division can explain how that
21 applies here, because that's in my answer, it's the
22 first thing. That statute doesn't talk about the order
23 that was issued to Mr. Blake.

24 ALJ STERN: Mr. Huynh.

25 MR. HUYNH: Sure. Your Honor, we can, but my

1 recollection, the term actually -- broker is more of an
2 encompassing term, and it does include, or as
3 traditionally encompass, you know, registered
4 representative and salesman. It's not a statutorily
5 defined term in the SEC, but through, I believe my
6 recollection is, case law, any application of it, it
7 does cover registered representatives, and that's how
8 it's always been applied.

9 ALJ STERN: Okay. I'll tell you what. For a
10 one day hearing, I'm not sure when we'd get you on, but
11 it probably won't be until March, because I have three
12 or four weeks of hearing. That's maybe if it's even
13 possible, because I'll be going out of town in March,
14 and I think I have a couple of hearings already
15 scheduled in March, and it may have to be later than
16 that.

17 MR. HUYNH: Yeah, Your Honor, March would not
18 work for myself. I have a criminal trial starting in
19 March that's going to last about three to three and a
20 half weeks, so...

21 ALJ STERN: March is shot.

22 MR. HUYNH: Yeah, March would be shot for me.

23 ALJ STERN: And February, as I say, I think it's
24 at least three weeks we're running on a case, Tri-Core
25 is running.

1 MR. SALCIDO: Doesn't the statute require a
2 hearing in a certain period of time on a denial of an
3 application? I don't have that right in front of me,
4 but I think it might.

5 ALJ STERN: We can check.

6 MR. SALCIDO: You may want to look at that.

7 MR. HUYNH: I think the position is already
8 within that time frame of your answer, I think. We've
9 always taken the position that --

10 MR. SALCIDO: Because right now he can't work.
11 So I mean -- normally the defense likes to push things
12 out, but in this situation he can't work until we get
13 this thing decided.

14 ALJ STERN: What is that, Mr. Huynh?

15 MR. HUYNH: I'm not quite sure, you know, if I'm
16 thinking of the same statute that Mr. Salcido is
17 thinking of, and I think the position is, the question
18 has always been, are we saying the hearing has to be
19 conducted within that short window. And I think the
20 general position by the Commission is that the initial
21 conferences or status conference hearings that we've
22 conducted have complied with the statutes, but not the
23 completion of the actual administrative hearing in that
24 short little window.

25 ALJ STERN: Right. That's the 30 days of a

1 hearing. I think, under the circumstances, there's
2 never been a deadline to complete the case. It was a
3 deadline to have some sort of a hearing. So we have
4 always tried to get the parties in here.

5 And in the case of your client, Mr. Salcido, I
6 think -- well, you said off the record, I think, or
7 maybe you said it on the record, that you didn't get the
8 procedural order.

9 MR. SALCIDO: I got this one, yeah. But I say
10 this -- I'm not going to make an issue of time. I
11 guess, let's just grab the first hearing date you have
12 right now. Because if we come back in a month, then we
13 might be in June, so let's maybe set a date now, and
14 that will force us to get to work on it.

15 ALJ STERN: Well, and to take a good look at
16 what the situation is with the Division's position,
17 because, I guess, essentially it's an issue of public
18 interest, and I guess your client was dealing in
19 products, or a product, of his own creation with
20 whomever, and that was found to be contrary to the rules
21 of FINRA, I guess, and he took his medicine. The
22 question is, I guess, is your position is that doesn't
23 exclude him from working as a financial advisor, but the
24 Division is concerned about public interest and the
25 activities that went on.

1 MR. SALCIDO: Well, the public interest thing, I
2 would hate to see that the Division tries to use the
3 facts in that consent, try to use the public interest
4 standard to try to backdoor the facts in that case,
5 because they really can't be used in this hearing. They
6 really shouldn't be used in this hearing, unless the
7 Division is prepared to put on that case, because that
8 is not a res judicata or collateral estoppel effect in
9 those cases. In fact, it specifically permits him to
10 deny those allegations in any proceeding that FINRA is
11 not a party to. That's why they allow you to go into
12 these things without admitting or denying so another
13 tribunal can't jam it down your throat.

14 ALJ STERN: Do you want the Division to amend
15 their notice to add the allegations concerning his
16 violations brought about by selling a product his
17 broker/dealer didn't sell?

18 MR. SALCIDO: Well, I was trying to flush this
19 out, and I think -- if I'm mistaken, Paul, let me know
20 -- that they were not going to try to retry that case;
21 that they were trying to say that the existence of the
22 order itself is the grounds for revocation.

23 ALJ STERN: Well, I'll tell you what. I'm going
24 to take a look at my hearing calendar and see what we
25 can do to get your man on. You two can talk for a few

1 minutes and see what you can do, but I don't think in
2 the great scheme of things that your man is going to
3 come out of this, you know, like I say a one, two, three
4 case. I mean, the Division is talking a day of hearing,
5 that takes time, et cetera. There will probably be some
6 briefs. Unfortunately --

7 MR. SALCIDO: I think it's probably better, I
8 think it's always better to set what you think it's
9 going to do and then plus one, just because things take
10 longer, you know.

11 ALJ STERN: Right.

12 MR. SALCIDO: And they don't have to be
13 consecutive, if they're within a week or something.

14 ALJ STERN: Let me see what we have available
15 and, hearing room wise, et cetera, and I'll get back.

16 We will go off the record for a few minutes.

17 (Recess taken from 11:11 a.m. to 11:21 a.m.)

18 ALJ STERN: We're back on the record.

19 We've had an off the record discussion. It
20 appears that April 22nd and 23rd are available for
21 hearing in the event the parties can't reach a mutual
22 agreement. So I will put out an order setting it for
23 hearing.

24 And I don't know how many documents will be
25 involved in this particular proceeding. I wouldn't

1 think it would be one of these voluminous 250 exhibit
2 cases.

3 MR. HUYNH: We don't anticipate that many
4 documents, Your Honor, but it would probably be a small
5 binder.

6 ALJ STERN: And how many witnesses do you think?

7 MR. HUYNH: Off the top of my head, Your Honor,
8 right now the Division is estimating two, maybe max
9 three, if even that.

10 ALJ STERN: And, Mr. Salcido, if your client is
11 presenting witnesses besides himself?

12 MR. SALCIDO: I would guess no know more than
13 three. And I would also say that we probably -- I know
14 sometimes the Division likes to put on witnesses to get
15 documents in. I don't think we need to do that. I
16 mean --

17 ALJ STERN: Okay. Yeah. If you guys can
18 stipulate to your exhibits, that will save some time.

19 All right. So with that, I'll put out a
20 procedural order. I'll ask that you exchange your
21 documents and list of witnesses, probably, at least
22 30 days beforehand, maybe 45 days, somewhere around,
23 probably, the first of March or thereabouts.

24 Anything else?

25 MR. HUYNH: Nothing, no, Your Honor.

1 MR. SALCIDO: No, Your Honor. Thank you.

2 ALJ STERN: Okay. With that, this matter is
3 concluded, and hopefully you'll resolve the matter.
4 Thank you.

5 (The proceedings concluded at 11:23 a.m.)

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1 STATE OF ARIZONA)
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I, KAREN L. KESSLER, RPR, Certified Reporter
 No. 50821 for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full, true
 and accurate transcript of the proceedings had in the
 foregoing matter, all done to the best of my skill and
 ability.

WITNESS my hand this 28th day of January,
 2014.



 KAREN L. KESSLER, RPR
 Certified Reporter
 Certificate No. 50821