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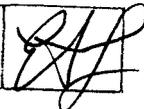
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Arizona Corporation Commission

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JUL 11 2014

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In the matter of:

Docket No. S-20898A-13-0395

**Michael J. Blake (CRD #2022161),  
a married man,**  
Respondent.

**Respondent Blake's  
Post-Hearing Brief**

Respondent Michael Blake, a securities salesman, made a settlement with FINRA that suspended his registration as an "associated person" — the equivalent of a "securities salesman" under Arizona law. He then applied for and was granted a license as an investment adviser representative (IAR) by the Securities and Exchange Commission (SEC).

Mr. Blake also applied for salesman and IAR licenses in Arizona. The Securities Division denied his applications, using the FINRA settlement as a basis.

Mr. Blake requested a hearing, which was held on April 22-23, 2014.

1 Mr. Blake's IAR application should be granted because: (i) there is no  
2 statutory basis to deny it; (ii) Mr. Blake's conduct does not warrant denial;  
3 and (iii) the Division did not prove that it's in the "public interest" to deny  
4 this application. And, for the same reasons, his salesman application should  
5 be granted upon expiration of the FINRA suspension.

6  
7 **1. FACT SUMMARY**

8 **1.1 Longest Drive, LLC**

9 Mr. Blake has been in the investment business for more than 20 years,  
10 and his record was spotless until the recent recession. About ten years ago,  
11 Mr. Blake and a few friends formed Longest Drive LLC. They used this entity  
12 to make real estate investments.

13 Longest Drive was strictly a passive investor in the real estate  
14 investments that are the basis of this action. It did not structure, operate, or  
15 control any of these projects.

16 Mr. Blake, at the time a registered securities salesman, sought and  
17 obtained the written approval of his securities dealer to participate in this  
18 LLC. And he complied with all applicable policies, rules, regulations, and  
19 statutes regarding this outside business activity.

20 Over the years, Mr. Blake's friends, family, and more affluent clients  
21 asked to join Longest Drive. Some were accepted, but only *after* Mr. Blake  
22 and his co-founders determined the prospective new member's suitability.

1           **1.2       The FINRA investigation and Order**

2           Longest Drive’s holdings suffered when the real estate market (as well as  
3 most of the world’s economies) crashed.<sup>1</sup> FINRA began an investigation and  
4 filed an enforcement complaint, alleging that Mr. Blake did not properly  
5 notify his securities dealer of his participation in Longest Drive. Mr. Blake  
6 and FINRA ultimately settled this case, which resulted in the FINRA Order.<sup>2</sup>

7           Mr. Blake did not admit or deny: (i) the allegations contained in the  
8 complaint; or (ii) the findings and violations contained in the Order. He  
9 consented to the entry of the findings and violations “solely for purposes” of  
10 FINRA proceedings. And he specifically reserved the “right to take legal or  
11 factual positions in litigation or other legal proceedings in which FINRA is  
12 not a party.”<sup>3</sup>

13           Mr. Blake agreed to a one-year suspension from associating with a  
14 FINRA securities dealer. He has fully complied with the FINRA Order, and  
15 once the year is up he will regain his registration as an “associated person”  
16 without having to re-apply or re-test.

17  
18           **1.3       Mr. Blake’s IAR applications with the SEC and ACC**

19           Mid Atlantic Financial Management, Inc. (MAFM) — a federally licensed  
20 investment adviser (IA) and an IA notice filer in Arizona — asked Mr. Blake  
21 to join the firm as an IAR. Mr. Blake completed the applications, provided all  
22 requested information, and paid the applicable fees.<sup>4</sup>

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24           <sup>1</sup> Exh. R-17, Adam J. Levitin & Susan M. Wachter, *The Commercial Real Estate*  
25           *Bubble*, 3 Harv. Bus. L. Rev. 84 (2013).

26           <sup>2</sup> Exh. R-13, FINRA Order Accepting Offer of Settlement.

<sup>3</sup> Exh. R-13, FINRA Order.

<sup>4</sup> Exhs. R-10, R16, Mr. Blake’s email correspondence with MAFM.

1 The FINRA Order does *not* prevent Mr. Blake from working as an IAR. In  
2 fact, FINRA was fully informed of Mr. Blake's association with MAMF, and  
3 did not object. And MAFM knew all about the FINRA investigation and  
4 settlement, and it still hired Mr. Blake to be its representative.<sup>5</sup> Further, the  
5 SEC (which regulates IAs and IARs) approved Mr. Blake.<sup>6</sup>

6 Given that MAMF, FINRA, and the SEC have no objection to Mr. Blake  
7 working as an IAR, Mr. Blake's application to the Division for an IAR license  
8 should have been treated as no more than a "notice" filing. Instead, the  
9 Division used the FINRA Order to deny his IAR application, which has  
10 prevented Mr. Blake from earning a living in his chosen profession.

11  
12 **2. Mr. Blake's IAR application should be approved**

13 **2.1 There is no statutory basis to deny Mr. Blake's IAR application**

14 The only basis for denying Mr. Blake's IAR application is a statute (ARS §  
15 44-3201.A.10.) that does not apply. Under this statute, the ACC can deny Mr.  
16 Blake's application to be an IAR only if it finds that:

- 17 • he is subject to a FINRA order suspending his "licensure or  
18 registration *as a broker or dealer in securities or as an investment adviser*  
19 *or investment adviser representative*" for at least six months (emphasis  
20 added); and  
21 • it is "in the public interest" to deny his application.<sup>7</sup>

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<sup>5</sup> Exhs. R-10, R16, Mr. Blake's email correspondence with MAFM.

26 <sup>6</sup> Exhs. R-8, R-9, and R-25, Mr. Blake's email correspondence with the SEC.

<sup>7</sup> ARS § 44-3201.A.10.

1 It's important to note that the Arizona and FINRA use slightly different  
2 terminology regarding investment professionals. The Arizona Securities Act  
3 refers to an individual as a securities "salesman." It refers to a firm as a  
4 securities "dealer."<sup>8</sup> FINRA refers to a securities salesman as an "associated  
5 person," and a dealer is referred to as a "member" or "member firm."<sup>9</sup>

6 Mr. Blake was registered with FINRA as an "associated person," and with  
7 Arizona as a "salesman." He was not registered anywhere as a "broker or  
8 dealer in securities."

9 In fact, FINRA suspended Mr. Blake — an "associated person" of a  
10 "member firm" — from "associating with any FINRA member firm in all  
11 capacities" for one year.<sup>10</sup> It did *not* suspend Mr. Blake's registration as a  
12 "broker or dealer in securities."

13 If the Arizona legislature intended suspension as an associated person or  
14 securities salesman to be grounds for denying an application for  
15 registration as an IAR, the statute would have said that. But it didn't. So the  
16 Division cannot use this statute to deny Mr. Blake's IAR application.

17  
18 **2.2 There is no statutory basis to deny Mr. Blake's salesman**  
19 **application**

20 The same argument applies to the denial of Mr. Blake's securities  
21 salesman, which is based on a similarly worded statute.<sup>11</sup>

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25 <sup>8</sup> ARS §§ 44-1801.9 and 1801.22

26 <sup>9</sup> Exh. 19, FINRA By-Laws, Article 1 Definitions, at (rr) and (ee).

<sup>10</sup> Exh. R-13, FINRA Order.

<sup>11</sup> ARS § 44-1962.A.8.

1       The FINRA Order, however, effectively makes Mr. Blake's salesman  
2 application moot — at least during the FINRA suspension. So Mr. Blake asks  
3 the ACC to hold off considering this application until after the FINRA  
4 suspension runs, and he is once again a FINRA licensed associated person /  
5 securities salesman.

6  
7       **2.3       The SEC, FINRA, MAFM (the IA that hired Mr. Blake), and Mr.  
8       Blake's clients do not object to Mr. Blake being licensed as an IAR**

9       In Arizona, securities salesmen and IARs are both licensed and regulated  
10 by the ACC. Under the federal regulatory scheme, however, FINRA oversees  
11 securities salesmen and the SEC oversees IARs.

12       The FINRA action only suspended Mr. Blake's license as an associated  
13 person / securities salesman. And its Order did not prohibit Mr. Blake from  
14 acting as an IAR for a registered investment adviser. Why else would MAFM,  
15 which has a compliance department, hire and retain Mr. Blake?

16       Mr. Blake filed separate applications with the SEC for registration as an  
17 investment adviser and investment adviser representative. The FINRA case  
18 was fully disclosed. Yet, the SEC, which is charged with protecting the  
19 investing public, approved Mr. Blake's registration as an IAR.<sup>12</sup>

20       MAFM, as a registered investment adviser, also has to duty to protect the  
21 investing public. It knew all about Mr. Blake's FINRA's investigation and  
22 settlement. But it still agreed to authorize Mr. Blake to act as its IAR.

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<sup>12</sup> Exhs. R-8, R-9, and R-25, Mr. Blake's email correspondence with the SEC.

1 In an extra effort to protect the investing public, MAFM asked Mr. Blake  
2 to agree to “heightened supervision,” which exceeded other regulatory  
3 requirements. Mr. Blake readily agreed to these conditions.<sup>13</sup>

4 Mr. Blake even informed the ACC that he agrees to have these conditions  
5 be part of the ACC’s decision to grant his IAR application.  
6

7 **2.4 Mr. Blake’s actions do not justify denial of his IAR Application**

8 The Division stated that its basis for denial was the *existence* of the  
9 FINRA Order, rather than the underlying facts. But it still re-tried portions of  
10 the FINRA case against Mr. Blake. The evidence, however, showed that Mr.  
11 Blake’s actions do not justify denial of his IAR application because he:

- 12 ■ gave written notice to his dealer / member firm and received its  
13 approval before participating in Longest Drive;<sup>14</sup>
- 14 ■ did not receive any fees, commission, or compensation in connection  
15 with Longest Drive;<sup>15</sup>
- 16 ■ permitted just a few people (mainly friends and family) to participate  
17 in Longest Drive — only after determining that the investment was  
suitable for them;
- 18 ■ put his own money in Longest Drive, which was also lost; and
- 19 ■ did not receive any preferential treatment regarding his Longest  
20 Drive investment, and was treated no better than other members.<sup>16</sup>

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24 <sup>13</sup> Exh. R-18, letter from MAFM to Mr. Blake re heightened supervision.

25 <sup>14</sup> Exhs. R-2, R-5, R-21, R-22, R-23, R-26, Blake’s notices to his dealer re:  
outside business activity (Longest Drive) between 2002 and 20012.

26 <sup>15</sup> Exhs. R-3, R-5, R-26.

<sup>16</sup> Exhs. R-3, R-5.

1 Mr. Blake's dealer (Ameritas) conducted a review of Mr. Blake and  
2 Longest Drive about eight years after Mr. Blake first requested and received  
3 approval to become a member of Longest Drive.<sup>17</sup>

4 Much of Ameritas's review is self-serving. But its investigation  
5 concluded that Mr. Blake: (i) did not receive any direct compensation from  
6 Longest Drive; (ii) did not intend to deceive Ameritas; (iii) did not  
7 knowingly engage in securities activity "away" from the firm; and (iv) took  
8 clear and specific steps in dealing with Longest Drive members so that there  
9 was "no doubt" that this activity was separate and distinct from Ameritas.<sup>18</sup>

10 Moreover, Longest Drive's losses were primarily caused by the collapse  
11 of real estate market, and not from any misconduct. Virtually all real estate  
12 investments suffered during this time.<sup>19</sup>

#### 13 14 **2.5 Mr. Blake Has Already Been Punished For His Conduct**

15 Mr. Blake has been punished multiple times for his participation in  
16 Longest Drive:

- 17 • FINRA suspended him as an associated person / securities salesman  
18 for one year, starting in October, 2013.<sup>20</sup>
- 19 • Mr. Blake's member firm / dealer imposed a 30-day suspension on  
20 him (September 13, 2010 – October 13, 2010).<sup>21</sup>
- 21 • The Division has held up his IAR application — which has prevented  
22 him from earning a living — since October, 2013.<sup>22</sup>

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23 <sup>17</sup> Exh. R-26, Ameritas's review of Mr. Blake and Longest Drive.

24 <sup>18</sup> Exh. R-26, Ameritas's review of Mr. Blake and Longest Drive.

25 <sup>19</sup> Exh. R-17, Adam J. Levitin & Susan M. Wachter, *The Commercial Real  
Estate Bubble*, 3 Harv. Bus. L. Rev. 84 (2013)

26 <sup>20</sup> Exh. R-14; Notice at ¶32.

<sup>21</sup> Exh. 26, Ameritas's review of Mr. Blake and Longest Drive.

1       The Division's action exacerbated the punishment imposed by FINRA,  
2 which actually conducted the investigation. And FINRA specifically found  
3 that the sanctions it imposed: (i) "are in the public interest," (ii) "are  
4 sufficiently remedial" to deter Mr. Blake from any future misconduct; and  
5 (iii) "represent a proper discharge by FINRA of its regulatory responsibility  
6 under the Securities Exchange Act of 1934."<sup>23</sup>

7       Even if the ACC approves Mr. Blake's IAR license now, the Division has  
8 exacted punishment on Mr. Blake (no income for ten months – and  
9 counting). And if the ACC denies Mr. Blake's IAR and salesman applications,  
10 it can then prevent him from reapplying for an additional year.<sup>24</sup>

11       That further undermines the FINRA Order, which allows Mr. Blake to be  
12 re-licensed as a securities salesman / associated person when the one-year  
13 suspension is up — without having to test or reapply.

14       In effect, the Division is converting a one-year associated person /  
15 securities salesman suspension into a multi-year suspension from acting as  
16 an associated person / securities salesman *and* as an IAR.

17       How many times should Mr. Blake be punished?

18  
19       **3. CONCLUSION**

20       A person who reads ARS § 44-3201.A.10 should be entitled to rely on the  
21 statute's plain meaning. And that statute doesn't state that suspension as an  
22 associated person / securities salesman is a basis to deny registration as an  
23

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24  
25       <sup>22</sup> Exhs. R-15 and R-16; Notice at ¶33.

26       <sup>23</sup> Exh. R-13, FINRA Order.

<sup>24</sup> ARS §44-3201.D.; ARS § 44-1962.A.8.

1 IAR. How can people comply with the law if the statute's actual words don't  
2 mean anything?

3 There are several levels of regulation and supervision of investment  
4 professionals. They include federal regulation (SEC, FINRA), state regulation  
5 (the ACC and similar agencies in other states), industry self-regulation, and  
6 an investor's own responsibility to act responsibly and prudently.

7 Here, the federal regulators (FINRA, SEC), a regulated and licensed  
8 member of the investment industry (MAMF), and investment clients (who  
9 have intimate knowledge of their investment professional) *all agree* that Mr.  
10 Blake should be a licensed IAR.

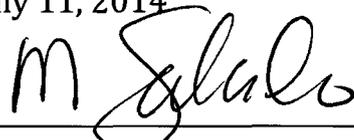
11 The Division is the lone hold-out, and it is single-handedly preventing  
12 Mr. Blake from making a living.

13 Denying Mr. Blake's IAR application would damage his firm and his  
14 clients, as well as undermine the actions taken by the federal regulators.  
15 And it is not in the public interest.

16 Therefore, Mr. Blake moves the ACC to:

- 17 1. approve his license as an IAR; and
- 18 2. approve his license as a securities salesman effective upon his  
19 completion of the FINRA suspension as an associated person /  
20 securities salesman.

21  
22 Dated: July 11, 2014

23 

24 Michael Salcido

25 *Attorneys for Respondent Blake*

26

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