

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

Arizona Corporation Commission
DOCKETED

JUN 26 2015

DOCKETED BY [Signature]

IN THE MATTER OF:
MICHAEL J. BLAKE (CRD # 2022161), a married
man,
Respondent.

DOCKET NO. S-20898A-13-0395

DECISION NO. 75127

OPINION AND ORDER

DATES OF PRE-HEARING: December 23, 2013 and January 16, 2014
DATES OF HEARING: April 22, and 23, 2014
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Michael Salcido, on behalf of Respondent, Michael J. Blake; and Phong (Paul) Huynh, Staff Attorney, on behalf of the Securities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On November 19, 2013, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Michael J. Blake (CRD# 2022161) ("Respondent"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") and the Investment Management Act ("IM Act") in connection with the offer and sale of securities in the form of membership interests. It was further alleged that Respondent had filed an application to be an Investment Adviser Representative ("IAR") while subject to an order of a self-regulatory organization ("SRO"), the Financial Industry Regulatory Authority ("FINRA"), suspending him for one year in all capacities from associating with a FINRA member firm.

Respondent Blake was duly served with a copy of the Notice.

...

1 On December 4, 2013, Respondent Blake filed a request for hearing in response to the Notice
2 in this matter pursuant to A.R.S §§ 44-1972, 44-3212, and A.A.C. R14-4-306.

3 On December 9, 2013, by Procedural Order, a pre-hearing conference was scheduled on
4 December 23, 2013.

5 On December 23, 2013, at the pre-hearing conference, the Division appeared through counsel.
6 Respondent's counsel who had filed the request for hearing did not appear and could not be reached
7 telephonically. Counsel for the Division indicated that he had last spoken with Respondent's counsel
8 several weeks prior to the pre-hearing conference.

9 On December 26, 2013, by Procedural Order, due to the unexplained absence of counsel from
10 the proceeding, the pre-hearing conference was rescheduled.

11 On January 16, 2014, at the rescheduled pre-hearing conference, the Division and Respondent
12 appeared through counsel. Counsel for the respective parties requested that a hearing be scheduled.
13 In the interim, counsel indicated that they would attempt to resolve the issues raised by the Notice
14 prior to the hearing.

15 On January 17, 2014, by Procedural Order, a hearing was scheduled to commence on April
16 22, 2014.

17 On April 22, 2014, a full public hearing was convened before a duly authorized
18 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division and
19 Respondent were present with counsel. At the conclusion of the proceeding, the parties agreed to
20 exchange post-hearing briefs after which the matter was taken under advisement pending submission
21 of a Recommended Opinion and Order to the Commission.

22 On July 11, 2014, the Division and Respondent filed their post-hearing briefs.

23 On January 15, 2015, Respondent filed notice of the completion of his FINRA suspension.

24 On January 23, 2015, the Division filed its response to Respondent's latest filing with respect
25 to the completion of the FINRA suspension

26 * * * * *

27 Having considered the entire record herein and being fully advised in the premises, the
28 Commission finds, concludes, and orders that:

FINDINGS OF FACT

1
2 1. Respondent Michael J. Blake (CRD# 2022161) is an Arizona resident who was
3 registered as a securities salesman with the Commission from March 9, 2000 to April 3, 2013. (Ex.
4 S-1 and S-2A)

5 2. Respondent Blake was registered as a securities salesman with Carillon Investments,
6 Inc. ("Carillon") a registered securities dealer from November 1, 2002 to June 30, 2006.

7 3. On or about June 30, 2006, Carillon was acquired by Ameritas Investment
8 Corporation ("Ameritas"), another registered securities dealer.

9 4. Subsequently, from June 30, 2006, until March 28, 2013, Respondent Blake was
10 employed by Ameritas as a securities salesman until he retired.

11 5. On March 21, 2013, as the result of an investigation conducted by FINRA concerning
12 Mr. Blake's sales activities, FINRA issued a Notice of Complaint which alleged violations of
13 industry practices and rules by Respondent Blake in Disciplinary Proceeding No. 20100217105-01.
14 (Ex. R-6)

15 6. These allegations concerned securities transactions conducted by the Respondent by
16 means of private transactions and are termed "selling away" since these sales were not made through
17 the salesman's employer.

18 7. In May 2013, Respondent Blake became employed by another broker-dealer, Mid
19 Atlantic Capital Corporation ("MACC") as a securities salesman and he applied to the Commission
20 on May 15, 2013 for approval of his registration with MACC. (Ex. S-1)

21 8. While Mr. Blake's application for approval of his registration as a salesman with
22 MACC was pending, on August 29, 2013, Respondent Blake presented an Offer of Settlement to
23 FINRA in order to resolve the issues raised by the allegations in the Notice of Complaint concerning
24 violations of industry rules and regulations. (Ex. R-13)

25 9. Subsequently, on September 9, 2013, FINRA issued a Notice of Acceptance of the
26 Offer of Settlement which had been presented by Respondent Blake in the disciplinary action
27 initiated by FINRA. (Ex. R-14)

28 ...

1 10. Upon FINRA issuing its Notice of Acceptance of the Offer of Settlement by Mr.
2 Blake, he effectively consented to the following sanctions: a one-year suspension in all capacities
3 from associating with any FINRA member firm; a \$10,000 fine; and that suspension was to be
4 effective on a date set by FINRA staff. It was subsequently determined that Respondent Blake's
5 suspension would be from October 7, 2013 to October 6, 2014, whereby he was prohibited from
6 associating with any FINRA member in any capacity, including clerical or ministerial functions. (Ex.
7 R-14)

8 11. Since Respondent Blake was unable to work any longer for MACC, he terminated his
9 employment with that company in October 2013. However, he became employed by a related entity,
10 Mid Atlantic Financial Management, Inc. ("MAFM"), a Federally registered Investment Advisor
11 ("IA") and Respondent Blake subsequently filed an application on October 2, 2013, for license
12 registration with the Commission to become a registered Investment Advisor Representative ("IAR")
13 for MAFM in Arizona. (Ex. S-1)

14 12. On November 19, 2013, the Division issued its Notice which seeks the revocation of
15 Respondent Blake's registration as a securities salesman and the denial of his outstanding
16 applications for a position as a securities salesman and as an IAR. At this time, Respondent Blake
17 was subject to the FINRA suspension which prevented him from associating in all capacities with any
18 FINRA member firm.

19 13. Two key exhibits in the proceeding outlined the activities of Respondent Blake when,
20 on multiple occasions, he violated the conduct rules of the National Association of Securities Dealers
21 ("NASD") and those of FINRA by participating in private securities transactions outside of his
22 employment. They are further described in Respondent Blake's Offer of Settlement to FINRA and in
23 FINRA's Order Accepting Offer of Settlement in Disciplinary Proceeding No. 20100217105-01.
24 (Ex. R-13 and Ex. R-14)

25 14. The Division, in support of its allegations in the Notice, called the following
26 witnesses: Clyde Hanselman, a special investigator with the Division, and Pamela Pont, an investor.

27 15. Mr. Hanselman testified that, according to Commission records, Respondent Blake
28 had been registered with the Commission as a securities salesman from March 9, 2000 to April 3,

1 2013. Subsequently, Mr. Blake filed an application for registration with the Commission as a
2 securities salesman on May 15, 2013 to be employed by MACC. Further testifying, Mr. Hanselman
3 stated that Commission records indicated that on October 2, 2013, Mr. Blake filed an application with
4 the Commission to be licensed as an IAR with MAFM. (Tr. 37:5-19)

5 16. Mr. Hanselman stated that he is familiar with FINRA's Central Registration
6 Depository System ("CRD") and that it is utilized by FINRA to regulate member broker dealers and
7 sales representatives. (Tr. 37-38:20-8)

8 17. According to Mr. Hanselman, FINRA began its investigation of Respondent Blake on
9 March 21, 2013. (Tr. 39:5-10)

10 18. Mr. Hanselman referenced a "snapshot" of the CRD which outlined Respondent
11 Blake's employment history in the securities industry. Mr. Hanselman stated that it reflected a
12 voluntary termination by Mr. Blake as a salesman for MACC on October 2, 2013, and showed his
13 current employment with MAFM and that he had a pending application for registration as an IAR in
14 Arizona. (Tr. 42)

15 19. Respondent Blake's CRD snapshot reflected a customer complaint by Kira Ann
16 Pippert with respect to a revocable trust alleging that he had violated State securities laws, breach of
17 fiduciary duty, negligence, common law fraud, and a violation of FINRA Rule 2010. The snapshot
18 contained information that a promissory note was involved and the alleged damage was \$1,500,000.
19 (Tr. 45) (Ex S-3)

20 20. According to the CRD snapshot, Ms. Pippert's claim was settled for a total of
21 \$475,000 with \$390,000 paid by Mr. Blake and \$85,000 by Ameritas, his employer at the time. (Ex.
22 S-3)

23 21. Respondent Blake's CRD snapshot also contained information concerning another
24 complaint by a client, Gary Chilcoat, which also involved a promissory note with similar allegations
25 of securities law violations and alleged damages of \$430,000. This complaint was subsequently
26 settled for \$75,000 with Mr. Blake contributing \$60,000 of the settlement. (Ex. S-3)

27 22. Respondent Blake's snapshot from the CRD also contained a description of the action
28 initiated by FINRA with respect to his activities while employed at Carillon and Ameritas which

1 involved violations of various FINRA and NASD rules. These related to investment contracts
2 involving friends and/or clients as described in the Offer of Settlement and Order Accepting Offer of
3 Settlement in FINRA's disciplinary proceeding No. 20100217105-01.

4 23. The CRD's snapshot for Respondent Blake depicts his activities and describes him
5 starting out with three friends who pooled their funds to invest in investment contracts in commercial
6 real estate projects without providing his member firms with prior written notice of his outside sales
7 activities. Subsequently, his investment group expanded in size and scope resulting in 28 investors
8 investing approximately \$3,200,000 in the various projects instead of the original four investors. (Ex.
9 S-3)

10 24. Mr. Hanselman further stated that the CRD snapshot went on to describe a lawsuit in
11 Maricopa County Superior Court involving an investor, Ms. Pamela Pont, who claimed \$50,000 in
12 damages arising from a promissory note investment when Mr. Blake was employed with Ameritas.
13 The litigation involved allegations of negligent misrepresentation, fraud and breach of fiduciary duty.
14 Mr. Hanselman also described an additional complaint by Mr. Stanley Dyck, with similar allegations
15 concerning misrepresentation and fraud and breach of fiduciary duty involving claimed damages of
16 \$450,000. (Tr. 49-50) (Ex. S-3)

17 25. Mr. Hanselman read into the record the first paragraph of the FINRA Complaint
18 stating as follows: "Respondent Michael James Blake, acting outside the course and scope of his
19 employment with his employing member firms, participated in private securities transactions
20 involving the investment of more than \$3.2 million by approximately twenty-eight investors in three
21 investment contracts, without providing prior written notice to his firms of his proposed roles in these
22 transactions. As a result of the foregoing, Respondent violated NASD Conduct Rules 3040 and
23 2110." (Tr. 52-51:15-1) (Ex. R-6)

24 26. The first cause of action stated in the FINRA Complaint involved "selling away" in
25 private securities transactions. (Ex. R-6)

26 27. The second cause of action in the FINRA Complaint alleged that Mr. Blake provided
27 false information to a member firm employer and omitted to correct inaccurate information in
28 violation of NASD Rule 2110 and FINRA Rule 2010. (Ex. R-6)

1 28. The FINRA Complaint also alleged that in employer questionnaires in 2006, 2007,
2 2008, and 2009 Respondent Blake falsely answered “no” when asked whether he had engaged in
3 private securities transactions.

4 29. While employed by Carillon, Respondent Blake in October 2002 disclosed, in an
5 Outside Business Activity Questionnaire, that he and four friends were involved in the Longest Drive
6 LLC (“Longest Drive”) as a private investment vehicle to invest in commercial real estate. It stated
7 that he had a 20 percent interest, but would receive no compensation and would combine the
8 investments by his friends and himself and write a Longest Drive a check to invest in a real estate
9 development project. Subsequently, this outside business activity was approved by Carillon’s chief
10 compliance officer at the time. (Ex. S-9)

11 30. The Complaint by FINRA alleged that, between 2006 and 2007, Longest Drive
12 invested approximately \$3,200,000 in commercial real estate properties being developed by Grace
13 Community Properties (“Grace”) in three separate developments. The Complaint went on to describe
14 how Longest Drive changed drastically after Mr. Blake’s initial investment with several friends.
15 According to the FINRA Complaint, at no time did Respondent Blake amend or update his disclosure
16 of his outside business activities with respect to Longest Drive (Ex. R-6)

17 31. As stated in the FINRA Complaint and in the Order Accepting Offer of Settlement,
18 Respondent Blake formed a second limited liability company, Longest Drive II, LLC aka LLC II, in
19 Arizona in November 2006 wherein he was the managing member and owning 20 percent or more of
20 the entity. This entity was to make further investments for Respondent Blake and his associates
21 beyond the three initial investments made with Grace. (Ex. R-6 and Ex. R-14)

22 32. Mr. Hanselman identified Respondent Blake’s Offer of Settlement dated August 29,
23 2013 and subsequently accepted by FINRA on September 9, 2013. (Ex. R-13 and Ex. R-14)

24 33. According to Commission records, Longest Drive was organized on May 10, 2002 and
25 listed only Respondent Blake and an individual from Minnesota as its members. Longest Drive’s
26 Articles of Organization were amended on October 1, 2009, and named Respondent Blake as its sole
27 manager. (Ex. S-4A and Ex. S-4B)

28 ...

1 34. Mr. Hanselman testified that the Division's investigation included a copy of a note
2 from Donald Zeleznak, who was the managing member of Grace which was the entity that introduced
3 investment opportunities in real estate developments to Longest Drive. Mr. Zeleznak stated that
4 Longest Drive had been treated like all Grace investors and that neither it nor anyone associated with
5 Longest Drive had been paid any commissions or fees for services. (Tr. 63-64) (Ex. S-9)

6 35. According to the Outside Business Activity Questionnaire completed by Mr. Blake for
7 Carillon in the fall of 2002, Mr. Blake stated that the members would agree upon a real estate
8 investment, and each would write checks to Longest Drive. Mr. Blake would then write a Longest
9 Drive check using the "pooled" funds to the particular project in which the investment was made.
10 The questionnaire listed two insurance or brokerage clients of Respondent Blake with whom he had
11 been friends with for more than 15 years. The questionnaire had been approved by the chief of
12 Carillon's Compliance Department on November 1, 2002. (Ex. S-9)(Ex. R-6)

13 36. According to Mr. Hanselman, Respondent Blake signed an acknowledgment for his
14 receipt of a printed version of Carillon's "Compliance Guide for Registered Representatives"
15 ("Compliance Guide") on November 9, 2002. (Tr. 75:12-19) (Ex. S-22)

16 37. Carillon's Compliance Guide required Mr. Blake to report all outside business
17 activities and personal investment accounts with outside financial institutions. Further, Respondent
18 Blake was required not to discuss or to recommend any private securities to his clients or promote or
19 induce others to invest in private securities. With respect to sales activities, Respondent Blake was
20 restricted to only selling specific securities products which he had been authorized to sell by Carillon.
21 (Ex. S-22)

22 38. Similar restrictions were set forth in the 2003 Compliance Guide which was signed for
23 by Mr. Blake on June 24, 2003. Mr. Blake also signed a 2004 review certification on December 10,
24 2004 which contained similar restrictions on private securities transactions and also specifically
25 required that he not engage in "selling away" and sell only Carillon products (Ex. S-22)

26 39. When Mr. Blake completed his 2003 Annual Compliance Questionnaire, in response
27 to a question of whether he engaged in a private securities transactions, he answered "no." (Ex. S-23)

28

1 40. Ms. Pamela Pont testified that in 2007 she had \$50,000 to invest and met with Mr.
2 Blake at his office and told him that she wanted her investment to “grow.” (Tr. 242)

3 41. Ms. Pont stated that she had been a client of Respondent Blake since 2003 and in the
4 fall of 2007 spoke with him about an investment in the Romeoville project. (Tr. 242-243:23-11)

5 42. Ms. Pont testified that at that time her “money was dwindling down” and that she was
6 a conservative person with her investments only in annuities. (243:12-25)

7 43. Ms. Pont further testified that she was not “knowledgeable” about the securities
8 industry in her dealings with Respondent Blake. (Tr. 244:5-12)

9 44. Although Ms. Pont testified that she had assets of approximately \$200,000 in 2003, by
10 2007 she only had \$50,000 left, after spending money to buy a home and to take care of her three
11 children. (Tr. 244:15-24)

12 45. It was important to Ms. Pont that her \$50,000 not decline in value. (Tr. 246:3-5)

13 46. When Ms. Pont was discussing her financial situation with Respondent Blake in 2007,
14 he mentioned an investment in the Romeoville medical building, but she had no experience in real
15 estate investing other than purchasing a home with her husband and her present home. (Tr. 246:8-18)

16 47. According to Ms. Pont, Respondent Blake told her that for her \$50,000 investment she
17 would earn anywhere from \$30,000 to \$50,000 within two years. (Tr. 247:2-4)

18 48. Ms. Pont testified that she remembered signing a piece of paper with the name
19 Romeoville on it and the amount of her investment of \$50,000, but she had no recollection of
20 receiving any form of packet describing the risks or a subscription agreement or a private placement
21 memorandum for the project. (Tr. 248:1-17)

22 49. Ms. Pont stated that she was unaware “of every detail” and didn’t know what Longest
23 Drive was. (Tr. 249:3-10)

24 50. Ms. Pont testified that she decided to invest in the Romeoville project with
25 Respondent Blake because she was excited and she believed that she could double her money within
26 2 years. (Tr. 250:3-5)

27 51. Ms. Pont further testified that she had no dealings with the management or operation
28 of the Romeoville investment. (Tr. 251:6-10)

1 52. Ms. Pont stated that she has requested the return of her investment from Respondent
2 Blake several times, but she has not received either a return of her investment or any profits or
3 interest from the Romeoville project. (Tr. 252:4-11)

4 53. Testifying further, Ms. Pont stated that she did not know anything about investing.
5 (Tr. 255:16-19)

6 54. Respondent Blake repeatedly answered “no” to questions regarding private
7 transactions with his clients during his completion of his Annual Compliance Questionnaires. (Ex. S-
8 23)

9 55. After Mr. Blake became associated with Ameritas which had acquired Carillon, in
10 response to questions concerning private securities transactions in his Annual Compliance
11 Questionnaires, Respondent Blake again answered “no” to questions of whether he had been engaged
12 in any private securities transactions in 2006, 2007, 2008, 2009 and 2010. (Ex. S-23)

13 56. While employed with Ameritas, Respondent Blake received materials in his
14 compliance documents which warned registered representatives not to engage in “selling away.” (Ex.
15 S-23)

16 57. Respondent Blake testified that he has been licensed in the securities business since
17 December 1989 (Tr. 90:16-19)

18 58. Respondent Blake further testified that he had been licensed as an IAR in 1991, but in
19 2004 Ameritas stopped paying his registration fee as an IAR. As a result, when he went to work for
20 MAFM in 2013 he had to retake the exam for his license. (Tr. 91:14-24)

21 59. According to Respondent Blake, 75 percent of his securities business consisted of
22 investment advisory work where he charged a fee for his advisory services and the other 25 percent
23 of his business was in traditional securities sales, the difference being that as a registered sales
24 representative he received a commission from the sales of securities whereas as an IAR, he was paid
25 a fee for his services.

26 60. Respondent Blake stated that he began work with Carillon on November 2, 2002, and
27 after it merged with Ameritas in June 2006, he remained with Ameritas until February 28, 2013. (Tr.
28 92-93:20-7)

1 61. According to Respondent Blake, when his employment ended with Ameritas, he was
2 conducting approximately 75 percent of his business as an IAR. (Tr. 93:9-12)

3 62. After Respondent Blake was advised by Ameritas that he was going to be asked to
4 retire at the end of 2012, he found an opportunity with Charles Schwab to be an IAR. (Tr. 94:1-3)

5 63. Mr. Blake described complications with his obtaining registration as an IAR in 2013
6 because Ameritas had stopped paying his registration fees in 2004 because he believed that he had
7 been “grandfathered” under their registration. Once he left Ameritas on February 28, 2013, he stated
8 that he was “on my own.” (Tr. 98)

9 64. Mr. Blake described Longest Drive as being formed by himself and three friends in
10 2002 solely to invest in commercial real estate as a hobby, and he and his friends each invested
11 \$50,000. Before Respondent Blake got involved with his friends, he got his broker at the time, AXA
12 Equitable, to approve his outside business activity. (Tr. 99)

13 65. Mr. Blake testified that the FINRA investigation of his activities involving
14 commercial real estate initially began in July 2009. (Tr. 101:13-21)

15 66. Although Respondent Blake insisted that his broker dealers were aware of his
16 involvement in Longest Drive from 2002 through 2008, there was no documentary evidence offered
17 to support this contention. Respondent Blake testified that he was only involved with eight of the
18 investors in Longest Drive bringing in a total of \$1.7 million and that they always invested in what
19 are known as office condos. He stated that the remainder of the investors associated with Longest
20 Drive were brought in by the other investors. (Tr. 103:11-23)

21 67. Respondent Blake did not deny that he handled the funds that were pooled for the
22 Longest Drive investments or that he wrote the checks to make the investments in the projects that
23 were developed by Grace. (Tr. 104:5-8)

24 68. Respondent Blake testified that since he did not financially benefit from other
25 individuals investing in the various projects and since he had not invested in some of the projects, he
26 did not believe that he was in violation of any securities laws or regulations. (Tr. 104:9-18)

27 69. With respect to investor complaints concerning losses, Respondent Blake stated that
28 he had no control over the “bubble bursting in real estate in 2008” (Tr. 105:6-10)

1 70. Respondent Blake testified that the Longest Drive investors were involved in 11
2 projects and eight of them made money. However, three of the projects, Romeoville, Deer Park and
3 Burr Ridge were problem projects, but they “are still active investments.”¹ (Tr. 105:14-23)

4 71. Respondent Blake further testified that of the three remaining projects there are 28
5 investors including himself, but he is unable to say whether a profit will be earned on these
6 investments. (Tr. 106:18-24)

7 72. According to Mr. Blake, the investors in the various projects shared in the profits and
8 losses according to the percentage of their investments, but he personally did not receive any fees,
9 commissions or compensation due to his position in Longest Drive. (Tr. 107-108:20-9)

10 73. Respondent Blake testified that he operated and controlled another entity, Olympus
11 Financial Advisors, Inc., which was operated separately from his regular business and Longest Drive
12 and that he kept it separate from his investment business.² (Tr. 109:1-13)

13 74. Respondent Blake testified further that he did not believe that he was “selling away”
14 because he did not believe the real estate investments were securities and he was not being paid a
15 commission. (Tr. 110:10-15)

16 75. According to Respondent Blake, of the eight investors that he personally was involved
17 with, only the Pipperts and Pamela Pont filed complaints against him. (Tr. 111:9)

18 76. According to Respondent Blake, when he went to work with Carillon and later
19 Ameritas, he disclosed investing through Longest Drive and gave copies of the offering
20 memorandum to his employer.³ (Tr. 113)

21 77. Respondent Blake stated that when Longest Drive invested in an office condominium
22 project in Illinois, the investment was made by means of a subscription agreement evidencing
23 Longest Drive’s investment with the developer. (Tr. 115)

24 ...

25 ...

26 _____
27 ¹ Respondent Blake stated that he “hadn’t walked away on my obligation on these” and that he personally paid the
accounting fees for the preparation of tax forms on these investments for the investors.

28 ² Mr. Blake indicated that he had a partner from Minnesota in this business which was a marketing company that had
nothing to do with Longest Drive.

³ The memorandum was provided by the developer.

1 78. Respondent Blake testified that none of the representatives from the broker dealer that
2 he was dealing with on compliance matters raised the issue of a security being involved until a
3 meeting in May 2010 when he was with Ameritas. (Tr. 115:11-25)

4 79. According to Mr. Blake, when he was at a meeting in Cincinnati, Ohio with the
5 president and new chief compliance officer of Ameritas, he was asked to explain what happened with
6 his clients, the Pipperts, and why they filed a complaint with FINRA. (Tr. 116:1-12)

7 80. Mr. Blake stated that the Pipperts filed for arbitration with FINRA and did not file a
8 lawsuit. (Tr. 116:11-15)

9 81. Respondent Blake stated that during his conversations with Ameritas' president and
10 new chief compliance officer, they discussed "selling away," and he responded that they had
11 approved his prior business dealings in Longest Drive. (Tr. 116:16-24)

12 82. According to Respondent Blake, from 2002 to approximately 2010, officials with
13 neither Carillon nor Ameritas had told him to discontinue his investment activities with Longest
14 Drive or that the investments being made through Longest Drive constituted securities. (Tr. 117:1-7)

15 83. Mr. Blake further stated that from 2002 to 2010 no official of either of his broker
16 dealers accused him of violating their rules regarding disclosure of outside business activities or
17 "selling away." (Tr. 123:7-13)

18 84. Mr. Blake related that two of his other clients complained, one by the name of
19 Martensen, and another, Gary Chilcoat resulted in the Martensen complaint being denied or rejected
20 by his broker dealer and the Chilcoat complaint being settled for \$60,000 by Respondent Blake.⁴ (Tr.
21 117-120)

22 85. Mr. Blake testified that in October 2009 the NASD first brought allegations against
23 him regarding "selling away." (Tr. 123:14-16)

24 86. While the FINRA complaint was pending against Respondent Blake since March 21,
25 2013, FINRA, the SRO, still approved him to associate with a broker dealer, MACC, on May 24,
26 2013. (Ex. R-10)

27 _____
28 ⁴ According to Mr. Blake, the Martensen complaint involved a life insurance product and the Chilcoat complaint was
unrelated to an investment with Longest Drive, but involved an investment made by Mr. Chilcoat directly with Grace.

1 87. According to Respondent Blake, after his consent agreement with FINRA, the Mid
2 Atlantic companies determined with him that they would withdraw his application for registration in
3 Arizona for its investment firm, MACC, but would continue seeking approval of his IAR registration
4 in Arizona with MAFM. (Tr. 131) (Ex. R-16)

5 88. Respondent Blake testified that when investment checks were written to Longest
6 Drive for investments, once the required investment amount was collected, he would write one check
7 from the Longest Drive account to pay for the investment. The checks for the investment by Longest
8 Drive for a Grace project were not written on Mr. Blake's personal account. (Tr. 133-134:18-3)

9 89. Respondent Blake testified that the checks were made payable to the particular project
10 that Grace was developing, such as Romeoville, as each development was set up as a separate limited
11 liability company. (Tr. 134:10-15)

12 90. According to Respondent Blake, when MACC and MAFM initially hired him to be a
13 registered salesman and an IAR, they were aware of his dealings in Longest Drive. (Tr. 135:10-17)

14 91. Mr. Blake stated that he agreed to heightened supervision by MAFM once his
15 enforcement issues are resolved. (Tr. 136) (Ex. R-18)

16 92. Mr. Blake further agreed that the Commission has the authority to require heightened
17 supervision of his activities as an IAR if his license is approved. (Tr. 138)

18 93. Mr. Blake further stated that every advisory client which he would work with as an
19 IAR would be given what is called a "Form ADV" which summarizes and discloses all of a
20 representative's prior business activities and all disciplinary actions and complaints regarding his
21 business dealings. (Tr. 139:1-10)

22 94. Respondent Blake testified that he had not worked in the securities industry since
23 February 28, 2013, and he would not be involved again in any ventures which would prevent him
24 from being in the securities business. (Tr. 141-143)

25 95. Pursuant to A.R.S. 44-3152(C), Respondent Blake would be exempt from registration
26 as an IAR in Arizona so long as he is associated as a registered salesman with an Arizona registered
27 broker dealer.

28 ...

1 96. With respect to Longest Drive, Mr. Blake acknowledged that there were 28 investors
2 who invested a total of approximately \$3 million. (Tr. 159:1-4)

3 97. According to Respondent Blake, in 2002 he completed an Outside Business Activity
4 Form for Carillon and reported the activities of Longest Drive. He reported that originally three or
5 four individuals who were his friends invested with him in the Grace projects. (Tr. 160-161) (Ex. R-
6 2)

7 98. Respondent Blake confirmed that between 2006 and 2007 other investors in Longest
8 Drive besides his immediate friends became involved in raising the \$3.2 million for the investments
9 made by Longest Drive with Grace. (Tr. 161)

10 99. There were no Outside Business Activity Forms at either Carillon or its successor,
11 Ameritas that named the 28 investors in Longest Drive and their \$3.2 million investment in Grace
12 projects. (Tr. 161)

13 100. Mr. Blake stated that in 2008, he referred his clients, the Pipperts, directly to Grace
14 and they loaned Grace approximately \$400,000 and they were given a promissory note in return.
15 This transaction was not reported to either Carillon or Ameritas. (Tr. 167-168)

16 101. Respondent Blake testified that although his Outside Business Activity Form disclosed
17 the names of his 8 clients involved in Longest Drive projects, they did not disclose the dollar amounts
18 invested. (Tr. 171)

19 102. Respondent Blake testified further that investor checks were deposited into the
20 account of Longest Drive and Mr. Blake would write checks from Longest Drive to the specific
21 limited liability company which was established by Grace for each project. (Tr. 193)

22 103. While Longest Drive received a membership interest in the particular limited liability
23 company for the project being developed by Grace no individual investor received a membership
24 interest for their proportionate share of the investment. (Tr. 194)

25 104. Additionally, Respondent Blake testified that, with respect to the individual investors
26 in Longest Drive, he did not add their names to its membership list by means of any updated
27 amendments or articles of organization for the limited liability company. (Tr. 194:14-23)

28 105. Respondent Blake further testified that he was unaware that individual investors with

1 Longest Drive were to be documented as members when they made their investments. (Tr. 195)

2 106. Respondent Blake stated that he provided the individual investors in Longest Drive
3 annually with federal K-1 forms which reflected their ownership interest for tax purposes in the
4 limited liability company for the particular project being developed by Grace. This was done after
5 Longest Drive received a federal 1065 form from the specific limited liability company established
6 for each project by Grace. (Tr. 197)

7 107. Respondent Blake further testified that with respect to Grace's Romeoville, Deer Park
8 and Burr Ridge projects, he sends the K-1s from Longest Drive to the investors in those projects
9 reflecting their losses. (Tr. 198)

10 108. Respondent Blake stated that Longest Drive was created so that individuals could pool
11 their funds in order to invest in the projects that were being developed by Grace with the investors
12 receiving their proportionate share of the investment profits when the project was completed. (Tr.
13 199)

14 109. Respondent Blake testified that Longest Drive invested \$200,000 in the Romeoville
15 LLC, with Mr. Blake and his wife contributing \$100,000, and two other investors, Pamela Pont and
16 Dan Gallagher each investing \$50,000. (Tr. 201:1-24)

17 110. According to Respondent Blake, the proforma profit percentage which has been
18 projected for Romeoville was an 80 percent return in less than 24 months. (Tr. 202:6-9)

19 111. Respondent Blake testified that Longest Drive's investment with Grace in the
20 Romeoville project was not secured by the real estate for the project. (Tr. 203:1-8)

21 112. According to Respondent Blake, Longest Drive held an equity interest for the
22 investment which was made in each real estate project developed by Grace. (Tr. 203:15-22)

23 113. Respondent Blake testified that while he filled out subscription agreements for
24 Longest Drive as an investor in each Grace project, the individual investors with Longest Drive, such
25 as Pamela Pont in Romeoville, did not do so because her investment was in Longest Drive not the
26 particular Grace project. (Tr. 203-204:23-20)

27 ...

28 ...

1 114. According to Respondent Blake, although individual investors did not sign
2 subscription agreements with Grace for its projects, before individual investors invested with Longest
3 Drive they were provided copies of the same investment materials that he received for the project
4 before they invested in Longest Drive.⁵ (Tr. 205)

5 115. According to Respondent Blake, Pamela Pont, who invested \$50,000 in Longest Drive
6 for the Romeoville project, did not request low risk income producing investments, but wanted
7 growth from her investment. (Tr. 208-209)

8 116. Mr. Blake testified that Mrs. Pont wanted to invest in real estate and was interested in
9 buying and flipping houses. (Tr. 209:15-19)

10 117. Respondent Blake further stated that Mrs. Pont had been a client of his previously and
11 received what he termed "a pretty sizeable settlement" from a divorce. (Tr. 210:1-6)

12 118. Mr. Blake testified that he disclosed the existence of the Longest Drive to his brokers
13 by completing Outside Business Activity Forms on line every year from 2002 to 2012. (Tr. 213-
14 214:17-2)

15 119. However, Respondent Blake testified further that he did not have copies of the 2003 to
16 2008 forms because they had been submitted electronically to Ameritas. (Tr. 214-215:16-5)

17 120. Respondent Blake's Outside Business Activities Questionnaire dated August 11, 2009,
18 which described his activities in Longest Drive, does not indicate whether the form was accepted or
19 approved by Ameritas. (Ex. R-21)

20 121. The Outside Business Activities Questionnaire submitted by Respondent Blake to
21 Ameritas on August 11, 2009, states that he is not compensated and only receives his proportionate
22 percentage of any profits or losses. (Ex. R-21)

23 122. An email dated September 22, 2009, from Respondent Blake to the chief compliance
24 officer of Ameritas listed 11 Ameritas clients who were termed Longest Drive members. (Tr. 217)
25 (Ex. R-22)⁶

26 _____
27 ⁵ The investor packages included all the information received from Grace concerning the risks and proformas concerning
the expected profits from the particular project.

28 ⁶ This email was created after Respondent Blake was notified of a FINRA investigation regarding a complaint by his
clients, the Pipperts.

1 123. According to Respondent Blake, after this email was sent, no one at Ameritas was
2 surprised about Longest Drive. (Tr. 218:2-10)

3 124. After FINRA began its investigation of Respondent Blake in 2009, Ameritas began its
4 own investigation reviewing his business practices so that in September 2010, the firm sanctioned
5 him for his activities with a 30-day suspension from employment and fined him \$2,500. (Ex. R-26)

6 125. According to the September 3, 2010, Ameritas letter which enumerated the sanctions
7 from its chief operating officer, the company's review found no evidence of approval by either
8 Carillon or Ameritas for any activity beyond personal investments in real estate. It states that
9 Ameritas had no knowledge that his activities had expanded beyond his own personal investment
10 activity in real estate. (Ex. R-26)

11 126. Respondent Blake testified that he did not learn until 2011 that the nonpayment of
12 commission was not determinative of whether a private securities transaction had taken place. (Tr.
13 237:20-23)

14 127. Under the circumstances, based on the evidence, Respondent Blake's one year
15 disciplinary suspension by the SRO, FINRA, is the basis for the Division's action in this proceeding.
16 The Act and the IMA provide that the Commission may take disciplinary action by the revocation of
17 Respondent Blake's registration as a securities salesman and by the denial of both his May 15, 2013,
18 application to be a securities salesman for MACC and his October 2, 2013, application to be an IAR
19 for MAFM because of his suspension by FINRA. Pursuant to A.R.S. §§ 44-1962(A)(8), the
20 Commission may revoke, suspend, or deny an individual's registration or licensing application as a
21 securities salesman with the Commission, if that individual has been suspended by FINRA for a
22 period of greater than six months. Similarly, pursuant to A.R.S. § 44-3201(A)(10), the Commission
23 may take action on the license of an IAR, or application for an IAR license, if the Commission finds
24 that it would be in the public interest to do so, or if the IAR, or applicant for an IAR license, "... is
25 subject to an order of an administrative tribunal, an SRO or the SEC denying, revoking or suspending
26 membership, licensure or as a broker or dealer in securities or as an investment adviser or investment
27 adviser representative for at least six months." In this instance, there is no need to reexamine the
28 facts which caused FINRA to discipline Respondent Blake. However, based on that action, as well as

1 the entirety of the record developed in this proceeding, we believe that Respondent Blake's securities
2 registration as a salesman should be revoked and his pending application for a securities salesman
3 license should be denied. With respect to the application by Respondent Blake to be an IAR, we
4 believe that the prior FINRA suspension, combined with the entirety of the record in this case,
5 support a denial of the application in accordance with the public interest.

6 **CONCLUSIONS OF LAW**

7 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
8 Arizona Constitution and A.R.S. § 44-1801, et seq. and § 44-3101, et seq.

9 2. Respondent Michael J. Blake violated A.R.S. § 44-1962(A)(8) when his membership
10 or his registration as a securities salesman was suspended for a period of in excess of 6 months by
11 FINRA.

12 3. The registration as a salesman by Respondent Michael J. Blake as a securities
13 salesman should be revoked and the application for registration should be denied pursuant to A.R.S. §
14 44-1962(A) because his registration was suspended for more than six months by FINRA and based
15 on the facts in the record of this case.

16 4. Respondent Michael J. Blake's application for a license as an IAR should also be
17 denied pursuant to A.R.S. § 44-3201(A)(10) and the facts in the record of this case.

18 **ORDER**

19 IT IS THEREFORE ORDERED that, pursuant to the authority granted to the Commission
20 under A.R.S. § 44-1962, the license registration of Respondent Michael J. Blake and his application
21 for registration as a securities salesman are hereby revoked and denied, respectively.

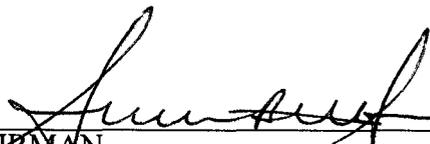
22 IT IS FURTHER ORDERED that, A.R.S. § 44-3201(A), the application of Michael J. Blake
23 for a license as an Investment Advisor Representative is hereby denied.

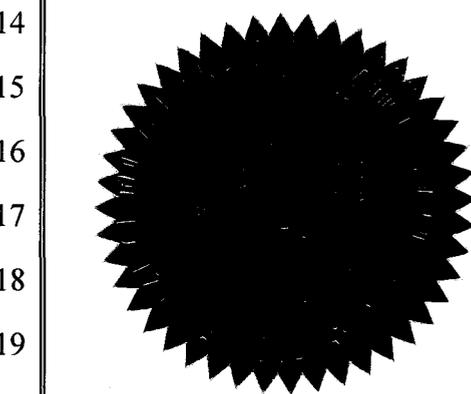
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1 IT IS FURTHER ORDERED that, pursuant to A.R.S. § 44-1974, upon application, the
2 Commission may grant rehearing of this Order. The application must be received at its offices within
3 twenty (20) calendar days after entry of this Order and, unless otherwise ordered, filing an application
4 for rehearing does not stay this Order. If the Commission does not grant rehearing within twenty (20)
5 calendar days of the filing of the application, the application is considered to be denied. No
6 additional notices will be given for such denial.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9		
10	CHAIRMAN	COMMISSIONER
11		
12	COMMISSIONER	COMMISSIONER
13		COMMISSIONER



14
15 IN WITNESS WHEREOF, I, JODI JERICH, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this 26th day of June 2015.

20 
JODI JERICH
EXECUTIVE DIRECTOR

21 DISSENT _____

22
23 DISSENT _____
24 MES:tv(ru)

25
26
27
28

1 SERVICE LIST FOR:

MICHAEL J. BLAKE (CRS# 2022161)

2 DOCKET NO.:

S-20898A-13-0395

3 Michael Salcido
4 4411 E. Chandler Blvd., #1026
5 Phoenix, AZ 85048
6 Attorneys for Respondent Blake

7 Matt Neubert, Director
8 Securities Division
9 ARIZONA CORPORATION COMMISSION
10 1300 West Washington Street
11 Phoenix, AZ 85007

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