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**ARIZONA CORPORATION COMMISSION**

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Arizona Corporation Commission  
**DOCKETED**  
JUL 16 2015

**ORIGINAL**

DOCKETED BY 

In the matter of:  
  
**Michael J. Blake (CRD #2022161),  
a married man,**  
  
Respondent.

Docket No. S-20898A-13-0395  
**Respondent Blake's  
Application for Rehearing**

Respondent Michael J. Blake applies for rehearing of the Order entered on June 26, 2015 under ARS §§ 44-1974 and 44-3214 because the penalties are excessive and the Order is: (i) not justified by the evidence; (ii) contrary to law; (iii) arbitrary and capricious; and (iv) an abuse of discretion.

Blake applied for licenses as an investment advisor representative (IAR) and as a securities salesman. The Division denied both applications based on a settlement Blake made with FINRA. The denial was not based on "multiple violations" of the Securities and Investment Management Act.

The only statutes cited as the basis for denial do not apply.

1     **1. Summary of the Facts**

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

7             Mr. Blake also applied for salesman and IAR licenses in Arizona. The  
8     Securities Division denied both applications, using the FINRA settlement  
9     and suspension as its basis. The Division stated that it did not intend to  
10    “retry” the FINRA case (or underlying facts) and that the existence of the  
11    FINRA order was the basis of its action.<sup>1</sup>

12    **2. There is no statutory basis to deny Mr. Blake’s applications.**

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

- 16    • he is subject to a FINRA order suspending his “licensure or registration  
17    *as a broker or dealer in securities or as an investment adviser or investment*  
18    *adviser representative*” for at least six months (emphasis added); and  
19    • it is “in the public interest” to deny his application.<sup>2</sup>

20             Arizona and FINRA use slightly different terminology regarding  
21    investment professionals. The Arizona Securities Act refers to an individual  
22    as a securities “salesman.” It refers to a firm as a securities “dealer.”<sup>3</sup> FINRA  
23

24  
25             

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<sup>1</sup> Notice of Opportunity for Hearing

26             <sup>2</sup> ARS § 44-3201.A.10.

<sup>3</sup> ARS §§ 44-1801.9 and 1801.22

1 refers to a securities salesman as an “associated person,” and a dealer is  
2 referred to as a “member” or “member firm.”<sup>4</sup>

3 Mr. Blake was registered with FINRA as an “associated person,” and  
4 with Arizona as a “salesman.” He was not registered anywhere as a “broker  
5 or dealer in securities.”

6 In fact, FINRA suspended Mr. Blake — an “associated person” of a  
7 “member firm” — from “associating with any FINRA member firm in all  
8 capacities” for one year.<sup>5</sup> It did *not* suspend Mr. Blake’s registration as a  
9 “broker or dealer in securities.”

10 The same argument applies to the denial of Mr. Blake’s securities  
11 salesman, which is based on a similarly worded statute (ARS § 44-  
12 3201.A.10.)<sup>6</sup>

13 Yet the denial is based on these very statutes. <sup>7</sup> If the Arizona  
14 legislature intended suspension as an associated person or securities  
15 salesman to be grounds for denying an application for registration as an IAR  
16 or securities salesman, the statutes would have said that. But they didn’t, so  
17 they can’t be used as a basis to deny Mr. Blake’s applications.

### 18 19 **3. The Penalty is Excessive**

20 The Order exacerbates the punishment imposed by FINRA, which  
21 actually conducted the investigation. FINRA specifically found that the  
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23  
24 <sup>4</sup> Exh. 19, FINRA By-Laws, Article 1 Definitions, at (rr) and (ee).

25 <sup>5</sup> Exh. R-13, FINRA Order.

26 <sup>6</sup> ARS § 44-1962.A.8.

<sup>7</sup> Order at 19.

1 sanctions it imposed: (i) “are in the public interest,” (ii) “are sufficiently  
2 remedial” to deter Mr. Blake from any future misconduct; and (iii)  
3 “represent a proper discharge by FINRA of its regulatory responsibility  
4 under the Securities Exchange Act of 1934.”<sup>8</sup>

5 Even if the ACC approved Mr. Blake’s IAR license now, it has exacted  
6 harsh punishment on Mr. Blake (no income for almost two years – and  
7 counting). Moreover, the ACC can now prevent him from reapplying for  
8 these licenses for an additional year.<sup>9</sup>

9 That further undermines the FINRA Order, which allowed Mr. Blake to  
10 be re-licensed as a securities salesman / associated person when the one-  
11 year suspension was up (October 2014) — without testing or reapplying.

### 12 **Conclusion**

13 The Division stated that its basis for denying Mr. Blake’s applications  
14 was the *existence* of the FINRA Order, rather than the underlying facts. But it  
15 still re-tried a large part of the FINRA case against Mr. Blake, which is  
16 reflected in the Order.

17 FINRA investigated this case and issued its punishment, which Blake  
18 served. Now Blake can be relicensed with FINRA. And the SEC, which knew  
19 about the FINRA settlement, has already agreed to license Blake as an IAR.

20 But the Order converts one-year FINRA suspension of Mr. Blake’s  
21 salesperson license to a *de facto* permanent denial of his salesman *and*  
22 investment advisory representative licenses. This is not fair and it is not  
23 consistent with the law cited in the Order.

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26 <sup>8</sup> Exh. R-13, FINRA Order.

<sup>9</sup> ARS §44-3201.D.; ARS § 44-1962.A.8.

1 Mr. Blake moves the ACC to now grant his applications for registration as  
2 a securities salesman and an investment advisor representative.

3 Dated: July 16, 2015

4 

5 Michael Salcido

6 *Attorneys for Respondent Blake*

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8  
9 **Original** and 10 copies filed with:

10 Docket Control  
11 Arizona Corporation Commission  
12 1200 W. Washington  
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14 **Copies** delivered to:

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