Allen

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission
DOCKETED
MAY 0 2 2005
DOCKETED BY NR

IN THE MATTER OF

LONZO ARCHER
1512 Plymouth Road
North Brunswick, NJ 08902
CRD No. 1979672

DOCKET NO. S-03557A-04-0000

DECISION NO. 67776

OPINION AND ORDER

DATE OF HEARINGS: January 24 and January 31, 2005

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Michael Kalmus on behalf of Respondent Lonzo Archer; and

Michelle Allen, Staff Attorney, Securities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On May 7, 2004, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order of Revocation and Other Affirmative Relief ("Notice") against Lonzo Archer ("Respondent") in which the Division alleged that on January 27, 2004, the Securities Division of the Department of Financial Institutions of the State of Washington ("State of Washington") revoked Respondent's securities license in Order No. S-03-029-04-E061 ("Final Order") for selling unsuitable investments to an elderly couple. The Final Order of the State of Washington was not appealed. The Division alleges that Respondent's conduct and license revocation by the State of Washington constitute violations of the Arizona Securities Act ("Act") and are grounds to suspend or revoke his securities license registration in Arizona.

Respondent was duly served with a copy of the Notice.

On June 10, 2004, Respondent, through New York counsel, Michael Kalmus, filed a request

for hearing and notice of appearance. Respondent's counsel did not submit evidence of admission Pro Hac Vice ("PHV") in compliance with Rule 33 of the Rules of the Arizona Supreme Court and evidence that he had paid the required filing fees.

On June 11, 2004, by Procedural Order, it was ordered that Respondent's request filed in response to the Notice should be held in abeyance for 60 days pending Respondent's counsel filing with the Commission a Motion and Consent for Admission Pro Hac Vice ("Motion PHV"). The filing of the Motion PHV would establish compliance with Rule 33 of the Rules of the Arizona Supreme Court and evidence that the required filing fees had been paid in a timely fashion or Respondent would be in default.

On August 9, 2004, Respondent's New York counsel filed a Motion PHV which established that he had associated with local counsel and complied in a timely manner with Rule 33 of the Rules of the Arizona Supreme Court.

On August 10, 2004, by Procedural Order, Mr. Kalmus was authorized to represent Respondent Pro Hac Vice and a pre-hearing conference was scheduled for September 8, 2004.

On August 18, 2004, the Division filed a Motion to Continue the pre-hearing conference because counsel for the Division and local counsel for Respondent were unavailable on September 8, 2004.

On August 19, 2004, by Procedural Order, the pre-hearing conference was continued to October 7, 2004.

On October 7, 2004, a pre-hearing conference was held with the Division and Respondent present with counsel. After a review of the pending issues, it was agreed that a hearing be held on November 18, 2004.

On October 8, 2004, by Procedural Order, a hearing was scheduled for November 18, 2004.

On November 5, 2004, Respondent's counsel, by facsimile, requested a continuance of the hearing scheduled on November 18, 2004 because Respondent had been scheduled for throat surgery on November 17, 2004, in New York City. Subsequently, during a teleconference on November 5, 2004, counsel for the parties agreed to a continuance of the proceeding to January 24, 2005.

On November 10, 2004, by Procedural Order, the hearing was continued to January 24, 2005.

On January 24, 2005, a full public hearing was convened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division was present with counsel and Respondent appeared through counsel. Counsel for the Respondent requested a brief continuance until January 31, 2005, due to the illness of the Respondent. Counsel faxed medical verification in support of this request. The Division opposed the request.

On January 24, 2005, by Procedural Order, the proceeding was continued until January 31, 2005.

On January 31, 2005, the hearing was reconvened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division and the Respondent were present with counsel. At the conclusion of the proceeding, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * * * * * * *

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

FINDINGS OF FACT

1. Respondent, Lonzo Archer's last known address is 1512 Plymouth Road, North Brunswick, New Jersey, 08902. From August 12, 2002 through December 31, 2004, Mr. Archer was a registered securities salesman in the State of Arizona, National Association of Securities Dealers ("NASD"), Central Registration Depository ("CRD") No. 1979672 in association with First Montauk Securities Corporation ("FMSC").

2. On May 7, 2004, the Division issued a Notice alleging Mr. Archer had violated A.R.S. § 44-1962 because he was subject to an order of an administrative tribunal revoking his registration as a broker for at least six months. Respondent was duly served with a copy of the Notice and requested a hearing.

3. The Division, in support of its allegations, cited a January 27, 2004, State of Washington Final Order which revoked Mr. Archer's registration as a securities salesman in Washington State. A copy of the State of Washington's Final Order is marked Exhibit A, attached

hereto, and incorporated by reference.[1] As a result of the action taken by the State of Washington, the Division is recommending the revocation of Respondent Archer's registration as a securities salesman in Arizona.

4. Based on the record, on December 19, 2003, the State of Washington issued Order No. S-03-029-03-SC01, a Statement of Charges and Notice of Intent to Enter an Order to Revoke Registration, Impose Fines, Charge Costs, and Order Disgorgement ("Statement") against Respondent Archer.

5. On December 29, 2003, the Statement together with a Notice of Opportunity to Defend and Opportunity for Hearing and an Application for Adjudicative Hearing ("Application for Hearing") was served via certified U.S. mail on Respondent Archer.

6. Pursuant to Washington State law, Respondent Archer was advised that he had 20 days from the date he received the Statement to file an Application for Hearing on the Statement. Mr. Archer was further advised that if he failed to request a hearing, that the tentative charges as set forth in the Statement would become final, his registration would be revoked and he would be subject to fines and would be ordered to disgorge his commissions.

7. Mr. Archer failed to file a timely Application for Hearing within 20 days of his receipt of the Statement.

8. On January 27, 2004, the State of Washington's Final Order was issued against Mr. Archer. The Final Order found that, while a registered securities salesman in the State of Washington, Mr. Archer had sold unsuitable investments that were excessive in size and frequency of their trading, during a time in which he lacked discretionary power to affect said transactions for two Washington residents. The Final Order found that Mr. Archer's unauthorized transactions resulted in losses to the two investors of $118,300 and that approximately $35,000 was paid as commissions to Respondent.

9. As a result, the State of Washington's Final Order revoked Mr. Archer's registration as a salesman in Washington State, fined him $20,000 and ordered him to disgorge the $35,000 in

[1] On January 31, 2005, during the hearing, Exhibit A was admitted into evidence.

commissions he earned from the transactions.

10. During the hearing, Mr. Archer acknowledged that he received the Statement and was aware that his Application for Hearing had to be filed within 20 days. At the time, he believed that FMSC's in-house counsel would file an Application for Hearing on his behalf in a timely fashion.

11. According to Mr. Archer, his Application for Hearing was filed one day too late and resulted in the Final Order from the State of Washington. Mr. Archer acknowledged that he has neither paid the fine to the State of Washington nor disgorged his commissions pursuant to the Final Order due to a lack of personal resources.

12. Mr. Archer is requesting leniency in this proceeding since he has no existing customers in Arizona, has not earned any monies here, and is willing to either accept a suspension of his registration or to voluntarily cancel his registration in Arizona to avoid further problems with his registration in other jurisdictions, which have, until now, not taken any adverse actions due to the Final Order.

13. Under the circumstances, we believe that our paramount duty is to protect Arizona investors from possible harm and while Mr. Archer may have had meritorious defenses to the State of Washington's claims, he cannot raise them here. Therefore, Mr. Archer's Arizona registration as a securities salesman should be revoked.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1962.

2. It is established that Mr. Archer is in violation A.R.S. § 44-1962(A)(8).

3. Pursuant to A.R.S. § 44-1962, the salesman registration of Mr. Lonzo Archer should be revoked.

. . .

. . .

. . .

. . .

. . .

ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-1962, the salesman registration of Mr. Lonzo Archer shall be revoked.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN | COMMISSIONER | COMMISSIONER

COMMISSIONER | COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 2nd day of May, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

SERVICE LIST FOR: LONZO ARCHER

DOCKET NO.: S-03557A-04-0000

Michael Kalmus
850 Third Avenue, 14th Floor
New York, NY 10022
Attorney for Respondent
Via Facsimile and
Certified Mail
Return Receipt Requested

Anthony B. Bingham
1423 South Higley Road
Bldg. 4, Ste. 110
Mesa, AZ 85206

Matt Neubert, Director
Securities Division
ARIZONA CORPORATION COMMISSION
1300 West Washington Street
Phoenix, AZ 85007

I certify that this is a true copy of a record on file in the Department of Financial Institutions of the State of Washington.
15 day of April, 20 04
Signature, Authorized Representative

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING whether there has been a violation of the Securities Act of Washington by: LONZO ARCHER, Respondent.	Order No. S-03-029-04-FO01 ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL ORDER REVOKING REGISTRATION, IMPOSING FINE AND ORDERING DISGORGEMENT

THE STATE OF WASHINGTON TO:

Lonzo Archer, CRD #1979672
655 Third Avenue, 14th Floor
Room 1416-1420
New York, NY 10017

INTRODUCTION

On December 19, 2003, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intent to Enter an Order to Revoke Registrations, Impose Fines, Charge Costs, and Order Disgorgement order number S-03-029-03-SC01, hereinafter referred to as the "Statement of Charges", against Respondent Lonzo Archer. On December 29, 2003, the Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing (hereinafter referred to as "Notice of Opportunity for Hearing") and an Application for Adjudicative Hearing (hereinafter referred to as "Application for Hearing"), was served via certified mail on Lonzo Archer. The Notice of Opportunity for Hearing advised Lonzo Archer that he had twenty days from the date he received the notice to file a written application for an adjudicative hearing on the Statement of Charges. The Statement of Charges further advised that if Lonzo Archer did not request a hearing, the Securities Administrator intended to adopt the

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

DECISION NO. 67776

EXHIBIT A

Tentative Findings of Fact and Conclusions of Law set forth in the Statement of Charges as final, revoke Lonzo Archer's registration, impose the fine sought, and order disgorgement.

Lonzo Archer failed to request an adjudicative hearing within twenty days of his receipt of the Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing provided or otherwise.

The Securities Administrator therefore adopts as final the findings of fact and conclusions of law as set forth in the Statement of Charges. The Securities Administrator finds as follows:

FINDINGS OF FACT

RESPONDENT

1. Lonzo Archer ("Archer") is a securities salesperson with First Montauk Securities Corp. ("First Montauk Securities") and has been employed there since August 2002. He has been registered as a securities salesperson with the Washington State Securities Division since February 2001, and was previously so registered from February 1994 to April 1998. Archer was employed by Mantis Securities, Inc. ("Mantis Securities") as a securities salesperson from September 2000 to August 2002.[1] Prior to that, Archer was employed as a securities salesperson for fourteen different broker-dealers in eleven years, including Northridge Capital Corporation from August 1999 to August 2000, G.F.B. Securities, Inc. from March 1998 to August 1999, William Scott & Co. L.L.C from December 1996 to March 1998, Rickel & Associates, Inc. from February 1996 to December 1996, FAB Securities of America, Inc. from May 1995 to February 1996, Global Equities Group Inc. from April 1995 to May 1995, A.T. Brod & Co. Inc. from June 1994 to March 1995, S.D. Cohn & Co., Inc. from February 1994 to June 1994, Westfield

Financial Corporation from June 1993 to February 1994, LCP Capital Corp. from October 1992 to January 1993, Prudential Equity Group, Inc. from February 1992 to October 1992, GKN Securities Corp. from January 1991 to March 1991, R.H. Damon & Co., Inc. from April 1990 to January 1991, and Barrett Day Securities, Inc. from August 1989 to January 1990. Archer currently resides in New Brunswick, New Jersey.

NATURE OF RESPONDENT'S CONDUCT

2. Burt S. and Virginia S.[2] ("Burt and Virginia") are Washington residents, ages sixty-six and fifty-seven, respectively.

3. Burt received an unsolicited telephone call from Lonzo Archer ("Archer") of Mantis Securities in approximately February of 2001. Archer offered his services as a securities salesperson. Burt was initially not interested in opening an account with Archer. Archer then mentioned a number of stocks he was recommending and asked Burt to track their performance. Archer phoned Burt again several times over the next few months to ask if he had followed the stocks, which had performed well. Because the stocks Archer had told Burt to track had done well, Burt gained confidence in Archer's ability to manage his investments. Burt decided to open an account with Mantis Securities and signed a new account application in May 2001. Burt transferred a Roth individual retirement account (IRA) account, hereinafter referred to as Account I, worth approximately $42,000 to Mantis Securities in June 2001.

4. Burt and Virginia have minimal investment experience. Burt and Virginia had never

[1] Mantis Securities withdrew their broker-dealer registration in the state of Washington on or about September 30, 2002.
[2] The full names of the customers are omitted to protect their privacy.

directed their own investments until 1998. At that time, they purchased a few stocks, which they later sold during the market correction of 2000. The bulk of their assets continued to be held in retirement accounts that were not self-directed. Burt and Virginia's main investment objective was to supplement their retirement savings. Speculation was not one of their investment objectives.

5. Upon opening the account, Archer agreed to obtain Burt's authorization prior to making trades. Burt received his first trade confirmation in the mail from Mantis Securities in June of 2001, a purchase of 3,000 shares of Mim Corp., a small-capitalization stock. Archer had not contacted Burt prior to making the trade. Burt called Archer for an explanation. Archer explained that the market moved too quickly to call about every trade. Subsequent to this conversation, Archer continued to make trades without contacting Burt. In fact, Archer never contacted Burt prior to the purchase or sale of securities. Burt would learn about the transactions through receipt of the trade confirmations in the mail from Mantis Securities. If he wanted to speak with Archer to discuss his account, Burt had to initiate the phone call.

6. From June 2001 to March 2002, Burt believed Archer's trading was profitable, as the value of Account I had doubled. As a result, Burt and Virginia decided to transfer two of Virginia's accounts to Mantis Securities. In March of 2002, they transferred a Roth IRA account of Virginia's, hereinafter referred to as Account II, worth approximately $100,000. In April of 2002, they also transferred a Rollover IRA account of Virginia's, hereinafter referred to as Account III, worth approximately $97,000. Archer made trades in Virginia's accounts without contacting her. In fact, Virginia never spoke with Archer.

7. At the time all three accounts had been transferred to Mantis Securities, Burt and Virginia's annual income was approximately $50,000 per year. The accounts represented over a quarter of their net

worth.

8. From June 1999 through September 2002, Archer bought approximately $500,000 worth of securities in Account I. From April 2002 through September 2002, Archer purchased approximately $91,000 worth of securities in Account II, and $57,000 worth of securities in Account III. All of the securities purchased by Archer were stocks. Further, virtually all the stocks purchased were low priced small capitalization ("small cap") stocks.[3] Investing in small-cap stocks involves substantial risk. Small-cap stocks are companies that are usually less established and lack financial resources, so their stock price tends to be highly volatile. By Archer's own admission, the companies he was recommending to Burt and Virginia were "speculative and growth oriented."

9. From May 3, 2002 through May 28, 2002, Burt and Virginia were in Europe on vacation. During this time period, they could not be contacted by telephone and in fact had no contact with Archer. Archer made over a dozen trades during this time period.

10. As described above, Archer engaged in a heavy volume of trading in all three of Burt and Virginia's accounts. Archer held most of the stocks he purchased in the accounts for only a few weeks or months before selling them in order to purchase new stocks. This volume of trading generated excessive commissions given the size of the accounts. From June 1999 to September 2002, Burt and Virginia paid over $35,000 in commissions for their three accounts. Simply to meet the expenses of maintaining the account, Account I needed to produce an investment return of over 40%.[4]

11. Archer left Mantis Securities and became employed by First Montauk Securities in August

[3] For purposes of this Statement of Charges, a small-cap stock is defined as a stock with a market capitalization (number of shares outstanding multiplied by stock price) of $500 million or less.

of 2002. Burt and Virginia transferred their accounts to First Montauk Securities in early September 2002. Around this same time period, Burt and Virginia became extremely concerned about their accounts, which had been rapidly declining in value over the last several months. Burt and Virginia were especially concerned about Archer's excessive purchases of two small-cap stocks, Eagle Supply Group Inc. and Advanced Environmental Recycling Technologies Inc. Beginning in February 2002 and continuing through July 2002, Archer purchased a collective total of close to 50,000 shares of Eagle Supply Group Inc. for close to $150,000 in their three accounts. In March and April 2002, Archer purchased a collective total of 14,500 shares of Advanced Environmental Recycling Technologies Inc. for close to $34,000 in their three accounts. At the time of these purchases, both stocks were trading for between $2 and $4 per share.

12. Burt and Virginia decided to terminate their association with Archer and sent him a letter dated October 1, 2002 asking him to cease trading. Burt and Virginia's accounts were then transferred to J.B. Oxford & Company, the clearing brokerage firm for Mantis Securities. Burt directed all further trading from this point forward. Burt and Virginia attempted to mitigate their losses by selling the securities that Archer had purchased in their accounts. Burt and Virginia sold all the stock purchased by Archer within a few months.

13. In addition to the $35,000 in commissions they paid, Burt and Virginia also suffered substantial losses in value during the short time period in which Archer controlled their accounts. Account I lost approximately $1,300, Account II lost approximately $51,000, and Account III lost

[4] This return is calculated by dividing the commissions, margin interest, and other expenses paid by the average net equity of the account.

approximately $66,000. Collectively, these losses account for approximately 54% of the funds Burt and Virginia entrusted to Archer.

Based upon the above Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. The offer and/or sale of the stocks described above constitutes the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12).

2. Lonzo Archer, as described above, has willfully violated RCW 21.20.702 by recommending the purchase and sale of securities to Burt and Virginia S. without reasonable grounds to believe that the transactions were suitable for them. Such practice is grounds for the revocation of his salesperson registration pursuant to RCW 21.20.110(1)(b), and for the imposition of fines pursuant to RCW 21.20.110(1).

3. Lonzo Archer, as described above, has willfully violated RCW 21.20.035 by knowingly effecting transactions in the accounts of Burt and Virginia S. that were excessive in size and frequency in view of the financial resources and character of the accounts, and that were effected by reason of Burt and Virginia S.'s trust and confidence in Archer. Such practice is grounds for the revocation of his salesperson registration pursuant to RCW 21.20.110(1)(b), and for the imposition of fines pursuant to RCW 21.20.110(1).

4. Lonzo Archer, as described above, engaged in one or more dishonest and unethical practices in the securities business, as defined by WAC 460-22B-090(6), by inducing trades in the accounts of Burt and Virginia S. that were excessive in size and frequency in view of the financial resources and character of the accounts. Such practice is grounds for the revocation of his salesperson

registration pursuant to RCW 21.20.110(1)(g), and for the imposition of fines pursuant to RCW 21.20.110(1).

5. Lonzo Archer, as described above, engaged in one or more dishonest or unethical practices in the securities business, as defined by WAC 460-22B-090(9), by exercising discretionary power in effecting transactions for the accounts of Burt and Virginia S. without first obtaining written discretionary authority from them. Such practice is grounds for the revocation of his salesperson registration pursuant to RCW 21.20.110(1)(g), and for the imposition of fines pursuant to RCW 21.20.110(1).

FINAL ORDER

Based on the forgoing, NOW, THEREFORE IS HEREBY ORDERED that Lonzo Archer's securities salesperson license shall be permanently revoked from the date of entry of this Order.

IT IS FURTHER ORDERED that, pursuant to RCW 21.20.110, Lonzo Archer shall pay a fine in the amount of $20,000. Such payment shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Washington State Treasurer; (c) delivered by certified mail to Deborah R. Bortner, Securities Administrator, Department of Financial Institutions, PO Box 9033, Olympia, Washington 98507-9033; and (d) submitted with a cover letter that identifies Lonzo Archer as a Respondent under these proceedings, and the Order number of these proceedings.

IT IS FURTHER ORDERED that, pursuant to RCW 21.20.110, Lonzo Archer shall pay disgorgement in the amount of $35,000. Such payment shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Washington State Treasurer; (c) delivered by certified mail to Deborah R. Bortner, Securities Administrator, Department of

Financial Institutions, PO Box 9033, Olympia, Washington 98507-9033; and (d) submitted with a cover letter that identifies Lonzo Archer as a Respondent under these proceedings, and the Order number of these proceedings.

AUTHORITY AND PROCEDURE

This Order is entered pursuant to the provisions of RCW 21.20.110, and is subject to the provisions of RCW 21.20.120 and Chapter 34.05 RCW. Pursuant to RCW 21.20.110, a certified copy of this order may be filed in Superior Court. If so filed, the clerk shall treat the order in the same manner as a Superior Court judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like manner.

DATED this 27th day of January, 2004.

STATE OF WASHINGTON
ADMINISTRATOR
SECURITIES DIVISION
DEPARTMENT OF FINANCIAL INSTITUTIONS

DEBORAH R. BORTNER
Securities Administrator

Approved by:

Michael E. Stevenson
Chief of Enforcement

Presented by:

Chad C. Standifer
Staff Attorney