

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**


2 CARL J. KUNASEK  
Chairman  
3 JIM IRVIN  
Commissioner  
4 WILLIAM A. MUNDELL  
Commissioner

Arizona Corporation Commission

**DOCKETED**

OCT 08 1999

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DOCKETED BY	
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6 In the matter of )  
7 JAMES NEWTON DARWIN, II )  
400 N. Ronay Dr. )  
8 Spicewood, TX 78669 )  
9 CRD # 1779045 )  
Respondent. )

DOCKET NO. S-03349A-99-0000

10 DECISION NO. 61998

**ORDER FOR RELIEF AND  
CONSENT TO SAME**

11 JAMES NEWTON DARWIN, II ("Darwin") elects to permanently waive his right to a hearing  
12 and appeal under Articles 11 and 12 of the Securities Act of Arizona (the Act) with respect to this Order for  
13 Relief and Consent to Same (Order); admits the jurisdiction of the Arizona Corporation Commission  
14 (Commission); neither admits nor denies the Findings of Fact and Conclusions of Law contained in this  
15 Order; and consents to entry of this Order by the Commission.

16 **II.**

17 **FINDINGS OF FACT**

18 1. Darwin whose last known address is 400 N. Ronay Dr., Spicewood, Texas 78669, is a  
19 registered salesman in Arizona.

20 2. Darwin has been a registered securities salesman in Arizona since February 3, 1999.  
21 Darwin is currently registered in Arizona with ProFutures Financial Group, Inc. ("ProFutures  
22 Financial").

23 3. From on or about February 21, 1992 to on or about April 22, 1998, Darwin held a Group  
24 1 Life Accident Health and HMO license with the Texas Department of Insurance ("TDI"). Darwin  
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1 further held a Variable Contract Agents license with TDI from on or about May 31, 1996 to on or about  
2 April 22, 1998.

3 4. Prior to his registration as a securities salesman in Arizona, Darwin held an appointment  
4 as a general insurance agent with Commercial Union Life Insurance Company of America ("CU Life")  
5 pursuant to his insurance licenses. During Darwin's appointment with CU Life, the company paid  
6 advance commissions to insurance agents who submitted customer applications to purchase tax sheltered  
7 annuities.

8 5. From about January 1996 to about October 1996, Darwin designed and executed a  
9 scheme to defraud CU Life whereby he created, forged, and submitted eighteen (18) fraudulent  
10 applications for tax sheltered annuities to CU Life, for the purpose of obtaining advance commissions.  
11 When preparing said applications, Darwin used the names of fictitious persons and fictitious addresses as  
12 purported applicants, and forged the signatures on the applications. As a result of his scheme to defraud,  
13 Darwin received approximately \$24,500.00 in fraudulently obtained commissions from CU Life and  
14 used the funds for his own benefit.

15 6. Upon CU Life's investigation and discovery of Darwin's fraud as described above,  
16 Darwin's appointment with CU Life was terminated for cause by CU Life on or about March 7, 1997,  
17 after allegations were made that accused him of violating investment-related statutes, regulations, rules or  
18 industry standards of conduct, and fraud or the wrongful taking of property. Darwin has since  
19 surrendered both of his insurance licenses to TDI.

20 7. On or about September 15, 1998, Darwin filed a Form U-4 application with the Central  
21 Registration Depository ("CRD") of the National Association of Securities Dealers ("NASD"), seeking  
22 to become registered as a securities salesman of ProFutures Financial. Question 22N(1) of the then and  
23 currently effective Form U-4 application requires applicants to disclose whether they have ever been  
24 discharged after allegations were made that accused them of "violating *investment-related* statutes,  
25 regulations, rules or industry standard of conduct." (emphasis in original). The explanation of terms  
26

1 section in the Form U-4 application defines the term "investment-related" as "[p]ertaining to securities,  
2 commodities, banking, insurance, or real estate . . ." (emphasis added.) Darwin answered "no" to  
3 Question 22N(1).

4 8. Question 22N(2) of the then and currently effective Form U-4 application requires  
5 applicants to disclose whether they have ever been discharged after allegations were made that accused  
6 them of "fraud or the wrongful taking of property." Darwin answered "no" to Question 22N(2).

7 9. In January 1999, when Darwin applied for registration as a securities salesman in  
8 Arizona, the Form U-4 previously filed with the NASD on or about September 15, 1998, discussed in  
9 paragraphs 5 and 6 above, became a part of his registration application in Arizona.

10 10. Subsequent to the approval of his registration in Arizona, on or about March 15, 1999,  
11 Darwin amended his prior Form U-4 application with respect to ProFutures Financial to disclose "yes"  
12 answers to Questions 22N(1) and (2).

13 11. Darwin's answers to Questions 22N(1) and (2) of the Form U-4 application that he filed  
14 on September 15, 1998, were incomplete, inaccurate or misleading.

### 15 III.

#### 16 CONCLUSIONS OF LAW

17 12. Each of the preceding paragraphs is incorporated by reference.

18 13. Darwin's conduct constitutes grounds for the revocation of Darwin's registration as a  
19 securities salesman with the Commission pursuant to A.R.S. §§ 44-1962(A)(1) and (4) on the following  
20 grounds:

- 21 (1) The application for registration of the salesman, based upon the information filed  
22 in the Form U-4, was incomplete, inaccurate or misleading; and  
23 (2) The salesman is lacking in integrity, is not of good business reputation or is not  
24 qualified by training or experience.

25 ...

IV.  
ORDER

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED that pursuant to A.R.S. § 44-1962, Darwin's securities salesman's registration be revoked upon entry of this Order.

IT IS FURTHER ORDERED that this decision shall become effective immediately upon the date set forth below.

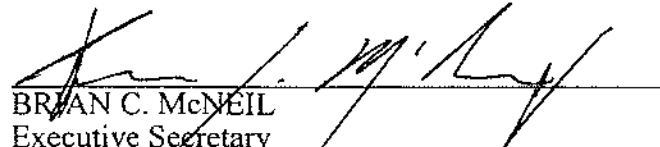
BY ORDER OF THE ARIZONA CORPORATION COMMISSION

  
CHAIRMAN

\_\_\_\_\_  
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 8<sup>th</sup> day of October, 1999.

  
BRIAN C. McNEIL  
Executive Secretary

\_\_\_\_\_  
DISSENT  
(PTJ)

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1 or impose additional sanctions and costs and seek other appropriate relief subject to Darwin's right to a  
2 hearing pursuant to the Act.

3 7. Darwin agrees that, as a part of the settlement reached herein, he will not apply for  
4 registration as a securities dealer or salesman, or for licensure as an investment adviser or investment  
5 adviser representative, under the Securities Act of Arizona or the Investment Management Act of  
6 Arizona, at any time in the future.

7 8. Darwin acknowledges that this Order resolves only alleged administrative violations of  
8 the Act and that nothing contained in the Order purports to resolve any other issues which may exist  
9 between Darwin and the State. Nothing in the Order shall be construed to restrict or preclude any other  
10 agency or officer of the State of Arizona or its subdivisions from initiating other civil or criminal  
11 proceedings against Darwin, now or in the future, that may be related to the matter addressed by the  
12 Order and the Consent. Nothing in the Order shall be construed to restrict the State's right in a future  
13 proceeding to bring an action against Darwin from or related to facts not set forth in the Order.

14 9. Darwin acknowledges that he has been informed and understands that the Commission or  
15 its designee, at the Commission's sole and exclusive discretion, may refer or grant access to this matter,  
16 or any information or evidence gathered in connection with this matter, to any person or entity having  
17 appropriate administrative, civil or criminal jurisdiction. Darwin acknowledges that no representations

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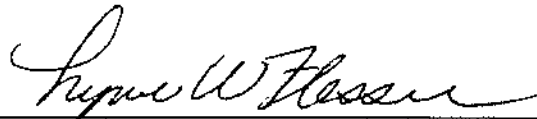
Docket No. S-03349A-99-0000

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2 regarding the above have been made so as to induce him to enter into this Order, including the fact that  
3 no promise or representation has been made by the Commission or its designee or staff with regard to  
4 any potential criminal liability or immunity from any potential criminal liability.

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JAMES NEWTON DARWIN

8 SUBSCRIBED TO AND SWORN BEFORE me this \_\_\_\_ day of September, 1999, by JAMES  
9 NEWTON DARWIN.

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11 

12 NOTARY PUBLIC

13 My Commission Expires:

