

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK

Chairman

3 JIM IRVIN

Commissioner

4 WILLIAM A. MUNDELL

Commissioner

5 In the matter of

6 RICHARD JOHN PELLO

7 5772 E. Ironwood Bluff  
Cave Creek, Arizona 85331

8 CRD #1365717,

9 Respondent.

)  
) DOCKET NO. S-03421A-00-0000  
)  
) DECISION NO. \_\_\_\_\_  
)  
) **FINAL ORDER OF REGISTRATION**  
) **SUSPENSION AND**  
) **CONSENT TO SAME**

10 \_\_\_\_\_  
11 **I.**

12 **INTRODUCTION**

13 RICHARD JOHN PELLO (Pello) elects to permanently waive his rights to a hearing and appeal  
14 under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. Section 44-1801, *et seq.* (the Securities  
15 Act), with respect to this Final Order of Registration Suspension and Consent to Same (the Order); admits  
16 the jurisdiction of the Arizona Corporation Commission (the Commission); neither admits nor denies the  
17 Findings of Fact and Conclusions of Law contained in the Order; and consents to entry of the Order by  
18 the Commission.

19 **II.**

20 **FINDINGS OF FACT**

21 1. Pello’s last known address is 5772 East Ironwood Bluff, Cave Creek, Arizona 85331.

22 2. For 17 years, from May 31, 1983 to January 21, 2000, Pello was a registered securities  
23 salesman in Arizona, associated with Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”).  
24 Pello has not been a registered securities salesman in Arizona since his termination from Merrill  
25 Lynch on January 21, 2000.

1           3.       Prior to January 21, 2000, Pello was the Administrative Manager of Merrill Lynch's  
2 Scottsdale, Arizona Complex. Pello's was an operations management position. He was responsible  
3 for compliance, implementation of firm policy and training, supervision of employees, office  
4 operations, and was required to be familiar with each salesman associated with the offices within the  
5 Scottsdale Complex and the accounts each salesman serviced. Pello had no negative disciplinary  
6 history prior to the incident that is summarized in this Order.

7           4.       According to Pello, it is Merrill Lynch's practice to request each salesman who  
8 becomes associated with the Scottsdale Complex, to sign Merrill Lynch's form "Financial Consultant  
9 Employment Agreement and Restrictive Covenants." Merrill Lynch considers all information concerning  
10 customers, including names and telephone numbers, as well as investment objectives and account history,  
11 to be its trade secrets. The employment agreement restricts salesmen from using their knowledge of such  
12 information concerning customers, when the salesmen choose to leave Merrill Lynch and associate with  
13 other brokerage firms.

14           5.       On the afternoon of Friday, November 5, 1999, one of the Scottsdale Complex salesmen  
15 voluntarily terminated his association with Merrill Lynch. This salesman immediately became associated  
16 with PaineWebber Incorporated ("PaineWebber"). According to Pello, several other Merrill Lynch  
17 salesmen had left the Scottsdale Complex for PaineWebber within a brief period of time, and Merrill  
18 Lynch managers believed that PaineWebber was offering large financial incentives to induce salesmen to  
19 do so. Legal action against the salesman was contemplated by Merrill Lynch.

20           6.       As operations manager for the Scottsdale Complex, one of Pello's responsibilities was to  
21 review the personnel files of departing salesmen. If legal action were being considered, Pello assembled  
22 and transmitted to Merrill Lynch's attorneys the documents that would become exhibits in the lawsuits.

23           7.       When he reviewed the file of the salesman who resigned on November 5, 1999, Pello  
24 discovered that there was no Financial Consultant Agreement with Restrictive Covenants in the file,  
25 although Merrill Lynch policy concerning the execution of such an agreement had been in effect when the  
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1 salesman became associated with the firm. Pello photocopied a genuine signature of the salesman, onto a  
2 blank employment agreement.

3 8. On Monday, November 8, 1999, Pello signed an affidavit in support of Merrill Lynch's  
4 emergency motion for a temporary restraining order (TRO) and preliminary injunction, which was filed  
5 that same day in the United States District Court for the District of Arizona, together with a complaint by  
6 Merrill Lynch against the salesman for, among other things, breach of contract and misappropriation of  
7 trade secrets (including customer lists and account information). The employment agreement was an  
8 exhibit to the affidavit, and was represented to the District Court as a genuine contract.

9 9. The papers were served upon the defendant salesman, and the District Court (Robert C.  
10 Broomfield, D.J.) granted a TRO, on November 9, 1999. The TRO enjoined and restrained the defendant  
11 salesman, and all persons associated with PaineWebber, from, among other things, soliciting any business  
12 from customers the defendant salesman had served while he was associated with Merrill Lynch, and from  
13 accepting any business or account transfers from any such customers.

14 10. The defendant salesman denied that he had signed an employment agreement with  
15 restrictive covenants between himself and Merrill Lynch. He obtained an opinion of an expert  
16 questioned-document examiner, dated November 15, 1999, that the signature of the salesman on the  
17 employment agreement had been "cut-and-pasted" onto the employment agreement using a genuine  
18 signature from a different document.

19 11. Merrill Lynch filed a notice of dismissal, dated November 15, 1999, and informed the  
20 District Court of the circumstances surrounding the dismissal. The TRO was vacated that same day, six  
21 days after its issuance. Merrill Lynch and the defendant salesman settled the salesman's claim for  
22 attorney and expert witness fees, and other damages incurred by the salesman.

23 12. On January 20, 2000, Pello confessed, to a Merrill Lynch executive and two of the firm's  
24 lawyers, that he had photocopied the signature of the salesman onto the employment agreement.

25 13. Pello has voluntarily cooperated with the Securities Division's inquiry into the above-  
26 described matter.

**III.**

**CONCLUSIONS OF LAW**

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3 1. The Commission has jurisdiction over this matter pursuant to Article XV of the  
4 Arizona Constitution and pursuant to the Securities Act.

5 2. Pello’s conduct constitutes grounds for the suspension of Pello’s registration as a  
6 securities salesman pursuant to A.R.S. §§ 44-1962(A)(4) on the ground that Pello is lacking in integrity,  
7 or is not of good business reputation.

**IV.**

**ORDER**

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9  
10 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission  
11 finds that the following Order is appropriate, in the public interest and necessary for the protection of  
12 investors and the preservation of fair and equitable business practices in the securities industry in Arizona.

13 1. IT IS ORDERED pursuant to A.R.S. § 44-1962 that Pello’s securities salesman registration  
14 is suspended for one year upon entry of this Order.

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

3                           BY ORDER OF THE ARIZONA CORPORATION COMMISSION  
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7 CHAIRMAN

COMMISSIONER

COMMISSIONER

8                           IN WITNESS WHEREOF, I, Brian C. McNeil, Executive  
9 Secretary of the Arizona Corporation Commission, have  
10 hereunto set my hand and caused the official seal of the  
11 Commission to be affixed at the Capitol, in the City of  
12 Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2000.

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17 BRIAN C. McNEIL  
18 Executive Secretary

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21 DISSENT  
22 (AJL)  
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27 This document is available in alternative formats by contacting Cynthia Mercurio-Sandoval, ADA  
28 Coordinator, voice phone number 602/542-0838, E-mail csandoval@cc.state.az.us.

1                   CONSENT BY RICHARD JOHN PELLO TO THE ENTRY, BY THE CORPORATION  
2                   COMMISSION, OF A FINAL ORDER OF REGISTRATION SUSPENSION AND  
3                   WAIVER OF HEARING

4                   1.       Respondent, RICHARD JOHN PELLO (Pello), admits the jurisdiction of the Arizona  
5 Corporation Commission (Commission) over the subject matter of this proceeding, and acknowledges  
6 that he has been fully advised of his right to a hearing to present evidence and call witnesses. Pello  
7 knowingly and voluntarily waives all rights to a hearing before the Commission and all other rights  
8 otherwise available under Article 11 of the Securities Act of Arizona (Securities Act), Chapter 12 of  
9 Title 44 of the Arizona Revised Statutes, and Title 14 of the Arizona Administrative Code. Pello  
10 acknowledges that this Final Order of Registration Suspension and Consent to Same (Order)  
11 constitutes a valid final order of the Commission.

12                   2.       Pello knowingly and voluntarily waives any right he may have under law to judicial  
13 review, suit, appeal or extraordinary relief resulting from the entry of the Order.

14                   3.       Pello acknowledges and agrees that he enters into the Order freely and voluntarily and  
15 that no promise was made nor any coercion used to induce Pello to enter into it.

16                   4.       Pello acknowledges that he has been represented by counsel in this matter, and that he  
17 has reviewed the Order with his attorney and understands all its terms.

18                   5.       Pello neither admits nor denies the Findings of Fact and Conclusions of Law contained  
19 in the Order.

20                   6.       Pello consents to the entry of the Order and agrees to be fully bound by its terms and  
21 conditions.

22                   7.       Pello acknowledges that the Order resolves only alleged administrative matters under  
23 the Securities Act and that nothing contained in the Order purports to resolve any other issues which  
24 may exist between Pello and the State. Nothing in the Order shall be construed to restrict or preclude  
25 any other agency or officer of the State of Arizona or its subdivisions from initiating other civil or  
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1 criminal proceedings against Pello, now or in the future, that may be related to the matters addressed  
2 by the Order. Nothing in the Order shall be construed to restrict the State's right in a future  
3 proceeding to bring an action against Pello from or related to facts not set forth in the Order.

4 8. Pello acknowledges that he has been informed and understands that the Commission or  
5 its designee, at the Commission's sole and exclusive discretion, may refer this matter, or grant access to  
6 any information or evidence gathered in connection with this matter, to any person or entity having  
7 appropriate administrative, civil or criminal jurisdiction. Pello acknowledges that no representations  
8 regarding the above have been made so as to induce him to enter into this Order, and no promise or  
9 representation has been made by the Commission or its designee or staff with regard to any potential  
10 criminal liability or immunity from any potential criminal liability.

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14 \_\_\_\_\_  
Richard John Pello

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16 SUBSCRIBED TO AND SWORN BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 2000, by  
17 RICHARD JOHN PELLO.

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NOTARY PUBLIC

20 My Commission Expires:  
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