

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 AMERICAN EXPRESS FINANCIAL ADVISORS )

7 IDS Tower 10 )

Minneapolis, Minnesota 55440 )

8 Respondent. )

DOCKET NO. S-03388A-00-0000

9 DECISION NO. \_\_\_\_\_

**FINAL ORDER FOR RELIEF AND  
CONSENT TO SAME**

10  
11 **I.**

12 **INTRODUCTION**

13 AMERICAN EXPRESS FINANCIAL ADVISORS (“AEFA”), elects to permanently waive its  
14 right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona (the “Act”) with  
15 respect to this Final Order for Relief and Consent to Same (“Order”); admits the jurisdiction of the  
16 Arizona Corporation Commission (“Commission”); neither admits nor denies the Findings of Fact and  
17 Conclusions of Law contained in this Order; and consents to entry of this Order by the Commission.

18 **II.**

19 **FINDINGS OF FACT**

20 1. AEFA is a securities dealer whose business address is IDS Tower 10, Minneapolis,  
21 Minnesota 55440.

22 2. At all relevant times AEFA has been registered as a securities dealer in Arizona.

23 3. Walter M. Elze, Jr. (“Elze”), (CRD No. 2857881), whose last known address is 17823  
24 North 53<sup>rd</sup> Lane, Glendale, Arizona 85308, was registered as a securities salesman with AEFA from  
25 April 8, 1997, until August 20, 1999.

26 4. At all relevant times, while registered as a salesman with AEFA, Elze worked at the

1 AEFA branch office located at 10240 West Bell Road, Sun City, Arizona 85351.

2 5. In approximately August 1997, Elze was assigned by AEFA as the securities  
3 salesman for the accounts of Shirley Noe (“Noe”).

4 6. On or about August 20, 1997, Elze had Noe execute an AEFA advisor-assisted  
5 telephone transaction authorization (“AATT”) which allowed Elze to make exchanges, transfers,  
6 redemptions, and surrenders from Noe’s accounts.

7 7. On or about January 27, 1998, Elze established an address under his control at Post  
8 Net Postal and Business Services located at 20229 North 67<sup>th</sup> Avenue, Suite C-4121, Glendale,  
9 Arizona.

10 8. After establishment of this controlled address, Elze changed the mailing address for  
11 all of Noe’s AEFA accounts, having all statements and documents regarding her AEFA accounts  
12 delivered to the controlled address.

13 9. Once the controlled address was established and Noe had executed the AATT, Elze  
14 proceeded to redeem funds from the Noe accounts and had checks delivered to the controlled  
15 address.

16 10. Once checks were received at the controlled address, Elze forged or obtained Noe’s  
17 signature and deposited money into a bank account previously established by Elze and to which he  
18 had added Noe’s name as signatory.

19 11. In connection with the above scheme, from approximately September, 1997, through  
20 July, 1999, Elze converted or misappropriated approximately \$226,000 from the accounts of Noe.

21 **FAILURE TO SUPERVISE BY AEFA**

22 12. During the time period of September, 1997, through July, 1999, Elze ordered  
23 redemptions from Noe’s accounts on 52 separate occasions totaling \$226,000 by the AATT process.  
24 A majority of these incurred penalties or surrender charges by Noe.

25 13. AEFA had supervisory policies and procedures in place for AATT transactions and  
26 redemptions from customer accounts. These procedures included manager weekly review and

1 customer telephone contact for advisor assisted telephone transactions. On only one occasion did  
2 AEFA question the activity in Noe's accounts as provided by its own policies and procedures.

3 14. During the time period of May 1998, through July 1999, AEFA supervisory personnel  
4 were on notice that Elze was gambling in Las Vegas and was in debt to AEFA. AEFA failed to  
5 investigate Elze's activity in customer accounts to ensure that no fraudulent activity was being  
6 conducted by Elze due to his own financial status.

7 15. In or about April 1998, AEFA became aware of two customer complaints concerning  
8 Elze's handling of their accounts. No further investigation or review of Elze's remaining accounts  
9 was conducted by AEFA.

10 16. On at least two occasions from May through July, 1999, correspondence was received  
11 at the AEFA Sun City branch office from Bank One addressed to Walter Elze, Kimberly Elze or  
12 Shirley Noe. No investigation was conducted by AEFA to determine why Elze had a joint bank  
13 account with Noe in violation of AEFA policies and procedures.

14 17. AEFA has failed to maintain accurate books and records relating to Noe's account  
15 and Elze's activity as set forth in the above paragraphs including, but not limited to, AEFA  
16 correspondence to Noe concerning her change of address and customer new account information for  
17 Elze customer accounts.

#### 18 **REMEDIAL MEASURES**

19 AEFA agrees to adopt and implement remedial measures and new supervisory and compliance  
20 procedures in accordance with a plan submitted to the Securities Division.

21 These measures include, but are not limited to:

22 18. Establish a full-time compliance position (Field Compliance Director) to be located and  
23 dedicated to the Arizona/Las Vegas market group. The Field Compliance Director position is in  
24 addition to the current compliance structure already in place.

25 19. Purchase and implement "early warning" software designed to detect possible fraud  
26 situations relating to the opening of new accounts and change of address issues. The system is also designed

1 to detect the use of mail handling centers sometimes used in controlled address situations.

2 20. Conduct an additional dedicated mandatory training session for all field supervisory  
3 personnel, in the Arizona/Las Vegas market group, regarding the review of AEFA generated  
4 compliance reports. The training will include a review of advisor assisted telephone transaction reports  
5 and redemption/purchase reports, among others, focusing on the detection of “red flag” behavior. The  
6 training will also focus on when compliance supervisors should contact clients to review possible “red  
7 flag” behavior.

8 **III.**

9 **CONCLUSIONS OF LAW**

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

12 2. Elze has been guilty of fraudulent acts or practices in connection with the purchase or  
13 sale of securities within the meaning of A.R.S. § 44-1991:

14 3. AEFA is under a duty to reasonably supervise its salesmen by establishing and  
15 maintaining written procedures, and systems for applying such procedures, which would reasonably be  
16 expected to prevent and detect, insofar as practicable, violations by salesmen, of the Act or of any rule  
17 or regulation adopted thereunder within the meaning of A.A.C. R14-4-131.

18 4. AEFA was on notice of potential violations by Elze and, thereafter, by not taking  
19 affirmative action, AEFA did not discover in a timely manner Elze’s fraudulent conduct and thereby  
20 failed to supervise its salesman pursuant to the provisions of A.A.C. R14-4-131.

21 5. AEFA did not make, maintain and preserve books and records relating to Noe’s  
22 account and Elze’s activity as required by A.A.C. R14-4-132.

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**IV.**

**ORDER**

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3       THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, and in consideration  
4 of the accompanying Consent to Entry of Order by AEFA, the Commission finds that the following Order  
5 is appropriate, in the public interest, and necessary for the protection of investors.

6       IT IS ORDERED, that AEFA pay the amount of \$125,000 to the State of Arizona pursuant to  
7 A.R.S. §44-2036, upon entry of this Order for deposit to the State General Fund.

8       IT IS FURTHER ORDERED, that AEFA shall submit to the Division on a quarterly basis from  
9 the date of this Order, a written report summarizing all customer complaints involving Arizona residents  
10 for two years from the date of this Order.

11       IT IS FURTHER ORDERED, that AEFA shall conduct compliance inspections of all AEFA  
12 office locations within ninety days of the entry of this Order. A list of the AEFA office locations to be  
13 inspected is attached as Exhibit A. Reports of each inspections' findings shall be provided to the Division  
14 within thirty days of the completion of each examination.

15       IT IS FURTHER ORDERED, that this Order represents the complete and final resolution of, and  
16 discharge with respect to all claims and causes of action by the Commission against AEFA and its  
17 predecessors, subsidiaries, affiliates, employees, officers, and directors, other than Elze, for violations  
18 arising as a result of or in connection with the facts set forth in this Order and is in lieu of further civil or  
19 administrative proceedings.

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1 IT IS FURTHER ORDERED, that this Order shall become effective immediately upon the date  
2 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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BRIAN C. McNEIL  
Executive Secretary

DISSENT

(MJN)

This document is available in alternative formats by contacting Cynthia Mercurio-Sandoval, ADA  
Coordinator, voice phone number 602/542-0838, E-mail [csandoval@cc.state.az.us](mailto:csandoval@cc.state.az.us).

CONSENT TO ENTRY OF ORDER BY THE COMMISSION  
AND WAIVER OF HEARING

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4 AMERICAN EXPRESS FINANCIAL ADVISORS (“AEFA”) acknowledges that it has been  
5 fully advised of its right to a hearing to present evidence and call witnesses. AEFA waives all hearing  
6 procedures and right to appeal provided by the Securities Act of Arizona with respect to this Order and  
7 Consent to Same (“Order”).

8 AEFA admits the jurisdiction of the Arizona Corporation Commission with respect to the  
9 matters set forth in the Order and in this Consent.

10 AEFA neither admits nor denies the Findings of Fact and Conclusions of Law set forth in the  
11 Order, and consents to the entry of this Order.

12 AEFA states that its entry into this Consent is a voluntary act that no promise was made nor  
13 coercion used to induce AEFA to enter into it. By entering into the Consent, AEFA hereby agrees to  
14 the terms set forth in the Order, which is incorporated herein by reference.

15 AEFA agrees not to take any action or to make or permit to be made, any public statement  
16 denying, directly or indirectly, any Findings of Fact or Conclusions of Law in the Order or creating the  
17 impression that the Order is without factual basis. If AEFA breaches this agreement, the Commission  
18 may move to vacate this Order and restore this case to its active docket.

19 AEFA acknowledges that the Order does not preclude the Commission or any other agency,  
20 officer of this State, or its subdivisions, from instituting other administrative, civil, or criminal  
21 proceedings now or in the future, based on facts not presently known to the Commission on matters  
22 not set forth in the Order.

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1 Douglas A. Lennick represents that he/she is an officer of AEFA and has been authorized by AEFA to  
2 enter into this Consent to Entry of Order for and on behalf of AEFA.

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4 AMERICAN EXPRESS FINANCIAL ADVISORS

5  
6 BY: \_\_\_\_\_  
TITLE: Executive Vice President

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9 SUBSCRIBED TO AND SWORN BEFORE me this \_\_\_\_ day of \_\_\_\_\_,  
10 2000.

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13 \_\_\_\_\_  
14 NOTARY PUBLIC

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16 My Commission Expires:  
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