FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JASON MALCOM PIRNIE (CRD No. 2878458), Respondent.	Expedited Proceeding No. ARB240001 STAR No. 20240810310 Hearing Officer– DRS **EXPEDITED DECISION** July 8, 2024

Respondent failed to pay an industry-related arbitration award and failed to prove that he had a bona fide inability to pay or make a meaningful payment toward the award. Respondent is therefore suspended from associating with any FINRA member in any capacity until he demonstrates that he has: (1) paid the award in full; (2) entered into a fully-executed, written settlement agreement with the arbitration claimants and is in compliance with its terms; (3) petitioned for bankruptcy protection, and the bankruptcy filing is pending; or (4) shown that the award has been discharged in bankruptcy.

Appearances

For the Complainant: Michael Manning, Esq., Michelle Galloway, Esq., and Jennifer L. Crawford, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro se

DECISION

I. Introduction

This expedited proceeding stems from a former registered representative's failure to pay an industry-related arbitration award rendered against him by a FINRA arbitration panel. Because he did not pay the award, FINRA notified him that it would suspend him from associating with any FINRA member firm in any capacity. Respondent timely filed a request for hearing with the Office of Hearing Officers, which stayed the upcoming suspension. In his hearing request, Respondent asserted the defense that he was financially unable to pay the award. I held a videoconference hearing on May 10, 2024, to adjudicate Respondent's defense.

After considering the evidence and the parties' arguments, I find that Respondent failed to comply with the award and failed to establish his inability-to-pay defense. Respondent did not prove that since the award was issued, he was unable to either pay the full amount or make some meaningful payment toward satisfying it. As a result, Respondent is suspended from associating with any FINRA member firm in any capacity until he demonstrates that he has either: (1) paid the award in full; (2) entered into a fully executed, written settlement agreement with the arbitration claimant and is in compliance with its terms; (3) petitioned for bankruptcy protection and the bankruptcy petition remains pending; or (4) shown that the award has been discharged in bankruptcy.

II. Findings of Fact and Conclusions of Law

A. Regulatory Framework

Under FINRA rules governing industry-related arbitrations, "[a]ll monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction."[1] If an associated person fails to comply with an arbitration award, then, under FINRA By-Laws, Article VI, Section 3(b), FINRA may suspend the person "where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied." "FINRA Rule 9554 provides an enforcement mechanism for Section 3(b) by authorizing expedited suspension proceedings against members and associated persons who have allegedly failed to comply with an arbitration award."[2] That rule authorizes FINRA to send a notice "stating that the failure to comply within 21 days of service of the notice will result in a suspension . . . from associating with any member."[3] The notice must specify the grounds for, and the effective date of, the suspension and must advise respondents of their right to file a written request for a hearing.[4]

Once served with a suspension notice, a respondent may request a hearing with FINRA's Office of Hearing Officers.[5] "Under Rule 9554(d) a suspension notice becomes effective 21 days after service, unless stayed by a request for a hearing under Rule 9559. If a hearing is not requested timely, the notice of suspension constitutes FINRA's final action, as provided by Rule 9554(f)."[6] The hearing request must specifically identify all defenses the person has to the suspension notice.[7] FINRA recognizes five defenses in a suspension proceeding for failure to pay an arbitration award:

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[1] FINRA Rule 13904(j).

[2] *Dep't of Enforcement v. Garratt*, No. ARB210001, 2021 FINRA Discip. LEXIS 27, at *7 (NAC Aug. 31, 2021).

[3] FINRA Rule 9554(a).

[4] FINRA Rule 9554(c); *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *8–9 (Mar. 17, 2016).

[5] FINRA Rule 9554(e).

[6] *Garratt*, 2021 FINRA Discip. LEXIS 27, at *7–8.

[7] FINRA Rule 9554(e).

> (1) the respondent has paid the arbitration award in full; (2) the arbitration parties have agreed to installment payments of the award, or have otherwise agreed to settle, and the respondent is not in default under the agreement; (3) a court has vacated the award; (4) a motion to vacate or modify the award is pending in a court; and (5) the respondent has a bankruptcy proceeding pending in United States Bankruptcy Court, or a Bankruptcy Court has discharged the award.[8]

A respondent may also assert a bona fide inability to pay an award issued in connection with an industry dispute.[9]

B. Respondent and the Arbitration Award

Respondent first registered or associated with a FINRA member firm in 1997 and registered with FINRA as a general securities representative from December 14, 2012, through November 30, 2022, through his association with UBS Financial Services Inc. LLC.[10] UBS discharged Respondent for "failing to meet the expectations of his role."[11] Respondent is not currently registered with a FINRA member firm[12] and is not otherwise employed.[13]

On November 30, 2023, an arbitration award was entered against Respondent in *UBS Financial Services Inc. and UBS Credit Corp. vs. Jason Malcom Pirnie*, FINRA Dispute Resolution Services Arbitration Case No. 23-02231.[14] The award totals $245,817.95, and is comprised of damages and reimbursement of fees.[15] FINRA properly served the award on Respondent by notice on November 30, 2023.[16] The notice informed Respondent, among other things, that "FINRA rules provide that all monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction."[17] That

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[8] *Dep't of Enforcement v. Henry*, No. ARB220023, 2023 FINRA Discip. LEXIS 6, at *3–4 (OHO Apr. 13, 2023) (citing FINRA By-Laws, Article VI, Section 3(b)); NASD Notice to Members 00-55, at 2 (Aug. 2000), https://www.finra.org/rules-guidance/notices/00-55.

[9] *See, e.g., William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599 (Mar. 14, 2003); *see also* SR-FINRA-2010-014, Order Approving Proposed Rule Change Relating to FINRA Rule 9554 to Eliminate Explicitly the Inability-to-Pay Defense in the Expedited Proceedings Context, Exchange Act Release No. 62211, 2010 SEC LEXIS 1800, 75 Fed. Reg. 32525 (June 2, 2010) (approving change to FINRA Rule 9554 making the defense of inability to pay an arbitration award unavailable to a respondent when the award is issued in favor of public customers and recognizing that bona fide inability to pay is a defense in an expedited proceeding involving an industry arbitration award).

[10] Amended Stipulations ("Stip.") ¶ 1; Joint Exhibit ("JX-__") 1, at 2.

[11] JX-1, at 3.

[12] JX-1, at 2.

[13] Tr. 102, 114. In January 2023, however, he was employed by an investment advisory firm for about a week. JX-1, at 2; Tr. 102.

[14] Stip. ¶ 3.

[15] Stip. ¶ 4; JX-2.

[16] Stip. ¶ 6; JX-3.

[17] JX-3, at 1.

same day, FINRA sent Respondent additional notice by letter informing him he must pay the award in full by January 2, 2024.[18]

C. The Notice of Suspension and Respondent's Hearing Request

Respondent did not pay the award and on January 4, 2024, FINRA sent Respondent a notice of suspension under FINRA Rule 9554.[19] The suspension notice informed Respondent that FINRA intended to suspend his association with FINRA member firms in any capacity, effective January 25, 2024, because he failed to comply with the award.[20]

The suspension notice advised Respondent that he could prevent his suspension if he demonstrated that he: (1) paid the award in full; (2) entered into a fully executed, written settlement agreement with the arbitration claimants, and his obligations under it were current; (3) timely filed an action to vacate or modify the award and any such motion had not been denied; or (4) filed a bankruptcy petition and the bankruptcy proceeding is pending, or the bankruptcy court has discharged the award or payment owed under a settlement agreement (collectively, the "Rule 9554 enumerated defenses").[21]

Additionally, the suspension notice informed Respondent that: (1) he had a right to request a hearing before FINRA's Office of Hearing Officers to assert any of the Rule 9554 enumerated defenses or to claim as a defense a bona fide inability to pay the award; (2) the hearing request must be in writing; (3) it must state all claimed defenses; and (4) it must be filed before the effective date of the suspension. The suspension notice stated that a timely filed hearing request would stay the effective date of the suspension.[22]

On January 19, 2024, Respondent timely filed his hearing request, asserting he had a financial inability to pay the award. Respondent has not paid any part of the award, entered into a fully executed, written settlement agreement with the arbitration claimant, or filed for bankruptcy protection.[23]

I held a videoconference hearing on May 10, 2024. Based on the evidence presented at the hearing, I find that Respondent's inability-to-pay defense fails, mainly because, as explained below, he has substantial net worth and assets that can be used to make a meaningful payment toward the award.

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[18] Stip. ¶ 8; JX-4.

[19] Stip. ¶ 10; JX-5. Respondent received the suspension notice on January 5, 2024, and was properly served with it. Stip. ¶¶ 11, 13.

[20] JX-5, at 1.

[21] JX-5, at 1.

[22] JX-5, at 1.

[23] Stip. ¶ 14.

D. Legal Requirements of the Inability-to-Pay Defense

Respondents asserting an inability-to-pay defense assume the burden of proving the defense and must document fully their financial circumstances,[24] including their assets and liabilities.[25] "Merely showing serious financial distress or that it would be hard or painful to pay an arbitration award does not establish the defense."[26] Rather, "respondents must show that since the issuance of the award, they have been unable to pay the full amount and 'unable to make some meaningful payment toward the award from available assets or income' by reducing expenses, borrowing funds, or selling assets."[27] The defense fails when respondents' "evidence of financial condition is insufficient or incomplete."[28] It also fails when they have not demonstrated that they could not borrow to pay a meaningful portion of the award.[29] Nor is it sufficient for respondents to claim that their credit was so bad they did not try to get a loan.[30]

E. Respondent's Financial Condition

To support his defense, Respondent testified and submitted a Statement of Financial Condition dated March 6, 2024 ("SFC"),[31] along with related documentation.

1. Assets

According to the SFC, Respondent's assets total $1.6 million dollars. His largest listed assets by far are his residence ($1.21 million)[32] and his individual retirement accounts ("IRAs")

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[24] *Robert Tretiak*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653, at *12 n.16 (Mar. 19, 2003).

[25] *Bruce M. Zipper*, Exchange Act Release No. 33376, 1993 SEC LEXIS 3525, at *8 (Dec. 23, 1993).

[26] *Dep't of Enforcement v. Markus*, No. ARB210008, 2021 FINRA Discip. LEXIS 17, at *4–5 (OHO Aug. 17, 2021); *see also Dep't of Enforcement v. Shimko*, No. ARB200002, 2020 FINRA Discip. LEXIS 41, at *12 (OHO Sept. 15, 2020).

[27] *Dep't of Enforcement v. Stofleth*, No. ARB210015, 2022 FINRA Discip. LEXIS 1, at *5 (OHO Jan. 3, 2022) (quoting *DiPietro*, 2016 SEC LEXIS 1036, at *16 n.22); *see also Daniel Paul Motherway*, Exchange Act Release No. 97180, 2023 SEC LEXIS 753, at *6–7 (Mar. 21, 2023) (quoting *DiPietro*, 2016 SEC LEXIS 1036, at *16 n.22 (internal quotations and citations omitted)).

[28] *Stofleth*, 2022 FINRA Discip. LEXIS 1, at *5 (citing *Gallagher*, 2003 SEC LEXIS 599, at *9–11).

[29] *See Dep't of Enforcement v. Helbling*, No. ARB210004, 2021 FINRA Discip. LEXIS 14, at *11 n.63 (OHO July 23, 2021) (rejecting inability-to-pay defense when respondent failed to prove, among other things, that he could not borrow funds to pay a meaningful portion of the award); *Gallagher,* 2003 SEC LEXIS 599, at *11 (upholding hearing officer's rejection of inability-to-pay defense when applicant "submitted no evidence that he could not have borrowed against the home, or otherwise, the necessary money to pay the arbitration award").

[30] *See Shimko*, 2020 FINRA Discip. LEXIS 41, at *35 ("[Respondent] claimed that his credit was too bad and so he did not try, but this is insufficient to demonstrate an inability to obtain a loan.").

[31] JX-6.

[32] JX-6, at 1.

($260,000).[33] The remaining listed assets are: securities ($51,000);[34] cash ($35,000);[35] automobiles, recreation vehicles, boats ($28,000);[36] a credit balance on his credit card ($23,000);[37] and furniture and household goods ($20,000).[38]

Besides the financial information included on the SFC, the parties presented other evidence, including stipulations, regarding the value of Respondent's assets. These valuations differed, in some respects, from the information listed on his SFC. For example,

- As of February 29, 2024, Respondent had two brokerage accounts at Merrill Lynch with a total balance of $96,465.96.[39] The SFC, dated March 6, 2024, listed securities valued at $51,000.

- As of February 2024, in his various bank accounts, Respondent had a combined total balance of $11,828.68.[40] The SFC listed cash of $35,000.

- As of February 16, 2024, Respondent had a cash advance credit limit on his credit card of $25,000[41] and available credit of $42,562.34.[42] The SFC listed credit balances on credit cards of $23,000.

- The total balance in Respondent's three IRAs, as of the most recent statement for each, is $268,185.13.[43] The SFC listed the value of his IRAs as $260,000.

There was also additional evidence regarding the value of Respondent's largest asset, his residence. As noted above, Respondent listed his home's value on the SFC as $1.2 million. He based this on the county's tax assessment.[44] Enforcement's investigator witness, however,

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[33] JX-6, at 1; JX-22, at 3.

[34] JX-6, at 1.

[35] JX-6, at 1.

[36] JX-6, at 1.

[37] JX-6, at 1. After submitting the SFC, Respondent wrote Enforcement stating he believed he "misunderstood this question and thought it referred to the available credit on" his "credit card," adding "[i]t is not an asset but the remaining available credit after subtracting the current" balance of approximately $8,000. He disputed that the available credit was an "asset and accessing it would only increase" his "liability figures." JX-20, at 2.

[38] JX-6, at 1.

[39] Stip. ¶ 27; JX-13; JX-14.

[40] Stip. ¶ 21; JX-9; JX-10.

[41] JX-15, at 69; Tr. 99.

[42] JX-15, at 69.

[43] Stip. ¶ 24; JX-10, at 1 (an IRA at Rockland Federal Credit Union valued at $ 6,770.94 as of January 31, 2024); JX-11, at 1 (an IRA at Merrill Lynch valued at $29,232.09 as of Dec. 29, 2023); JX-12, at 97 (an IRA at Merrill Lynch valued at $232,182.10 as of Feb. 29, 2024); Tr. 60–61, 88.

[44] Tr. 150, 176.

presented evidence that Respondent's home was worth at least $1.5 million. He testified that he reviewed the estimated values for Respondent's property on Zillow, Redfin, Realtor.com, and Trulia.[45] According to the investigator, these companies take publicly available real estate data and create an estimate of the value.[46] Further, he said that Zillow takes into account comparable homes that were sold in or around the neighborhood of the property; similar or comparable home valuations that are available in the neighborhood; the tax assessment; previous home sales, if any; and proximity of the property to schools, among other things.[47] Continuing, he said that Redfin is another company, like Zillow, that aggregates publicly available real estate data and uses it to calculate an estimate of market value.[48] According to the investigator, as of March 2024, the Zillow estimate was $1.79 million,[49] and Redfin valued the property at $1.57 million.[50] The investigator saw no estimates of value below $1.5 million,[51] and, specifically, the Realtor.com and Trulia estimates were not below $1.5 million.[52]

It is unclear, however, what the best estimate is of the residence's value. Zillow reports provide an estimate prepared on an objective basis without the purpose of supporting Respondent's inability-to-pay defense.[53] But Enforcement presented no evidence showing that the Zillow or similar estimates provided by the investigator should be accorded more weight than the county tax assessment. The investigator, for example, was not an expert witness and did not opine on this issue.

2. Liabilities

The SFC lists liabilities totaling $1.18 million.[54] Respondent's largest listed liabilities are his mortgage ($850,000)[55] and a BHG financial letter of credit/home equity line of credit (LOC/HELOC) ($216,000).[56] Regarding the HELOC, however, the parties stipulated that the outstanding principal balance as of March 1, 2024, was a bit lower than the amount reflected on

[45] Tr. 151.

[46] Tr. 151.

[47] Tr. 157–58.

[48] Tr. 158, 160.

[49] CX-1; Tr. 152.

[50] CX-3, at 2; Tr. 159.

[51] Tr. 160–63.

[52] Tr. 161–62.

[53] *Shimko*, 2020 FINRA Discip. LEXIS 41, at *29 n.125.

[54] JX-6, at 2.

[55] JX-6, at 2; Stip. ¶ 17; JX-7.

[56] JX-6, at 2; JX-20, at 1.

the SFC ($211,403.46).[57] Respondent identified the following additional liabilities: personal loans ($70,000);[58] auto loans ($32,000);[59] and credit card debt ($7,000).[60]

Regarding the $70,000 listed as "personal loans," this amount, according to Respondent, represents amounts loaned to him, primarily by his mother, so he could provide for specific expenses related to his children. He claimed he had an understanding with the other beneficiaries of his mother's estate that he would repay the loan when he was able to do so.[61] Respondent said it was understood he would repay the loan, which is interest free, in one balloon payment or else his portion of any inheritance would be reduced by the amount of the unpaid loan.[62] That said, he characterized the need to pay back the loan as "more of a moral and ethical obligation to his mother and the other beneficiaries."[63]

In evaluating Respondent's defense, I do not view the $70,000 purported loan as a liability that reduces his ability to make a meaningful payment toward the award. "In the context of a hearing such as this, undocumented liabilities do not establish a basis for proving the defense of an inability to pay."[64] "Nor can he simply prioritize paying other expenses in full over the Award, especially when . . . the amount and terms of payment are uncertain."[65]

3. Net Worth

The SFC reflected Respondent's net worth (assets minus liabilities) as $425,000.[66] This calculation, however, is conservative; his net worth may well be higher. As noted above, there is evidence that the value of several assets is greater than the amounts Respondent listed on the SFC. Further, as I explained above, I do not take into account the $70,000 purported loan. Finally, Respondent testified that his net worth is between $400,000 and $600,000.[67] But even assuming his net worth is no higher than the amount listed on the SFC, it is substantial.

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[57] Stip. ¶ 19; JX-8.

[58] JX-6, at 2.

[59] JX-6, at 2.

[60] JX-6, at 2.

[61] Tr. 99–100.

[62] Tr. 101–02.

[63] Tr. 100.

[64] *Stofleth*, 2022 FINRA Discip. LEXIS 1, at *12.

[65] *Markus*, 2021 FINRA Discip. LEXIS 17, at *10.

[66] JX-6, at 2.

[67] Tr. 179.

4. Cash flow

According to Enforcement, Respondent did not complete the annual income section of the SFC and a review of that document confirms that Enforcement is correct.[68] As a result, the SFC did not include his annual income for: (1) the year before the year in which the award was issued; (2) the year in which the award was issued; or (3) the year after the year in which the award was issued.[69]

Under the category monthly income/receipts, the SFC reflects a total of $3,400, almost all of which was comprised of payments made on his behalf by his mother ($3,000).[70] The only other income/receipts identified, which collectively total $400, are dividends and interest, primarily from his qualified accounts.[71] According to the SFC, Respondent's expenses/disbursements far exceed his monthly income/receipts. Respondent's listed monthly expenses/disbursements total $15,586.[72] They consist mainly of alimony/child support payments ($4,600);[73] mortgage payments ($4,070);[74] loan payments, i.e., BHG LOC/HELOC ($3,800);[75] education expenses for a special needs school for his child ($1,200);[76] utilities ($700);[77] and food ($400).[78] None of his additional monthly expenses exceed $200, but collectively, they total $1,016.[79] Based on the SFC, Respondent has a negative monthly cash flow of $12,186.

Even so, Respondent manages to pay his bills. He said that while his sources of funds are "dwindling fast," he is able to "make payments of what is necessary," because he gets support from his family (his mother and sister), who have "backed" him so he can "get . . . through this

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[68] JX-6, at 3; Tr. 201.

[69] *Compare* the blank Statement of Financial Condition attached to Notice of Hearing and Case Management and Scheduling Order (Jan. 22, 2024) *with* JX-6.

[70] JX-6, at 3; JX-20, at 3.

[71] JX-6, at 3; JX-20, at 2–3.

[72] JX-6, at 4.

[73] JX-6, at 4. This $4,600 expense is for court-ordered child support. Tr. 125–26. According to Respondent, the payment is "not a fixed amount," and the amount he actually pays varies "dramatically." But he stated the amount listed on the SFC is "pretty close to the average." Tr. 128, 130–34.

[74] JX-6, at 4. *But see* JX-7, at 1 (which reflects a mortgage payment of $4,037.23 on February 1, 2024).

[75] JX-6, at 4.

[76] JX-6, at 4; Tr. 110.

[77] JX-6, at 4.

[78] JX-6, at 4.

[79] JX-6, at 4. According to Respondent, these additional expenses include $200 in attorneys/professional fees based on consulting fees related to this expedited proceeding and legal fees related to his divorce. JX-20, at 3; JX-22, at 4. Respondent said his attorney/professional fees "are no longer relevant," and explained that because he and his ex-wife are "finally getting along," he does not need to keep an attorney on retainer. Tr. 110–11. He also said that while he no longer incurs childcare expenses, he gives his minor children about $200 per week for "phones and other expenses" that he deems necessary, but which his ex-wife "refuses to pay." He said he forgot to include this $200 payment on the SFC. Tr. 110–11; JX-18, at 1.

time."[80] That said, while his mother and sister are "comfortable," he felt that "morally," he "can't keep looking to them to make the balance sheet work because they can't. They shouldn't."[81] In addition to receiving assistance from his family, Respondent draws upon the equity in his brokerage account[82] and his taxable savings.[83] But he described those resources as "a very short runway"[84] that, when depleted, would require him "to resort to going into retirement assets" yielding "50 cents on the dollar."[85]

F. Respondent's Inability-to-Pay Defense Fails

Respondent has not paid any portion of the award from his substantial assets. He never withdrew funds from his two brokerage accounts or from his retirement accounts to make a payment.[86] And he never listed his house for sale with a realtor,[87] although he testified vaguely and without support that on two unspecified occasions, he tried to list the home for $1.3 million and received no offers.[88]

At the hearing, Respondent offered a number of excuses. He said he was unwilling to sell his house, and even if he were able to sell it for $1.3 or $1.4 million, the proceeds would still not cover the $245,817.95 award.[89] Likewise, Respondent testified that he was unable to get another line of credit against the value of his home, which, in any event, "wouldn't have even put a dent in the award," adding that he was trying to reserve capital and resources to make sure he could still provide for his children.[90] In an attempt to justify his decision not to use his IRAs as a source of funds to make a payment, Respondent explained that "financially that wouldn't really make sense" because he would only receive "50 cents on the dollar."[91] In sum, according to Respondent, "[t]he option to dip into my retirement accounts is always there, but in terms of how much that might settle up the award, that's my last resort. Well, actually second to my last. My last resort is selling my house."[92]

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[80] Tr. 112.

[81] Tr. 113; *see also* Tr. 82–83.

[82] Tr. 114.

[83] Tr. 115, 117.

[84] Tr. 117.

[85] Tr. 117.

[86] Tr. 91, 97–98.

[87] Tr. 184.

[88] Tr. 71.

[89] JX-20, at 1; Tr. 183–85.

[90] JX-20, at 1; *see also* Tr. 183.

[91] Tr. 181; s*ee also* Tr. 70.

[92] Tr. 184.

Respondent's excuses for not having paid any portion of the award miss the mark. Even though, according to his SFC, Respondent has a negative cash flow, this is not dispositive, especially when, as here, Respondent has a positive net worth.[93] Moreover, not only is Respondent's net worth positive, but it is substantial; it is greater than the size of the award, and likely larger than the amount stated on his SFC, as discussed above. His substantial net worth derives from his significant assets, which he can use as a source of funds to make a meaningful payment, namely, the equity in his home (which is at least $100,000), his brokerage accounts, and his IRAs. But he chose not to use them.[94] I recognize that Respondent is unemployed and appears to have minimum sources of funds besides his assets, and that his monthly expenses exceed his monthly income. But he could have used a portion of his assets as a source for repaying the award, while still drawing upon them to help pay his expenses. For these reasons, his defense fails.

There are additional factors that undercut his defense. First, Respondent failed to complete the income section of the SFC, so the proof regarding his defense was incomplete.

Second, he chose to pay certain discretionary expenses instead of paying down the balance of the award. He loaned his girlfriend $4,000 so she could pay her rent (half of which she purportedly repaid).[95] He also made credit card payments above the minimum required amount. For example, the December 2023–January 2024 credit card statement shows he made two payments on his credit card totaling $11,000.[96] At that time, the minimum amount due on his credit card was about $134.[97]

Third, he provided no documentary support for his claims that he tried to obtain an additional home equity line of credit, that his family had loaned him funds,[98] or that he otherwise tried to borrow the necessary funds. Respondent stated he has not attempted to obtain a loan through friends and doubts that any attempt would be successful.[99] He also said he reached out to a contact who works with various lenders but was told he would not be able to get a loan because

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[93] *Dep't of Enforcement v. Malatesta*, No. ARB200025, 2021 FINRA Discip. LEXIS 1, at *13–14 (OHO Jan. 13, 2021).

[94] *See, e.g.*, *Stofleth*, 2022 FINRA Discip. LEXIS 1, at *14 (finding inability-to-pay defense failed where retirement accounts were a source of funds that could have been used to pay the award, but respondent chose not to do so).

[95] Tr. 64, 66, 124.

[96] Tr. 118–19; JX-15, at 65.

[97] Tr. 119, 121; JX-15, at 63, 65 (reflecting a minimum payment due of $134). *See Helbling*, 2021 FINRA Discip. LEXIS 14, at *11 n.66 (citing *DiPietro*, 2016 SEC LEXIS 1036, at *19) (rejecting inability-to-pay defense when respondent's failure to pay arbitration award hinged on asset-allocation choices to pay discretionary expenses, including paying more than minimum amounts due on credit cards, instead of paying down the balance of the award); *see also Dep't of Enforcement v. Pincus*, No. ARB180031, 2019 FINRA Discip. LEXIS 7, at *8 (OHO Feb. 7, 2019) (same).

[98] Tr. 100.

[99] JX-20, at 3.

of his financial situation, the fact that he is unemployed, and because he has limited equity in his residence.[100] This unsupported testimony is insufficient to establish his defense.

Fourth, he offered no evidence that he tried to reduce his expenses, for example, by downsizing into less expensive housing.

Fifth, he offered insufficient evidence that he made reasonable efforts to find employment after he was terminated by UBS. He said he tried to transfer his licenses to a few member firms but found it difficult to find a firm to hire him because of what he called his "U5 issues and possible pending arbitration."[101] He said his only option was to set up a truly independent registered investment advisory firm, but he could not do that because it requires an upfront investment.[102] Faced with these challenges, Respondent took an unduly narrow approach to seeking employment. He has not sought employment outside the securities industry. He attempted to justify this decision by explaining that given his skill set, his income potential is much higher if he stayed within the financial services industry.[103] But I find this explanation not to broadly seek employment unpersuasive.

III. Conclusion

Based on the testimony and documentary evidence presented at the hearing, I find that Respondent did not satisfy the burden of proof required to establish his defense. He failed to prove that since the award was issued, he has been unable to either pay the award in full or make a meaningful contribution toward satisfying it. To the contrary, given Respondent's substantial net worth and assets, he had ample resources from which to make a meaningful payment.

FINRA properly issued Respondent a suspension notice under FINRA Rule 9554 for failure to pay the award. FINRA Rule 9559(n)(1) permits a Hearing Officer wide discretion to "approve, modify or withdraw . . . sanctions . . . imposed by the notice" and to assess costs. "'Honoring arbitration awards is essential to the functioning of the [FINRA] arbitration system,' and requiring 'associated persons to abide by arbitration awards enhances the effectiveness of the arbitration process.'"[104] Conditionally suspending a respondent's association with FINRA members gives them "an incentive to pay the award . . . [and] furthers two central purposes of the Exchange Act—serving the public interest and the protection of investors."[105]

By contrast, letting a respondent stay in the industry without paying an award, or meeting their "burden to demonstrate a *bona fide* inability to pay the award would . . . undermine the

[100] JX-20, at 3.

[101] Tr. 102–03.

[102] Tr. 103–04.

[103] Tr. 108–09.

[104] *Motherway*, 2023 SEC LEXIS 753, at *13 (quoting *Gallagher*, 2003 SEC LEXIS 599, at *13).

[105] *DiPietro*, 2016 SEC LEXIS 1036, at *24.

arbitration process."[106] Doing so "would also expose investors to an individual who has refused to accept the results of that process by failing to make any effort, meaningful or otherwise, towards paying the amounts he was found to owe, despite having agreed to do so when becoming a FINRA associated person."[107] "And allowing 'members or their associated persons that fail to pay arbitration awards to remain in the securities industry presents regulatory risks.'"[108]

IV. Order

Based on the foregoing, and pursuant to Article VI, Section 3(b) of FINRA's By-Laws, and FINRA Rule 9559(n), I **SUSPEND** Respondent from associating with any FINRA member firm in any capacity, effective upon the issuance of this Decision. The suspension shall remain in effect until he produces sufficient documentary evidence to FINRA that: (1) he has paid the award in full; (2) he and the arbitration claimants have entered into a fully executed, written settlement agreement relating to payment of the award, and he is current in fulfilling his obligations under the settlement terms; or (3) he has filed a petition in a United States Bankruptcy Court and the petition is pending, or a United States Bankruptcy Court has discharged the debt representing the award. Upon Respondent making such a showing, the suspension will automatically terminate.

Respondent is also **ORDERED** to pay the costs of this proceeding, which include $2,598.48 for the hearing transcript plus a $750 administrative fee, for a total of $3,348.48.[109] These costs are due and payable upon the issuance of this Decision.[110]

David R. Sonnenberg
Hearing Officer

[106] *Motherway,* 2023 SEC LEXIS 753, at *13.

[107] *Id.* at 13–14.

[108] *Id.* at 12 (citation omitted).

[109] Respondent must pay the costs of the hearing before the suspension terminates.

[110] I considered and rejected without discussion all other arguments by the parties.

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