

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TREVOR MICHAEL PERRY
(CRD No. 4994149),

Respondent.

Expedited Proceeding
No. ARB230003

STAR No. 20230775599

Hearing Officer–BEK

EXPEDITED DECISION

June 6, 2023

Respondent failed to pay an arbitration award and failed to prove that he has a bona fide inability to pay the award. Respondent is therefore suspended from associating with any FINRA member firm in any capacity.

Appearances

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

For the Respondent: Harris M. Freeman, Esq.

DECISION

I. Introduction

Respondent failed to pay a FINRA arbitration award entered against him in favor of his former employer firm, J.P. Morgan Institutional Investments Inc. (“J.P. Morgan”). Consequently, FINRA sent Respondent a notice of suspension pursuant to FINRA Rule 9554, notifying him that he would be suspended from associating with any FINRA member firm unless he paid the award or asserted a valid defense for not paying. Respondent requested a hearing, asserting as a defense an inability to pay the award. Respondent’s hearing request stayed the imposition of the suspension. I conducted a hearing in this matter on March 13, 2023.

At the hearing, Respondent did not establish that, after the award was issued, he was unable to pay the award in full or make a meaningful payment toward satisfying it. Respondent is therefore suspended from associating with any FINRA member firm in any capacity until he pays the award. In addition, I order him to pay the costs of the hearing.

II. Findings of Fact and Conclusions of Law

A. Regulatory Framework

FINRA's Code of Arbitration Procedure for Industry Disputes requires that an associated person pay a monetary award issued by an arbitration panel within 30 days after the person receives notice of the award.¹ When an associated person does not pay an award, FINRA Rule 9554 authorizes an expedited process by which FINRA may notify the person that failing to comply within 21 days of service of the notice will result in the person's suspension from associating with any member.² A valid hearing request stays the suspension.³ The hearing request must specify all defenses the person is relying on.⁴

B. Background and Jurisdiction

Respondent has been associated with a member firm since October 2007. Although he is no longer associated with J.P. Morgan, he currently is registered with another FINRA member firm.⁵ He therefore is subject to FINRA's jurisdiction.

C. The Award and Notice of Suspension

On November 21, 2022, an arbitration panel issued an arbitration award against Respondent in FINRA Dispute Resolution Services Case No. 20-02447. The award was for \$172,411.24 and post-award interest calculated at the Florida statutory rate totaling \$2,797.27 as of March 13, 2023.⁶ FINRA Dispute Resolution Services properly served Respondent with the award and notified him that unless he filed a motion in court to vacate the award, he had to pay it by December 21, 2022.⁷

Respondent did not pay the award by the deadline. On December 22, 2022, FINRA notified Respondent that his registration with FINRA would be suspended on January 12, 2023, unless he took one of several actions available to him under FINRA Rule 9554.⁸ Those actions include: (1) paying the award in full; (2) reaching a settlement agreement with J.P. Morgan and complying with its terms; (3) filing a motion to vacate or modify the award that has not been denied; or (4) filing a bankruptcy petition that is pending in a United States Bankruptcy Court or

¹ FINRA Rule 13904(j).

² FINRA Rule 9554(a).

³ FINRA Rule 9554(d).

⁴ FINRA Rule 9554(e).

⁵ Joint Exhibit ("JX-") 1, at 1.

⁶ Revised Stipulations ("Stip.") ¶¶ 3-4. Respondent was also required to pay costs and fees payable to FINRA Dispute Resolution Services in the amount of \$3,037.50, which he has paid. Stip. ¶ 5. *See also* JX-2.

⁷ Stip. ¶ 7; JX-3; JX-4.

⁸ Stip. ¶ 11; JX-5.

has resulted in the discharge of the award.⁹ The notice of suspension also informed Respondent that he could stay the imposition of the suspension by filing a timely request for a hearing and asserting one of these defenses, or claiming as a defense that he is financially unable to pay the award.¹⁰ Respondent stipulates that FINRA properly served him with the notice of suspension.¹¹

Respondent timely filed a request for a hearing and claimed a bona fide inability to pay the award.¹² He participated in the March 13, 2023 hearing, which was held by videoconference.

D. Inability to Pay Standard

To demonstrate an inability to pay, a respondent must prove more than a current lack of funds on hand to pay the award in full.¹³ A respondent must show that: (1) “he is unable to make some meaningful payment toward the award from available assets or income”;¹⁴ (2) “at no time after the award became due did he have the ability to pay all or any meaningful amount of the award”;¹⁵ and (3) “he is incapable of reducing his living expenses, diverting funds from other expenditures, [] borrowing funds,”¹⁶ or selling assets including a primary residence to pay the award.¹⁷ Moreover, the failure to come to some settlement with the arbitration claimant despite good-faith efforts is not a defense.¹⁸ In sum, if one can make meaningful payments at any time after the award was issued, the inability to pay defense fails.

E. Respondent Failed to Establish an Inability to Pay Defense

Respondent testified that he has every intention of paying the arbitration award in full, but he is currently unable to either pay the arbitration award in full or pay a significant amount toward the award.¹⁹ He testified that he is undergoing a contentious divorce and that his estranged wife will not agree to allow him to borrow against equity in his home, which is

⁹ JX-5; FINRA By-Laws, Art. VI, Sec. 3(b); NASD Notice to Members 00-55, at 2 (Aug. 2000), <https://www.finra.org/rules-guidance/notices/00-55>.

¹⁰ JX-5.

¹¹ Stip. ¶ 14.

¹² Stip. ¶ 15.

¹³ *Dep't of Enforcement v. Tretiak*, No. C02980085, 2000 NASD Discip. LEXIS 35, at *20 (OHO Mar. 10, 2000), *aff'd*, Nos. C02990042, C02980085, 2001 NASD Discip. LEXIS 1 (NAC Jan. 23, 2001), *aff'd*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653 (Mar. 19, 2003).

¹⁴ *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *16 (Mar. 17, 2016) (quoting *Dep't of Enforcement v. Respondent*, OHO Redacted Decision No. ARB010032, at 3 (Mar. 15, 2002)).

¹⁵ *Tretiak*, 2000 NASD Discip. LEXIS 35, at *20.

¹⁶ *Id.*

¹⁷ *DiPietro*, 2016 SEC LEXIS 1036, at *20.

¹⁸ *Tretiak*, 2001 NASD Discip. LEXIS 1, at *16–17.

¹⁹ Transcript (“Tr.”) 10, 28, 32, 68, 103–04.

stipulated to be \$610,272—more than enough to fully pay the arbitration award and interest of around \$173,000.²⁰ He also argues that his other assets and net income are insufficient to fully pay the arbitration award at this time, but he would be able to pay \$2,088 toward the arbitration award starting in June 2023, and, if pressed, immediately.²¹

I found Respondent to be forthcoming in his testimony. But his claims are insufficient to establish a defense. Respondent's ability to make meaningful payments toward the arbitration award, and his failure to do so, are fatal to his inability-to-pay defense.²²

1. Respondent Failed to Demonstrate That He Was Unable to Make a Meaningful Payment from His Income

Respondent stipulated that he is currently earning \$22,882 per month.²³ His Statement of Financial Condition ("SFC") reflects that since the date of the arbitration award through January 2023 he has had a monthly net-positive income of \$3,169.²⁴ Respondent testified that this also reflects what his monthly net-positive income has been since January 2023, and what it will be through May 2023, when his net-positive income drops to \$2,088 in June 2023 due to an increase in the monthly payments on a personal loan.²⁵

²⁰ Tr. 27–28, 32–33, 47–48, 71, 98; Stip. ¶ 19. Respondent also testified that his estranged wife is uncooperative and refuses to provide copies of her personal financial statements, thus preventing him from providing them to Enforcement in support of his defense. Tr. 74–75, 97. Enforcement argued that Respondent's failure to produce these financial statements precluded him from establishing an inability-to-pay defense. Tr. 18–20, 117–19. Because Respondent fails to establish his defense for other reasons, I will not further address this aspect of Enforcement's argument.

²¹ Tr. 11–14.

²² *DiPietro*, 2016 SEC LEXIS 1036, at *16 n.22, *19. In his opening statement, Respondent requested that I reserve determining his ability to pay until after his divorce becomes final because he will better understand his financial situation then. Tr. 12–13. At the end of Enforcement's opening statement, Respondent moved to stay the hearing until his divorce is finalized, but he admitted that mediation failed, and he does not yet have a hearing date in the divorce proceeding. Enforcement objected to a stay. I denied his motion. Tr. 21–25. In his closing statement, Respondent noted that the December 22, 2022 letter notifying him of FINRA's intent to suspend him states that he would not be suspended if he paid the award in full, without stating anything about making meaningful payments. He thus argued that the only issue at the hearing should be whether he had an ability to pay the award in full, not whether he could make meaningful payments. Tr. 123–24; JX-5. Respondent fails to appreciate that the December 22, 2022 letter informed him of the basis for avoiding suspension without a hearing. The law is well settled that once a hearing has been requested, the ability to make meaningful payments defeats an inability-to-pay defense. *DiPietro*, 2016 SEC LEXIS 1036, at *19.

²³ Stip. ¶ 22.

²⁴ JX-7, at 5–6 (monthly income of \$22,882 less monthly expenses of \$19,713 equals a net monthly income of \$3,169).

²⁵ Tr. 33–34 (Respondent testifying that his current monthly income fluctuates but on average it is about \$22,882 per month), 45–47 (Respondent testifying that his expenses are \$19,713 but increasing in June 2023 such that his monthly net-positive income will be \$2,088).

Although Respondent admitted at the hearing that he can pay \$2,088 per month toward the arbitration award beginning in June 2023, and even as of the date of the hearing if pressed, he failed to explain why he has not been making such monthly payments, or even greater payments, since the date of the arbitration award.²⁶ If he had paid his monthly net-positive income of \$3,169 every month since the date of the arbitration award in November 2022, he would have paid \$12,676 as of the March 2023 hearing date.²⁷

Moreover, Respondent has had the ability to pay more. This is because, in addition to admittedly having \$3,169 per month in disposable income through March 2023, Respondent has chosen to pay \$653 per month toward his retirement account, and another \$230 toward his children's private school education, both of which are discretionary payments.²⁸ It is well settled that a Respondent cannot establish an inability to pay an arbitration award if he chooses to pay discretionary expenses in lieu of paying down an arbitration award.²⁹ Thus, Respondent failed to demonstrate why he could not have been paying \$4,052 monthly toward the arbitration award through the March 2023 hearing date, for a total payment of \$16,208.³⁰

Similarly, Respondent is making monthly payments on other loans that he has, but he has not demonstrated that these are the minimum payments he could be making or that they are not otherwise discretionary.³¹ Respondent also admitted making unreported payments towards his children's college fund but failed to demonstrate these were not discretionary.³² Finally, Respondent admitted that he pays multiple expenses reported on his SFC with his credit card while he also reported monthly payments toward his credit card, but he failed to demonstrate that reporting the individual expenses along with the credit card payments was not double accounting of his monthly liabilities.³³

²⁶ Tr. 13, 47, 99–101, 105, 124–25.

²⁷ Four monthly payments of \$3,169 (Dec. 2022 through Mar. 2023) equals \$12,676.

²⁸ Tr. 44, 87–88; JX-7, at 6; Respondent's Exhibit ("RX-___") 6; *see also DiPietro*, 2016 SEC LEXIS 1036, at *19 (paying private school tuition noted as discretionary); *Respondent*, No. ARB010032, at 5 (rejecting inability-to-pay defense when respondent elected to save retirement assets rather than pay his arbitration award).

²⁹ *DiPietro*, 2016 SEC LEXIS 1036, at *19; *Tretiak*, 2000 NASD Discip. LEXIS 35, at *20.

³⁰ Discretionary income of \$3,169 plus discretionary payments of \$653 and \$230 equals \$4,052 per month or \$16,208 over four months (Dec. 2022 through Mar. 2023). Respondent also failed to demonstrate that he could not pay even more toward the arbitration award. He testified that he pays his parents \$1,100 per month to repay a loan they gave him, which they funded with a second mortgage on their home. Tr. 30, 40–41; RX-3 (reflecting his parents' monthly mortgage payments of \$1,206.77). But he failed to provide any documentation of this loan (e.g., loan terms), or explain why his payments to them were not discretionary.

³¹ Tr. 89–94; JX-7, at 6.

³² Tr. 88–89.

³³ Tr. 86–87; JX-7, at 6.

In sum, Respondent has failed to demonstrate that he currently lacks and has lacked the ability to make meaningful payments toward the arbitration award. He thus fails to demonstrate his asserted inability-to-pay defense.

2. Respondent Failed to Demonstrate That He Could Not Obtain a Loan

Respondent stipulates that his house has a fair market value of \$1,099,000, and he owes \$488,729 on a jointly held mortgage with his estranged wife.³⁴ This reflects equity of \$610,272, which is significantly more than enough to pay the arbitration award.³⁵ Although Respondent's wife has not agreed to a home equity loan or to refinance their home, he nevertheless has failed to apply for any loan because he did not believe he could get one.³⁶ Given his monthly net-positive income, and significant equity in his home, Respondent's belief that he could not obtain a loan—even a personal loan—is insufficient to demonstrate an inability to secure a loan. This also defeats his asserted inability-to-pay defense.³⁷

III. Conclusion

FINRA issued Respondent a notice of suspension under FINRA Rule 9554 on December 22, 2022, for failure to pay the arbitration award issued against him. FINRA Rule 9559(n) permits a Hearing Officer wide discretion to “approve, modify or withdraw . . . sanctions . . . imposed by the notice” and to assess costs. Based on the testimony and evidence presented at the hearing, I find that Respondent failed to substantiate that he has an actual inability to pay the award or to make a meaningful contribution toward paying it.

Allowing Respondent to remain in the securities industry without paying the arbitration award would undermine the arbitration process and be unfair to the arbitration creditor.³⁸ “Conditionally suspending [Respondent] from association with FINRA members gives him an incentive to pay the award. And ‘[i]nducing him to pay the award through suspension of his [FINRA] membership furthers the public interest and the protection of investors.’”³⁹

³⁴ Stip. ¶ 19.

³⁵ *Id.*

³⁶ Tr. 33, 71, 77, 80.

³⁷ *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *11–12 (Mar. 14, 2003) (upholding rejection of inability to pay defense when respondent failed to provide documentary proof that he could not secure a loan on his home).

³⁸ *Cf. DiPietro*, 2016 SEC LEXIS 1036, at *23–24.

³⁹ *Michael David Schwartz*, Exchange Act Release No. 81784, 2017 SEC LEXIS 3111, at *18 (Sept. 29, 2017) (quoting *Gallagher*, 2003 SEC LEXIS 599, at *13–14).

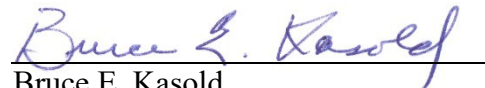
Accordingly, I suspend Respondent from associating with any FINRA member firm in any capacity.⁴⁰

IV. Order

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 as of the date of this Decision. The suspension shall remain in effect until Respondent produces documentary evidence to FINRA showing that: (1) the award has been paid in full; (2) Respondent and the arbitration creditor have settled the matter (and he is in compliance with the settlement terms); or (3) Respondent has a petition pending in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the award. Upon such showing, the suspension shall automatically terminate.⁴¹

Further, Respondent is **ORDERED** to pay FINRA costs of \$2,062.98, which include an administrative fee of \$750 and the hearing transcript cost of \$1,312.98.

SO ORDERED.



Bruce E. Kasold
Hearing Officer

Copies to:

Trevor Michael Perry (via First Class Mail and FedEx)
Harris Freedman, Esq. (via email)
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Michelle Galloway, Esq. (via email)
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⁴⁰ I have considered and reject without discussion all other arguments of the parties.

⁴¹ Respondent must also pay the costs of the hearing before the suspension terminates.