

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JONATHAN R. LAKE  
(CRD No. 1385504),

Respondent.

Expedited Proceeding  
No. ARB190024

STAR No. 20190631802

Hearing Officer–RES

**EXPEDITED DECISION**

November 11, 2019

**Respondent failed to pay an arbitration award and did not demonstrate he had a bona fide inability to pay the award. He is suspended from associating with any FINRA member in any capacity until he produces sufficient documentary evidence to FINRA showing that (1) the award has been paid in full; (2) Respondent and the arbitration claimant firm have agreed to settle the matter (and Respondent is in compliance with the settlement terms); or (3) Respondent has filed a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the award.**

*Appearances*

For the Complainant: David F. Newman, Esq., Kevin Hartzell, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Jonathan R. Lake, pro se

**DECISION**

**I. Introduction**

Respondent Jonathan R. Lake, a registered representative employed by a FINRA member firm, failed to pay a FINRA arbitration award (“Award”) he owed to his former employer firm, Morgan Stanley Smith Barney LLC (“Claimant Firm”). As a result, FINRA sent a Notice of Suspension pursuant to Rule 9554, notifying Respondent he would be suspended from associating with any FINRA member unless he paid the Award or filed a request for hearing asserting a recognized defense. He filed a Request for Hearing asserting the defense of bona fide inability to pay. The Request for Hearing stayed the effective date of the Notice of Suspension. On September 12, 2019, I held a telephonic hearing pursuant to the Request for Hearing and FINRA Rule 9559.

During the hearing, Respondent did not introduce sufficient financial information for me to determine whether he can make a meaningful contribution toward satisfaction of the Award at the present time. However, the evidence demonstrated that, at the time the Award became due, Respondent could afford to make a meaningful contribution to the Award, but did not do so. For the reasons stated below, I find that Respondent did not prove his defense of inability to pay. I suspend Respondent from associating with any FINRA member in any capacity until he produces sufficient documentary evidence to FINRA showing that (1) the Award has been paid in full; (2) Respondent and the Claimant Firm have agreed to settle the matter (and he is in compliance with the settlement terms); or (3) Respondent has filed a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the Award.<sup>1</sup>

## **II. Regulatory Framework**

Under FINRA rules governing 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.”<sup>2</sup> If an associated person fails to comply with an arbitration award, FINRA may suspend him “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 . . . .”<sup>3</sup> FINRA Rule 9554 establishes an expedited procedure for FINRA, under certain circumstances, to suspend an associated person for not paying an arbitration award. The 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.”<sup>4</sup>

Once served with a notice of suspension, a respondent may request a hearing to assert defenses to the FINRA action.<sup>5</sup> FINRA recognizes the following defenses: (1) the arbitration award has been paid in full; (2) the parties have agreed to installment payments of the award, or have otherwise agreed to settle, and the respondent is not in default of the settlement; (3) the award has been vacated by a court; (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.<sup>6</sup>

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<sup>1</sup> Respondent will remain suspended until he pays the costs of the hearing.

<sup>2</sup> FINRA Rule 13904(j).

<sup>3</sup> FINRA By-Laws, Article VI, Section 3(b).

<sup>4</sup> FINRA Rule 9554(a).

<sup>5</sup> FINRA Rule 9554(e).

<sup>6</sup> *Regulatory Operations v. Pincus*, No. ARB180031, 2019 FINRA Discip. LEXIS 7, at \*4-5 (OHO Feb. 7, 2019); FINRA By-Laws, Art. VI, § 3(b); NASD Notice to Members 00-55 (Aug. 2000), [www.finra.org/industry/notices/00-55](http://www.finra.org/industry/notices/00-55), at 2.

A respondent may also assert a bona fide inability to pay an arbitration award issued in an industry dispute.<sup>7</sup> “To prevail on an inability-to-pay defense, the respondent must demonstrate that he is unable to make some meaningful payment toward the award from available assets or income.”<sup>8</sup> A respondent must also establish that at no time after the award became due did he have the ability to make a meaningful contribution to the award.<sup>9</sup>

A respondent bears the burden of proving an inability to pay an award.<sup>10</sup> This is because the respondent’s assets, liabilities, income, and expenses are primarily within his knowledge.<sup>11</sup> FINRA is entitled to make a searching inquiry into the respondent’s assertion of inability to pay.<sup>12</sup> The defense may be rejected when the evidence provided by a respondent is insufficient or incomplete.<sup>13</sup>

### **III. Findings of Fact**

#### **A. The Award**

Respondent began his employment in the securities industry in 1987 when he joined a FINRA member firm.<sup>14</sup> From September 2011 through August 2017, Respondent was registered with the Claimant Firm.<sup>15</sup> From August 2017 through the present, Respondent has been registered through Wells Fargo Clearing Services, LLC (“Employer Firm”).<sup>16</sup>

While employed by the Claimant Firm, Respondent signed seven promissory notes totaling \$918,168 in favor of the Claimant Firm.<sup>17</sup> After Respondent began working for the Employer Firm, the Claimant Firm filed a FINRA arbitration claim alleging he had breached the terms of the promissory notes.<sup>18</sup> On December 26, 2017, a FINRA arbitrator executed an Award

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<sup>7</sup> *William J. Gallagher*, 56 S.E.C. 163, 169 (2003); *Bruce M. Zipper*, 51 S.E.C. 928, 930-31 (1993).

<sup>8</sup> *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at \*16 n.21 (Mar. 17, 2016).

<sup>9</sup> *Regulatory Operations v. Grady*, No. ARB170025, 2017 FINRA Discip. LEXIS 51, at \*4 (OHO Dec. 14, 2017); *Dep’t of Enforcement v. Tretiak*, No. C02980085, 2000 NASD Discip. LEXIS 35, at \*20 (OHO Mar. 10, 2000), *aff’d*, 2001 NASD Discip. LEXIS 1 (NAC Jan. 23, 2001), *aff’d*, 56 S.E.C. 209 (2003).

<sup>10</sup> *Pincus*, 2019 FINRA Discip. LEXIS 7, at \*5; *Tretiak*, 56 S.E.C. at 220.

<sup>11</sup> *Zipper*, 51 S.E.C. at 931.

<sup>12</sup> *Regulatory Operations v. DiPietro*, No. ARB140066, 2015 FINRA Discip. LEXIS 37, at \*7 (OHO June 8, 2015), *aff’d*, 2016 SEC LEXIS 1036; *Gallagher*, 56 S.E.C. at 169.

<sup>13</sup> *Pincus*, 2019 FINRA Discip. LEXIS 7, at \*7; *Gallagher*, 56 S.E.C. at 169-70.

<sup>14</sup> Hearing Transcript (“Tr.”) 114; Complainant’s Exhibit (“CX-”) 1, at 13.

<sup>15</sup> CX-1, at 11-12.

<sup>16</sup> Tr. 143; CX-1, at 11.

<sup>17</sup> Joint Exhibit (“JX-”) 1, at 1. All monetary amounts in this Decision are rounded to the nearest dollar.

<sup>18</sup> JX-1, at 1.

in the amount of \$955,911 against Respondent and in favor of the Claimant Firm.<sup>19</sup> The Award was served on Respondent on December 28.<sup>20</sup>

Respondent did not pay the Award. Nor did he (1) enter into a fully executed, written settlement agreement to pay the Award; (2) file a bankruptcy petition; or (3) at the time, file a motion to vacate the Award. The Claimant Firm filed a civil action in the United States District Court for the District of Connecticut to enforce the Award (“Civil Action”).<sup>21</sup> On April 12, 2018, the District Court entered judgment confirming the Award. In September 2018, the District Court entered an amended judgment setting the amount of the Award at \$1,035,111.<sup>22</sup> Since the entry of the amended judgment, Respondent has paid \$142,900 toward satisfaction of the Award.<sup>23</sup>

In the spring of 2019, the Claimant Firm served on the Employer Firm papers garnishing Respondent’s salary.<sup>24</sup> Two other garnishments had priority over the Claimant Firm’s,<sup>25</sup> but Respondent’s salary is currently subject to a monthly garnishment of \$932 in favor of the Claimant Firm.<sup>26</sup>

## **B. Respondent’s Present Financial Condition**

Respondent provided a statement of financial condition as of August 28, 2019 (“Statement of Financial Condition”).<sup>27</sup> In this document, he provided information with regard to his assets, liabilities, net worth, income, expenses, and cash flow. While he provided some underlying documentation to support the data in the Statement of Financial Condition, there were serious deficiencies in such documentation. During the hearing, Respondent admitted he failed to produce documents showing every disbursement or transfer of assets in the amount of \$1,000 or more.<sup>28</sup> With regard to the assets Respondent disclosed, he did not explain how he determined the market value, and did not produce documents supporting his determination of market value.<sup>29</sup>

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<sup>19</sup> Tr. 6, 40-41; JX-1, at 4. The amount of the Award included prejudgment interest.

<sup>20</sup> JX-1, at 4. The Award became final thirty days following Respondent’s receipt of the Award, or January 27, 2018.

<sup>21</sup> While the Civil Action was pending, FINRA suspended Respondent for failure to pay the Award. JX-3. Respondent stayed the effectiveness of the suspension by filing a motion in the Civil Action to vacate the Award. JX-7. The District Court denied Respondent’s motion to vacate. Tr. 34.

<sup>22</sup> Tr. 72-73; JX-9, at 9. This amount was more than the Award because it included interest and attorneys’ fees. Tr. 35.

<sup>23</sup> Tr. 46-47, 68, 70-71; CX-5; CX-8, at 3. Respondent paid the \$142,900 under a forbearance agreement that he and the Claimant Firm executed on May 7, 2018. CX-3.

<sup>24</sup> Tr. 57-58, 64-65; CX-10, at 1.

<sup>25</sup> Tr. 64, 66; CX-10, at 2.

<sup>26</sup> JX-18, at 7.

<sup>27</sup> JX-18.

<sup>28</sup> Tr. 178.

<sup>29</sup> Tr. 183-84.

## 1. Respondent's Assets, Liabilities, and Net Worth

The Statement of Financial Condition shows that Respondent's assets total \$158,562.<sup>30</sup> These assets include cash (\$2,900); furniture and household goods (\$3,200); an automobile (\$6,300); a 401(k) account (\$5,640); a pension (\$139,584); and a performance award from the Employer Firm (\$938).<sup>31</sup> Respondent cannot access his pension or performance award now.<sup>32</sup> Respondent thus represents the total amount of his current liquid assets as \$18,040.<sup>33</sup>

Respondent testified that, in 2014, he and his spouse bought a home in West Palm Beach, Florida, for \$329,000.<sup>34</sup> They sold the home in 2016 for \$349,000.<sup>35</sup> In an email to counsel for the Claimant Firm, Respondent represented that he used the sale proceeds to pay outstanding taxes.<sup>36</sup>

Respondent also testified that, in November 2017, he and his spouse sold their marital home for \$800,000.<sup>37</sup> They had purchased the home in 2009 for \$1,546,000,<sup>38</sup> and the outstanding mortgage at the time of sale was \$1.2 million.<sup>39</sup> Respondent testified that, because this was a "short sale," he and his spouse received no sale proceeds.<sup>40</sup>

The Statement of Financial Condition shows that, excluding the debt represented by the Award, Respondent's liabilities total \$998,246.<sup>41</sup> These liabilities include an auto loan (\$3,520); credit card debt (\$27,457); a student loan (\$30,422); a personal loan from Respondent's sister and brother-in-law (\$25,000); a judgment (\$3,976); unpaid taxes owed to the Internal Revenue Service (\$98,161); a promissory note in favor of the Employer Firm (\$674,639); a second

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<sup>30</sup> JX-18, at 2-3.

<sup>31</sup> JX-18, at 2-3.

<sup>32</sup> Tr. 127-28; JX-17a, at 23.

<sup>33</sup> Tr. 128; JX-18, at 3.

<sup>34</sup> Tr. 54; CX-7, at 1.

<sup>35</sup> CX-7, at 1.

<sup>36</sup> CX-7, at 1.

<sup>37</sup> Tr. 200-01.

<sup>38</sup> CX-7, at 1.

<sup>39</sup> CX-7, at 1.

<sup>40</sup> Tr. 201. The home was in foreclosure at the time of sale. Tr. 54.

<sup>41</sup> JX-18, at 3. The debt represented by the Award is \$1,035,111, as found by the District Court. JX-9, at 9. I find that including the Award in the calculation of Respondent's liabilities would result in a misleadingly lower valuation of net worth available for Respondent to make a meaningful contribution toward satisfaction of the Award. *Grady*, 2017 FINRA Discip. LEXIS 51, at \*18 ("As to whether the Award should be included among [a respondent's] liabilities, while [the respondent] is correct that a net worth calculation should ordinarily include all liabilities, the more useful analysis in this case excludes the Award.").

promissory note in favor of the Employer Firm (\$134,932); and a loan payable to Respondent's 401(k) account (\$4,261).<sup>42</sup>

The Statement of Financial Condition shows that Respondent owns assets of \$158,562 and owes liabilities (excluding the Award) of \$998,246.<sup>43</sup> Thus, for the purpose of determining Respondent's ability to make a meaningful contribution toward satisfaction of the Award, Respondent has a negative net worth of -\$839,684.<sup>44</sup>

## **2. Respondent's Income, Expenses, and Cash Flow**

The Statement of Financial Condition shows that Respondent's monthly salary from the Employer Firm is \$2,482, and his monthly commissions average \$12,438,<sup>45</sup> for a total monthly income of \$14,919.<sup>46</sup> Respondent's salary and commissions are his only sources of income.<sup>47</sup>

The Statement of Financial Condition also shows that Respondent pays monthly expenses and disbursements of \$20,360.<sup>48</sup> These expenses and disbursements include rent (\$2,500); food (\$615); utilities (\$378); payment on a student loan (\$100); payment on a promissory note to the Employer Firm (\$3,770); payment on a second promissory to the Employer Firm (\$713); insurance premiums (\$919); automobile expenses (\$941); alimony (\$1,000); income taxes (\$4,923); education expenses (\$1,000); attorneys' and professional fees (\$1,500); cell phone (\$274); cable and internet (\$174); wage garnishment by the Claimant Firm (\$932); and wage garnishment on the student loan (\$623).<sup>49</sup>

The Statement of Financial Condition shows that Respondent earns a monthly income of \$14,919 and pays monthly expenses of \$20,360. Thus, Respondent's monthly negative cash flow is -\$5,441.<sup>50</sup>

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<sup>42</sup> JX-18, at 3. Respondent signed the promissory notes in favor of the Employer Firm to receive up-front payments of a signing bonus and an asset growth bonus. The Employer Firm deducts a certain amount from Respondent's paycheck each pay period as an installment payment toward satisfaction of the promissory notes.

<sup>43</sup> JX-18, at 2-3.

<sup>44</sup> JX-18, at 3. If the calculation includes only Respondent's current assets, his net worth is -\$980,206.

<sup>45</sup> JX-18, at 5.

<sup>46</sup> JX-18, at 5-6. Respondent's Form W-2 Wage and Tax Statement shows that his income in 2018 was \$248,392. JX-17c, at 15. Respondent testified that his actual take-home pay is significantly less than this amount. Tr. 140-42. In fact, according to Respondent, in the two-week pay period from July 21 through August 3, 2019, after a number of deductions and tax withholdings, his take-home pay was \$415. Tr. 155-56; JX-17c, at 16.

<sup>47</sup> JX-18, at 5-6.

<sup>48</sup> JX-18, at 7.

<sup>49</sup> JX-18, at 6-7. With regard to the monthly education expense of \$1,000, Respondent is on a payment plan with the university that his daughter attends. Tr. 203-04; JX-18h.

<sup>50</sup> JX-18, at 5-7.

### **C. Respondent's Financial Condition at the Time of the Award**

As part of its offer of employment, the Employer Firm offered to pay Respondent a signing bonus ("Signing Bonus") of \$674,659.<sup>51</sup> The Employer Firm paid the Signing Bonus on or about August 4, 2017.<sup>52</sup> In the hearing, Respondent testified that he deposited this amount into a joint account that Respondent and his wife opened ("Joint Account") as contemplated by a pendente lite agreement in connection with an action for dissolution of his marriage.<sup>53</sup> He claimed that, unbeknownst to him, his spouse made significant withdrawals of funds from the Joint Account.<sup>54</sup>

Respondent testified that, in November 2017, two months before the Award became due, he closed the Joint Account and transferred the remaining funds to an escrow account established by his attorney ("Escrow Account").<sup>55</sup> According to Respondent, the matrimonial court granted a motion by Respondent's spouse to freeze the funds in the Escrow Account.<sup>56</sup> Respondent testified that he and his spouse agreed to use the funds to pay the outstanding college tuition of their daughter and to pay attorneys' fees.<sup>57</sup>

Respondent introduced into evidence checks and withdrawal slips showing disbursements and withdrawals from the Joint Account and the Escrow Account.<sup>58</sup> The disbursements and withdrawals that Respondent or his spouse made before the Award became final on January 27, 2018 total \$314,410.<sup>59</sup> Accordingly, at the time of the Award, approximately \$360,249 should have been in the Joint Account or the Escrow Account but was not.

### **IV. Conclusions of Law**

I conclude that Respondent failed to prove he was unable to make a meaningful contribution toward satisfaction of the Award, on which he had the burden of proof.

Respondent did not introduce into evidence sufficient financial documentation for me to determine whether he can make a meaningful contribution to the Award at the present time. He

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<sup>51</sup> Tr. 207; CX-2, at 1. The Employer Firm calculated the amount of the Signing Bonus based on Respondent's historic revenue generation while he was employed by the Claimant Firm. CX-2, at 1.

<sup>52</sup> CX-2, at 1.

<sup>53</sup> Tr. 208; JX-17e, at 141.

<sup>54</sup> Tr. 113, 162, 211-12. After learning that Respondent was paid \$674,659 as a Signing Bonus, the Claimant Firm moved for an order of attachment in the Civil Action in the hope that these funds could be frozen and preserved. Tr. 43-44. In the words of counsel for the Claimant Firm, however, "[W]e were not able to attach anything. The money was gone. We never could find it." Tr. 44.

<sup>55</sup> Tr. 196.

<sup>56</sup> Tr. 210, 230.

<sup>57</sup> Tr. 222.

<sup>58</sup> JX-18o.

<sup>59</sup> JX-18o.

also failed to meet his burden of proving that he was unable to make a meaningful contribution at the time the Award became due. Four months before the Award, Respondent received a \$674,659 Signing Bonus from the Employer Firm.<sup>60</sup> In those four months, he disbursed \$314,410, leaving \$360,249 unaccounted for.<sup>61</sup> He failed to demonstrate that he could not use this sum to make a meaningful contribution to the Award. Furthermore, he presented no evidence of what he did with the \$918,168 he received in consideration for the seven promissory notes he executed in favor of the Claimant Firm, which gave rise to the Award in the first place.

Based on the evidence presented, I find that Respondent failed to establish his defense of bona fide inability to pay.

## **V. Sanctions**

Honoring arbitration awards is essential to the functioning of FINRA's arbitration system. Requiring associated persons to abide by awards enhances the effectiveness of the arbitration process.<sup>62</sup> Because of Respondent's failure to meet his burden of proof, I find it appropriate to sanction Respondent by suspending him from association with any FINRA member until he meets one of the conditions stated below.

Under Article VI, Section 3(b) of FINRA's By-Laws and Rule 9559(n), Respondent is suspended from associating with any FINRA member in any capacity, effective immediately. The suspension shall remain in effect until Respondent produces sufficient documentary evidence to FINRA showing one of the following circumstances: (1) the Award has been paid in full; (2) Respondent and the Claimant Firm have agreed to settle the matter (and he is in compliance with the settlement terms); or (3) Respondent has filed a petition 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.

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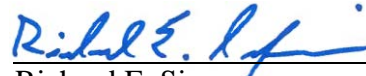
<sup>60</sup> Tr. 207-08; CX-2, at 1.

<sup>61</sup> Respondent did introduce into evidence a number of checks post-dating the due date of the Award and totaling \$59,650. JX-18o. These included three checks totaling \$7,500 that Respondent wrote to the Claimant Firm as per the May 2018 forbearance agreement. JX-18o, at 21-23.

<sup>62</sup> *Michael David Schwartz*, Exchange Act Release No. 81784, 2017 SEC LEXIS 3111, at \*18 (Sept. 29, 2017).



In addition, Respondent is ordered to pay costs of \$3,124.83, which include an administrative fee of \$750 and the hearing transcript cost of \$2,374.83.<sup>63</sup> These costs are due and payable immediately upon the issuance of this Decision.

  
Richard E. Simpson  
Hearing Officer

Copies to:

Jonathan R. Lake (via email, overnight courier, and first-class mail)  
David F. Newman, Esq. (via email and first-class mail)  
Kevin Hartzell, Esq. (via email)  
Jennifer L. Crawford, Esq. (via email)

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<sup>63</sup> I have considered and reject without discussion all other arguments of the parties.