FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. SILVIO BORRERO (CRD No. 5087491), Respondent.	Expedited Proceeding No. ARB240010 RCM No. 20240820391 Hearing Officer–LOM **EXPEDITED DECISION** October 7, 2024

Respondent failed to pay an arbitration award issued in favor of his former employer, a FINRA member firm, and failed to show that he had a bona fide inability to pay or make a meaningful payment toward the award at any time after issuance of the award. Respondent is therefore suspended from associating with any FINRA member in any capacity until he complies with the award or establishes another valid defense.

Appearances

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

For the Respondent: Daniel H. Kline, Esq.

DECISION

I. Introduction

Respondent, Silvio Borrero, is a registered representative currently employed by a FINRA member firm. He failed to pay an arbitration award entered against him in favor of his former employer, FINRA member firm Oppenheimer & Co., Inc. ("Oppenheimer"). FINRA staff notified Respondent in April 2024 that he would be suspended if he did not comply with the arbitration award or file a timely request for a hearing with FINRA's Office of Hearing Officers asserting one of a limited number of accepted defenses.

Respondent filed a timely request for a hearing, asserting that he had a bona fide inability to pay the arbitration award. The request for a hearing stayed the suspension. Respondent then had the burden of establishing at the requested hearing that he was unable to pay the arbitration award at any time after its issuance or to make even a meaningful payment on it. To carry that

burden, he had to produce full and complete financial information and records showing his claimed inability to pay. The proof of his claimed defense was uniquely in his control.

I held a hearing by videoconference that commenced on August 14, 2024, paused, and then concluded on August 21, 2024.[1] For the reasons discussed below, I find that Respondent failed to establish that he has a bona fide inability to pay the award, among other reasons because he did not produce full and complete financial information and records. As discussed below, Respondent will be suspended unless and until he satisfies the award or asserts a valid defense.

II. Findings and Conclusions

A. Respondent and Jurisdiction

Respondent is a registered representative currently employed by FINRA member firm MML Investors Services, LLC ("MML").[2] He joined MML in December 2022, immediately after leaving his previous firm, Oppenheimer, where he had worked for more than five years.[3]

Under Article V, Section 2(a)(1) of FINRA's By-Laws, a person seeking to become registered through a FINRA member firm must agree to comply with the federal securities laws and FINRA's rules. That provision of the By-Laws further requires that a person seeking to become registered must agree to comply with all rulings, orders, directions, and decisions issued under FINRA's rules, and any sanctions imposed under those rules. FINRA Rule 0140 additionally specifies that FINRA's rules apply to all FINRA member firms and their associated persons.

Accordingly, Respondent, who was registered during the period discussed here and who is a currently registered person,[4] has agreed—and is obligated—to comply with FINRA's arbitration rules and its rules regarding expedited proceedings like this one. That obligation includes compliance with FINRA Rule 13904(j), which requires payment of an arbitration award within 30 days of its issuance. Respondent has not disputed that FINRA has jurisdiction to conduct this proceeding.[5]

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[1] There are two hearing transcripts, one dated August 14, 2024, and the other dated August 21, 2024. Only the second transcript contains testimony. Testimony is cited here with the date and abbreviation for transcript, "Tr." and a page number. For example, Respondent's testimony is cited "Aug. 21, 2024 Tr. 25–26. The parties entered stipulations, which are cited here by the abbreviation "Stip." and the paragraph number of the applicable stipulation. The parties submitted some joint exhibits denoted by the prefix "JX" and a unique identifying number. Other exhibits introduced by Enforcement are identified by the prefix "CX" and a unique identifying number. Borrero introduced a single exhibit, which is identified by the prefix "RX" and the number one.

[2] Stip. ¶ 1; JX-1 (Central Registration Depository ("CRD") summary record for Borrero), at 1.

[3] JX-1, at 2.

[4] Stip. ¶ 1; JX-1, at 2.

[5] Stip. ¶ 1.

B. Arbitration Award Against Respondent

Cash advances to registered representatives are widely used and known in the securities industry as "forgivable loans."[6] A broker-dealer advances money to an employee and the employee signs a promissory note. Over time, while the employee remains with that broker-dealer, the loan may be repaid or forgiven. When a registered representative leaves one firm to take a position with another, however, the repayment of the entire amount still owing on a loan from the first broker-dealer may become immediately due, along with interest.[7]

Typically, when a person does not repay a loan after leaving a firm, the firm will seek to recover any money still owing on a promissory note by bringing a claim against its former employee in FINRA's arbitration forum.[8] Such claims are so common that FINRA has a special arbitration rule for them, FINRA Rule 13806 (Promissory Note Proceedings), which allows for expedited handling of such arbitration claims. Under Rule 13806, in certain circumstances a single public arbitrator can decide a promissory note claim, using simplified discovery procedures. This is because FINRA considers these claims to be relatively straightforward contract claims.[9]

This case followed the typical pattern. Oppenheimer advanced money to Respondent and he signed a promissory note. But when Respondent left Oppenheimer at the end of 2022 to join MML, he did not pay what he still owed on the promissory note.[10] He admitted in testimony that he knew at that time that he owed money to Oppenheimer.[11] About a year after Respondent left Oppenheimer, in December 2023, the firm filed a claim in arbitration seeking payment of the note, interest until it was paid, and costs.[12] A single public arbitrator considered the claim and issued an arbitration award in favor of Oppenheimer on March 12, 2024.[13] The arbitrator determined that Respondent owed Oppenheimer $140,694.44 on the promissory note and

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[6] *See*, *e.g.*, *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Schwarzwaelder*, No. 11-cv-0107, No. 11-cv-0162, 2011 U.S. Dist. LEXIS 52506, at *9–10 (W.D. Pa. May 17, 2011) (describing a promissory note and employment agreement as a "forgivable loan" and "a common device in the securities industry that is essentially a signing bonus with a penalty feature to ensure a new employee will not leave a company until sufficient time has elapsed that the 'loan' has been repaid"), *reversed and remanded on other grounds*, 496 F. App'x. 227 (3d Cir. 2012); *Wright v. RBC Capital Mkts. Corp*., No. CIV. S-09-3601 FCD/GGH, 2010 U.S. Dist. LEXIS 80165, at *6 (E.D. Ca. June 24, 2010) (explaining that forgivable loans are a customary recruitment inducement in the financial services industry).

[7] *See, e.g.*, *Struthers v. UBS Fin. Servs*., No. 08-CV-1381 H (JMA), 2009 U.S. Dist. LEXIS 38671 (S.D. Ca. May 7, 2009).

[8] *See*, *e.g.*, *Osborne v. Wells Fargo Advisors, LLC*, No. 2:11-cv-691-FtM-DNF, 2012 U.S. Dist. LEXIS 100205 (M.D. Fla. July 19, 2012); *Lewis v. UBS Fin. Servs*., 818 F. Supp. 1161 (N.D. Ca. 2011).

[9] *Wright*, 2010 U.S. Dist. LEXIS 80165, at *27–28.

[10] Stip. ¶¶ 3, 4; JX-2.

[11] Aug. 21, 2024 Tr. 92.

[12] JX-2, at 1–2.

[13] JX-2, at 4.

ordered him to pay that amount plus interest at a rate of nine percent per annum from December 9, 2022, through the date of payment in full. The arbitrator also ordered him to reimburse Oppenheimer for a small fee it had paid to FINRA's Dispute Resolution Services.[14]

C. Required Prompt Payment of Arbitration Award

FINRA administers its arbitration forum under rules promulgated by FINRA and approved by the Securities and Exchange Commission ("SEC"). FINRA members and their associated persons resolve disputes relating to their business in that forum, and customers may assert claims against FINRA members and their associated persons in FINRA's forum as well.[15] The purpose of providing an arbitration forum is "to provide parties with a speedier and less costly alternative to litigation."[16]

FINRA has put in place procedures designed to promote prompt payment of arbitration awards issued in its forum.[17] Under FINRA's arbitration rules, "[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."[18] This prompt payment requirement supports the efficiency and fairness of FINRA arbitration as a means of dispute resolution. It discourages delay in satisfying an award and relieves a winning arbitration claimant of the necessity of later turning to other more expensive and time-consuming means of enforcing its rights.[19]

FINRA Rule 9554 establishes an expedited suspension procedure for failure to comply with an arbitration award. FINRA Rule 9554 authorizes FINRA to send a notice "stating that the

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[14] JX-2, at 2–4.

[15] FINRA's Series 12000 Rules constitute the Code of Arbitration Procedure for Customer Disputes; the Series 13000 Rules are the Code of Arbitration Procedure for Industry Disputes.

[16] *Cunningham v. Ford Motor Co*., No. 21-cv-10781, 2022 U.S. Dist. LEXIS 127786, at *9 (E.D. Mich. July 19, 2022) (quoting *Stout v. J.D. Byrider*, 228 F.3d 709, 714 (6th Cir. 2000)), *dismissed by stipulation without prejudice* (E.D. Mich. Dec. 7, 2023).

[17] *Keith Patrick Sequeira*, Exchange Act Release No. 85231, 2019 SEC LEXIS 286, at *25 (Mar. 1, 2019).

[18] The same prompt payment within 30 days is required whether the arbitration involves a dispute between industry members (FINRA Rule 13904(j)) or between an industry member and a customer (FINRA Rule 12904(j)).

[19] The Federal Arbitration Act ("FAA") applies to arbitration proceedings involving interstate or foreign commerce, including arbitration in FINRA's arbitration forum but also arbitration proceedings in other forums and other industries. 9 U.S.C. §§ 1-14. The FAA contains its own enforcement mechanisms to encourage payment of arbitration awards, but the timeline is longer under the FAA than under FINRA's rules. The FAA allows the losing party to file a motion to vacate in a court of competent jurisdiction up to 90 days after the issuance of an arbitration award. Resolution of such a motion could extend the time the successful party must wait for payment and require time-consuming and costly litigation.

In contrast, if a losing party complies with FINRA's rules and pays a monetary award within 30 days, it will be unnecessary for the successful party to litigate a motion to vacate. Thus, FINRA's rules contribute to the conservation of judicial resources and the efficiency and fairness of the arbitration process. OHO Order EXP22-01 (ARB220010) (Aug. 4, 2022), at 5–8 & n.26, https://www.finra.org/sites/default/files/2022-08/OHO_EXP22-01_ARB220010.pdf.

failure to comply within 21 days of service of the notice will result in a suspension . . . from associating with any member."[20] 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.[21] The notice of suspension sent to Respondent satisfied these requirements.[22]

Once served with a suspension notice, a respondent may file a request for a hearing with FINRA's Office of Hearing Officers.[23] A hearing request stays the imposition of the proposed suspension.[24] It must specifically identify all defenses the person has to the suspension notice.[25] FINRA recognizes the following defenses, which have been referred to as "the Rule 9554 enumerated defenses."[26]

- The respondent has paid the arbitration award in full;
- The arbitration parties have agreed to installment payments of the award or have otherwise agreed to settle, and the respondent is not in violation of their agreement;
- A motion to vacate or modify the award is pending in a court, or a court has vacated the award;
- The respondent has a bankruptcy proceeding pending in United States Bankruptcy Court, or a Bankruptcy Court has discharged the award.

If an associated person fails to pay an arbitration award within the 30 days specified by FINRA and the person has not filed a motion to vacate, modify, or correct the arbitration award, or filed for bankruptcy, within that period, then FINRA's By-Laws provide that the person may be suspended.[27] Here, Respondent did not file a motion to vacate, file for bankruptcy, or pay the award.

Where the dispute resolved in the underlying arbitration is between industry members, as opposed to a dispute between an industry member and a customer, a respondent may also assert a

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[20] FINRA Rule 9554(a).

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

[22] JX-5.

[23] FINRA Rule 9554(e).

[24] FINRA Rule 9554(d).

[25] FINRA Rule 9554(e).

[26] *See* 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.

[27] The By-Laws authorize a suspension after a short period of only 15 days. Art. VI, Sec. 3(b). Rule 9554, however, gives a person a grace period within which to comply with the arbitration award (within 21 days of service) before imposing a suspension.

bona fide inability to pay an award as a defense to a suspension proceeding.[28] That is the defense Respondent asserts here.

D. Suspension Proceeding Against Respondent for Failure to Pay Arbitration Award

Pursuant to FINRA Rule 9554, FINRA staff notified Respondent on April 17, 2024, that the staff had been informed that he had not paid the arbitration award. The staff told him he would be suspended if he did not comply with the arbitration award by May 8, 2024, or file a request for a hearing with FINRA's Office of Hearing Officers asserting a valid defense.[29] On May 3, 2024, Respondent submitted a timely request for a hearing.[30] Under Rule 9554, the request for a hearing stayed the suspension and initiated this expedited proceeding.

In his request for a hearing, Respondent asserted a single defense. He said that he was financially unable to pay the award.[31] Under the applicable precedents, as discussed below, it was his burden to prove that he was unable—at any time since the arbitration award was issued—either to pay the award in full or to make a meaningful partial payment on it. This defense is commonly known as the "inability-to-pay defense."

Although this is an expedited proceeding, and FINRA Rule 9559(f) contemplates that a hearing will take place in this type of case within 30 days of a request for a hearing, the hearing in this case occurred more than three months after the filing of Respondent's written request for a hearing because Respondent requested five extensions of time. I granted four extensions in whole or in part for the purpose of allowing him time to produce the relevant financial records; I denied the fifth request for an additional two-month extension to retain an attorney.[32]

On August 14, 2024, I commenced a videoconference hearing, but, before the taking of testimony began, Respondent's newly retained counsel requested a short continuance. He represented that because of a technology problem he had not been able to review all the proposed exhibits.[33] Although this was Respondent's sixth request for a continuance, it was a request for a short extension of a few days to allow Respondent's counsel to complete his review of the

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[28] *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, 75 Fed. Reg. 32525 (June 8, 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).

[29] JX-5, at 1. As of the August 21 hearing, Respondent still had not satisfied the award, entered into a written settlement agreement with the arbitration claimant, or filed for bankruptcy protection. Stip. ¶ 14.

[30] *See* initial filing with Office of Hearing Officers by Borrero, May 3, 2024.

[31] *Id*.

[32] *See* Orders dated July 30, 2024, and August 9, 2024.

[33] Aug. 14, 2024 Tr. 14–29.

proposed exhibits. In the interest of fairness, I granted the request.[34] When the hearing resumed on August 21, 2024, I admitted all the proposed exhibits into evidence,[35] heard testimony, and considered the parties' arguments regarding Respondent's defense.

E. The Inability-to-Pay Defense

When a respondent asserts a bona fide inability to pay the arbitration award entered against him as a defense to a suspension, the focus is on the respondent's financial circumstances during the relevant period. To avoid a suspension, it is the respondent who must prove the inability-to-pay defense by showing an inability to pay the award or to make some meaningful payment toward satisfying it.[36] The respondent must document fully his or her financial circumstances,[37] including assets and liabilities.[38] The respondent bears the burden of proof because information regarding a respondent's assets is "peculiarly within [the respondent's] knowledge."[39] The defense fails if the respondent's evidence of financial condition is insufficient or incomplete.[40]

FINRA is entitled to make a searching inquiry into a respondent's assertion of an inability to pay an arbitration award.[41] The searching inquiry relevant to an inability-to-pay defense extends beyond a respondent's financial circumstances at the time of the notice of suspension. The inquiry covers the entire period from the issuance of the arbitration award to the present. A respondent on notice of the obligation to pay an arbitration award cannot dissipate assets in the immediate aftermath of the arbitration proceeding and thereby render himself unable to pay what he owes when he later receives a notice of suspension.[42]

The inquiry also covers more than whether a respondent could pay the arbitration award in full. To establish a bona fide inability to pay, a respondent must prove not only that he is unable to pay the award in full but that he has been unable to make any meaningful payment on it at any time since the award was issued.[43] As the SEC has said, "To prevail on an inability-to-

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[34] Aug. 14, 2024 Tr. 28; Order dated August 14, 2024.

[35] Aug. 21, 2024 Tr. 5–10 (discussion between counsel and the Hearing Officer). These are the admitted exhibits: JX-1 through JX-5; CX-1 through CX-38; supplemental exhibits CX-8A, CX-8B, CX-8C, CX-26A, CX-27A, CX-28A, CX-29A, CX-30A, CX-31A, CX-32A, CX-33A, CX-34A, CX-35A, CX-36A; and RX-1.

[36] *Daniel Paul Motherway*, Exchange Act Release No. 97180, 2023 SEC LEXIS 753, at *6–7, 11 (Mar. 21, 2023).

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

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

[39] *Id.* at *18.

[40] *Gallagher*, 2003 SEC LEXIS 599, at *9–11.

[41] *Tretiak*, 2003 SEC LEXIS 653, at *12.

[42] *E.g.*, *Dep't of Enforcement v. Shimko*, No. ARB200002, 2020 FINRA Discip. LEXIS 41, at *11–12 (OHO September 15, 2020).

[43] *Id.*

pay defense a respondent must demonstrate that he is unable to make some meaningful payment toward the award from available assets or income."[44]

The inability-to-pay defense may be rejected if the respondent could reduce living expenses, divert funds from other expenditures or borrow funds to pay the award.[45] "Merely showing serious financial distress or that it would be hard or painful to pay an arbitration award does not establish the defense."[46]

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

Respondent did not meet his burden of proof. He did not demonstrate that he has been unable at any time since the issuance of the arbitration award to pay what he owes the arbitration claimant, Oppenheimer, or at a minimum to make a meaningful payment toward satisfaction of the award.

1. Respondent's Incomplete and Insufficient Financial Records

a. Missing Home Ownership Information

In his statement of financial condition dated June 19, 2024, Respondent listed as an asset real estate valued at $600,000.[47] He listed among his liabilities a mortgage with an outstanding balance of around $390,000.[48] These items relate to his home in Florida where he lives with a woman he calls his girlfriend ("JR"), and their two children.[49]

Between June and early August, Respondent engaged in email correspondence with Enforcement staff as they asked for more information about his financial condition.[50] On July 7, 2024, he said in an email to Enforcement, "I only own my House. NO other real estate. I own it individually . . . ."[51] On July 28, Respondent for the first time declared that he is not the sole owner of the home referred to in his statement of financial condition. He said it is held by a

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[44] *Motherway*, 2023 SEC LEXIS 753, at *6–7. *See also Dep't of Enforcement v. Stofleth*, No. ARB210015, 2022 FINRA Discip. LEXIS 1, at *5 (OHO Jan. 3, 2022) ("To satisfy their burden of proof, 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 . . . .'") (quoting *DiPietro*, 2016 SEC LEXIS 1036, at *16 n.22).

[45] *Dep't of Enforcement v. Helbling*, No. ARB210004, 2021 FINRA Discip. LEXIS 14, at *5 (OHO July 23, 2021).

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

[47] CX-1, at 1; Aug. 21, 2024 Tr. 58–59.

[48] CX-1, at 2.

[49] CX-5, at 2; Aug. 21, 2024 Tr. 80, 87.

[50] CX-2; CX-3; CX-4; CX-5; CX-6; CX-7; CX-8; CX-8A; CX-8B; CX-8C.

[51] CX-7, at 1; Tr. 60–61.

trust.[52] On August 1, Enforcement asked for copies of the trust agreement and any ancillary documents sufficient to identify the trustee, the trust beneficiaries, and all terms of the trust.[53] In response, Respondent said that the home is owned by a Florida land trust and declined to provide the trust documents or names of the beneficiaries. He said that there were "privacy implications" if he disclosed the "other members/beneficiaries" of the trust.[54]

At the hearing, Respondent claimed that the property is held by a Florida land trust in which he holds a 25 percent interest.[55] The assertion that he holds only some sort of partial interest in the trust that holds title to the property was not something he had said before in his responses to the staff's inquiries. Although he asserts that his equity interest is partial, he claims that he has the entire liability on the mortgage. He is the only person responsible for paying 100 percent of the mortgage on the property.[56] He implied in his testimony that, as a result of the imbalance between his partial equity interest and his full mortgage liability, even if he borrowed against his equity interest he would not realize sufficient funds to pay the arbitration award.[57] He further testified that the trust is a barrier to selling his home or even borrowing on his home equity, because he would need the consent of others, which he does not have.[58] At the same time, he said, the home is protected under the Florida Homestead Act so that a judgment could not be attached to the home.[59] He repeated that he could not provide the trust documents.[60] Respondent claims that producing the trust documents would put him at risk of litigation because it could raise privacy concerns for others.[61] "The whole purpose of that type of trust is to protect the privacy and identities of the owners."[62]

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[52] CX-8A, at 1.

[53] CX-8A, at 1.

[54] CX-8B, at 1. The Florida Land Trust Act provides that a beneficiary of a land trust can hold a beneficial interest in real property while a trustee holds the legal and equitable title, but the beneficiary may direct the trustee to convey, sell, lease, mortgage, or otherwise deal with the property. The Land Trust Act also permits multiple beneficiaries to own specified proportions of the beneficial interest in the trust property. If land held in a Florida land trust is the principal residence of a beneficiary, that person is entitled to the homestead tax exemption. See Florida Statutes Title XL § 689.071. Generally, "[A] land trust is an arrangement under which both legal and equitable title [are] held by a trustee. At the same time, all of the rights, interests, powers and conveniences of fee ownership are retained and exercised by the beneficiary." Mitchell A. Sherman, *The Florida Land Trust: An Overview*, Nova Law Review Vol.6, Issue 3, 490-91 (1982), https://nsuworks.nova.edu/nlr/vol6/iss3/5/.

[55] Aug. 21, 2024 Tr. 26–27.

[56] Aug. 21, 2024 Tr. 25–27, 61.

[57] Aug. 21, 2024 Tr. 29–30.

[58] Aug. 21, 2024 Tr. 25–26, 30.

[59] Aug. 21, 2024 Tr. 25–26, 29–30.

[60] Aug. 21, 2024 Tr. 88.

[61] Aug. 21, 2024 Tr. 67–68.

[62] Aug. 21, 2024 Tr. 88.

Respondent did not produce any trust documents or other documents to corroborate his assertion that he holds only a fractional interest in his home or that his power to sell or encumber the home is limited.[63] The fact that others may be involved in a land trust that holds an interest in the house does not excuse Respondent from producing the documents necessary to understand the nature of his interest in the house and related matters such as his ability to borrow against his equity in the house. Nor is the asserted potential risk of litigation a valid excuse for not producing documents that are material to understanding Respondent's financial condition. Furthermore, even if producing the trust documents to FINRA in this forum would raise privacy concerns for others, there may be practical ways of dealing with those concerns, such as redacting the names of other beneficiaries from the trust documents, which Respondent could have explored with the interested parties. Respondent's shifting description of his interest in his home from an individual interest to a trust to a 25 percent interest in a trust renders his testimony by itself unreliable and insufficient to establish the nature of this asset.

Respondent failed to provide the documents necessary to understand his home ownership. That renders his financial information and records materially incomplete and insufficient to prove his defense.

b. Missing Information About Finances of Household Member

As is evident from his testimony and the documents he submitted to Enforcement, Respondent's finances are intertwined with those of JR. They live in the same house[64] with their two children (ages six and four),[65] and she contributes to their household expenses.[66] Respondent estimated on his statement of financial condition that from July 2023 to July 2024 she paid around $1,000 per month on his behalf,[67] but he provided no documentation to show that estimate to be accurate. Respondent claims that for at least a couple of years, JR has been using Respondent's checking account, although he says that she is not a signatory on the account.[68] Her name does not appear on the bank statements he provided to FINRA staff except as a person making Zelle payments to the account or receiving Zelle payments from the account, the same as other individuals are identified as making and receiving Zelle payments in the account.[69] Respondent said that he and JR had intended to make his account a joint account, but they "never

[63] Aug. 21, 2024 Tr. 67–68.

[64] Tr. 80.

[65] CX-5, at 2; Tr. 96–97.

[66] CX-1, at 5; CX-5, at 2.

[67] CX-1, at 5; CX-5, at 2.

[68] Aug. 21, 2024 Tr. 38–39, 96–97, 99.

[69] CX-13. Zelle is an electronic money transfer system that allows individuals to transfer money between bank accounts, with the sender and recipient each using an enrolled email address or telephone number. Zelle is offered as a service by banks through their websites and mobile apps or through the Zelle app. See https://www.zellepay.com /how-it-works.

got around to do it."[70] He told FINRA staff, "My girlfriend had severe issues with her bank account, and I was kind enough to allow her to deposit funds into my account."[71] They have no written agreement regarding the funds she deposits in his checking account, and Respondent does not track or reconcile individual transactions in the account.[72] He testified that she makes deposits into the account and then he makes certain payments on her behalf at her direction.[73] He claims that the money that flows through his checking account from her is solely hers, and not his. "I don't have a written agreement with her but there is an agreement I will not use her funds for myself. She decides if she wants to help with groceries or utilities from time to time."[74] He considers only his deposits from his financial advisory work as belonging to him.[75] He and JR own two cars jointly and are jointly responsible for at least one car loan.[76] She recently paid some auto insurance premiums for him.[77] She is also a named card user on one of Respondent's credit cards.[78]

The evidence establishes that JR is a member of Respondent's household. And the statement of financial condition that Respondent was required to fill out specified that he was to provide financial information and documents for every household member. That information includes the household member's assets and liabilities, income from any source, and monthly expenditures.[79] Respondent failed to provide any documentation relating to JR's finances.[80] He

[70] Aug. 21, 2024 Tr. 39.

[71] CX-8B, at 2; Aug. 21, 2024 Tr. 39, 96, 167. Respondent's testimony that JR uses his bank account because she "had trouble" with her own bank account is doubtful, because of her various Zelle transactions in Respondent's account. In order to use Zelle, a sender or recipient generally must have a U.S. bank account. See https://www.zellepay.com/how-it-works. JR's interactions with Respondent's bank account appear to have enabled transfers between Respondent's checking account and another bank account that JR maintains. *See, e.g.*, CX-13, at 2 (showing Zelle transfers from JR on 06/12/23, 06/27/23 to Respondent's checking account); CX-13, at 3 (showing Zelle transfers to JR on 06/08/23, 07/05/23 from Respondent's checking account). The amounts exchanged between JR and Respondent range from $800 to $11. CX-13, at 8 (07/14/23); CX-13, at 10 (08/24/23).

[72] CX-8B, at 1; Aug. 21, 2024 Tr. 81.

[73] Aug. 21, 2024 Tr. 97–98.

[74] CX-8B, at 2.

[75] Aug. 21, 2024 Tr. 53, 81. He also told FINRA staff that a single deposit belonged to him, a $6,311.06 deposit related to a roof damage claim. CX-8, at 1.

[76] CX-8B, at 2; Aug. 21, 2024 Tr. 87 ("The Kia Telluride, the Honda Odyssey, it's, you know, for household . . . . To, you know, transport the children.").

[77] CX-7, at 2; Aug. 21, 2024 Tr. 83.

[78] CX-36.

[79] CX-1, at 1.

[80] Aug. 21, 2024 Tr. 80.

treated her financial information as irrelevant and reiterated that he does not have access to her money. "Only my deposits [in my checking account] are mine."[81]

Without information regarding the finances of this household member, Respondent's statement of financial condition is materially incomplete and insufficient to establish that he has a bona fide inability to pay the arbitration award.

c. Missing Information Relating to Car Rental Business

Respondent listed ten vehicles as assets on his statement of financial condition.[82] He testified that he financed all the vehicles with loans and he listed those loans as his liabilities.[83] The vehicles range in age from a 2022 Mitsubishi Outlander to a 2015 Nissan Versa.[84] He represented that he owes more money on the car loans than the vehicles are currently worth.[85] In recent months, he testified, he has been unable to stay current on the payments due on the car loans and the loans are continuing to accrue interest.[86] He described a "snowball" effect with accruing fees making it even more difficult to repay the loans.[87] He testified that his income from his current FINRA member employer is not enough to cover the car loans.[88]

At the hearing, Respondent explained that he started a car rental/car sharing business in June 2022,[89] and acquired most of the cars used in that business just six months prior to leaving Oppenheimer.[90] Respondent testified, however, that he stopped his involvement in the car rental business around the beginning of January 2023, after he joined his current firm. He asked JR to take over the auto rental business.[91] He testified that she operates the business separate from him to allow him to focus on his current financial advisory business.[92] However, she uses eight of the

[81] Aug. 21, 2024 Tr. 81.

[82] CX-5.

[83] CX-1; CX-5; Aug. 21, 2024 Tr. 31.

[84] CX-5.

[85] CX-5.

[86] Aug. 21, 2024 Tr. 31–37, 45. He also claims that he has found it impossible to keep up with credit card payments. Aug. 21, 2024 Tr. 45–55.

[87] Aug. 21, 2024 Tr. 55.

[88] Aug. 21, 2024 Tr. 45.

[89] Aug. 21, 2024 Tr. 94–95.

[90] Aug. 21, 2024 Tr. 93. *See also* CX-8, at 1 ("I stopped the car rental business when I changed jobs at the end of 2022.").

[91] Aug. 21, 2024 Tr. 86, 93, 95.

[92] Aug. 21, 2024 Tr. 86, 92–93.

ten vehicles he lists as his assets in her business.[93] She did not buy those vehicles from him and does not pay him for their use.[94] Respondent testified that she also has other vehicles in the names of investors in the business.[95] She deposits money she makes from the business into Respondent's checking account.[96]

According to Respondent, JR finances some of her business operations from investor funds and then she pays monthly returns to investors from Respondent's checking account.[97] She also pays mechanics and other vendors from his account.[98] Because she is not a signatory on Respondent's checking account, she cannot make withdrawals. Instead, he claims, she instructs him on the payments he should make to the investors and vendors.[99] Respondent's bank statements show that he regularly makes payments by Zelle from his account to many of the same people each month, some of whom he identified as investors in the business. He also regularly receives payments by Zelle from many of the same people.[100] He provided no documentary evidence of any instructions from JR to make car rental business-related payments from his checking account.

Respondent testified that JR pays the insurance on the cars she uses in the car rental business and she adds and removes cars according to her business needs. He was allowed, however, to add his cars to her insurance policy.[101]

Respondent's testimony that he has nothing to do with the car rental business that he and JR started together is not credible, given that cash flows from the business to his checking account and payments to investors and vendors go through his checking account and there is no evidence that he was following instructions from JR. According to his testimony, she is not a signatory on the account.[102] So Respondent, and only Respondent, is in control of the thousands

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[93] Initially, Respondent identified all ten vehicles as his, but, as noted above, he later said that he owns a 2022 Kia Telluride and Honda Odyssey jointly with JR and they use those two vehicles for personal transportation. He testified that he also owns a Kia Sedona jointly with his mother. CX-8B, at 2; Aug. 21, 2024 Tr. 69–70.

[94] Aug. 21, 2024 Tr. 87, 100.

[95] Aug. 21, 2024 Tr. 101.

[96] Aug. 21, 2024 Tr. 96–97. At the hearing, he claimed that within the last two months JR opened a separate account for the business. Aug. 21, 2024 Tr. 98–99. He offered no documentary evidence. In any event, up until FINRA staff served him with the notice of suspension, money from and for the business flowed through Respondent's checking account—and he alone controls that account.

[97] Aug. 21, 2024 Tr. 40–44.

[98] Aug. 21, 2024 Tr. 42–43.

[99] Aug. 21, 2024 Tr. 97–98.

[100] CX-13 at 2, 3, 8, 10, 17, 21, 25, 28 (examples of Zelle payments to and from persons identified in Respondent's testimony as investors in the car rental business); Aug. 21, 2024 Tr. 41–44.

[101] Aug. 21, 2024 Tr. 83–84.

[102] Aug. 21, 2024 Tr. 96–99.

of dollars flowing in and out of the account each month. It is difficult to see how this arrangement could have enabled Respondent to focus better on his securities business if he was still responsible for receiving all the funds generated by the business and making all the payments to vendors and investors, albeit at JR's instruction.

In any event, Respondent's girlfriend, JR, is a member of his household, and her business income and other financial information should have been produced. They were not. Respondent's failure to provide that information makes it impossible for Respondent to show a bona fide inability to pay the arbitration award.

d. Undocumented Cash Flows

Respondent provided various financial records to FINRA staff to show that he is unable to pay the arbitration award. Among these records, he provided monthly bank statements for the checking account that he claims is his only financial account.[103] Even a glance at Respondent's bank statements shows substantial sums flowing in from undisclosed sources and flowing out to undisclosed places. For example, on October 16, 2023, the account received a deposit of $38,000 that was identified only by a deposit reference number, unlike various much smaller deposits from identified individuals using Zelle.[104] Respondent testified that the $38,000 deposit might have been made by JR after the sale of a vehicle from her car rental business or as money from an investor.[105] But it is impossible to tell the source of the money from Respondent's bank statement and his testimony was speculative. That same month, four large withdrawals were made on four separate days: October 13 ($1,900); October 17 ($3,000); October 18 ($8,000); and October 24 ($1,500). Those withdrawals totaled $14,400.[106] Only Respondent is a signatory on the account, so he must have made the withdrawals. It is impossible to tell from the bank statement how he used those funds.

The October transactions are not unique. The next month, November 2023, the bank statement shows that the account received three separate $15,000 deposits identified only by a deposit reference number from an undisclosed source. The account also received two smaller deposits, each identified only by a deposit reference number.[107] Many other deposits were received by Zelle from identified individuals, including his girlfriend, JR. The total deposits amounted to $53,743.68.[108] One of the $15,000 deposits was deducted from the account on

[103] CX-13; CX-5, at 2 ("I don't have any brokerage accounts, bank accounts or insurance policies with cash value."); CX-7, at 1; Aug. 21, 2024 Tr. 79.

[104] CX-13, at 19.

[105] Aug. 21, 2024 Tr. 40–41.

[106] CX-13, at 22.

[107] CX-13, at 24–25.

[108] CX-13, at 24–25.

November 16 with the notation "Ret Dep Item" and an identifying number.[109] The other two $15,000 deposits remained in the account. On November 30, $5,000 was deducted from the account. That transaction was identified only by a withdrawal reference number.[110] Respondent, the only person in control of the account and able to withdraw funds from it, provided no evidence of how he used those funds.

Thus, in those two months, October and November 2023, Respondent received approximately $100,000 in deposits, with about half of the deposits flowing from undisclosed sources.[111] Respondent also withdrew nearly $20,000 from the account during this period without disclosing how he used the funds.[112]

The FINRA principal investigator testified that she examined the various financial records Respondent produced.[113] She summarized in charts other aspects of what the documents show about cash flows in and out of Respondent's checking account.

One chart shows that during the 12-month period from June 6, 2023, through June 5, 2024, Respondent received deposits totaling $231,942.88.[114] The average monthly deposit was $19,328.57.[115] The deposits were far more than he received in commissions from his current employer. From January 1, 2024, to July 14, 2024, he received total commissions of only $25,162.43.[116]

Another chart shows the number of payments made on Respondent's home mortgage and the auto loans for the ten cars listed in Respondent's statement of financial condition during the last twelve months ending in June 2024, along with the amounts paid.[117] Mortgage records show that six payments were made on the home mortgage during those twelve months and that the payments totaled $24,974.22. But only one payment in the amount of $9,264.26 was made from Respondent's checking account.[118] The remaining payments on the home mortgage, a total of $15,709.96, came from some other undisclosed source.[119] Similarly, payments were made on six

[109] CX-13, at 29.

[110] CX-13, at 29.

[111] CX-13, at 19 (23 deposits and other additions in October totaling $48,422.98); CX-13, at 24 (37 deposits and other additions in November totaling $53,743.68).

[112] CX-13, at 22 (withdrawals identified only by reference number totaling $14,400); CX-13, at 29 (withdrawal of $5,000 identified only by reference number).

[113] Aug. 21, 2024 Tr. 109–35.

[114] CX-14.

[115] CX-14.

[116] CX-15, at 23; Aug. 21, 2024 Tr. 44–45.

[117] CX-38.

[118] CX-38.

[119] CX-38.

of the vehicles Respondent identified in his statement of financial condition as his assets, but some of the payments came from an unidentified source, not Respondent's bank account or credit card accounts.[120] The chart indicates that for four vehicles Respondent did not provide statements, which prevented any analysis of what payments had been made on the loans related to those vehicles.[121] In addition, that same chart shows that although some credit card payments were made from Respondent's checking account, other payments were made from an undisclosed source.[122]

FINRA's principal investigator testified that the likely conclusion from these records is that either someone else was making payments on some of these loans on Respondent's behalf or Respondent was making the payments from a source of funds he has not disclosed to FINRA.[123] The records Respondent produced show that, either way, he has access to substantial undisclosed resources. This undermines his claim that it is impossible for him to pay the arbitration award or even to make a meaningful payment toward satisfying it.

e. Undocumented Liability

Respondent listed as a liability in his statement of financial condition a $25,000 loan from his father.[124] He provided no documentation or outline of the terms. He testified at the hearing that his father gave him the cash and told him to "pay whenever [he] could."[125] Undocumented liabilities do not establish an inability to pay.[126]

2. Respondent's Access to Resources from Which to Pay the Arbitration Award

a. Respondent's Ability to Borrow Against Home Equity

Estimates of the value of Respondent's home from websites such as Zillow, Redfin, and Realtor.com range from around $600,000 to $643,000.[127] As of June 17, 2024, Respondent's mortgage on the property had an outstanding balance of $387,937.92.[128] Setting aside any potential complications relating to the Florida land trust, Respondent would have $200,000 to

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[120] CX-38.

[121] CX-38; Aug. 21, 2024 Tr. 130–31.

[122] CX-38.

[123] Aug. 21, 2024 Tr. 133–34.

[124] CX-1, at 2.

[125] CX-1, at 2; CX-3, at 1; Aug. 21, 2024 Tr. 76–77.

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

[127] CX-9; CX-10; CX-11. Respondent refused to provide an appraisal of the property. CX-8B, at 1. Consequently, the value estimates on the three real estate websites were the best information available.

[128] CX-12, at 45.

$240,000 in home equity against which he could borrow, more than enough to satisfy the arbitration award.

At the hearing, Respondent implied that his ability to borrow funds based on his home equity was much smaller than it might appear. He asserted that he only had a 25 percent interest in the Florida land trust, implying that he could realize only 25 percent of any home equity in excess of the mortgage liability.[129] But without the trust documents, it is impossible to ascertain what Respondent might realize from a home equity loan. Respondent has failed to show that he could not borrow funds sufficient to pay the arbitration award or, at a minimum, make a significant payment toward satisfying it.

Furthermore, Respondent has made inconsistent representations regarding his efforts to borrow against his home equity, which diminishes his credibility. When Enforcement staff first asked Respondent whether he had tried to borrow against the equity in his house, he said no, he had not. He said that he would not be approved because of his credit.[130] He later said, however, that he had attempted a couple of times to obtain a loan.[131] He testified that in October 2023 he called one or two online lenders to explore the possibility of obtaining a loan based on his home equity but was told his application would be rejected because he told them he was not current on his mortgage payments.[132] He provided no more details and produced no documentary evidence to support his testimony about these inquiries.[133] It is unclear why he made the purported inquiries in the fall of 2023, before Oppenheimer filed its arbitration claim in December 2023 and before the arbitration award was issued in spring of 2024. In any event, even if he made those uncorroborated and half-hearted inquiries, they are insufficient to show that he could not use his home equity to borrow funds to pay some or all of the arbitration award.

b. Respondent's Access to Funds from the Car Rental Business

As discussed above, according to Respondent, his girlfriend, JR, channels funds generated by the car rental business and from investors through Respondent's checking account, and the funds to operate and maintain the business flow out of that account.[134] JR, however, is not a signatory to that account.[135] So Respondent maintains control of the funds related to the business. He claims that he and JR have an unwritten agreement that the funds generated from the business belong to her,[136] but the fact remains that she cannot access those funds except

[129] Aug. 21, 2024 Tr. 26–27, 29, 181.

[130] CX-5, at 3; Aug. 21, 2024 Tr. 63.

[131] Aug. 21, 2024 Tr. 63–64.

[132] CX-8B, at 3; Aug. 21, 2024 Tr. 26, 65–66.

[133] CX-8B, at 3; Aug. 21, 2024 Tr. 26, 65.

[134] Aug. 21, 2024 Tr. 96–97.

[135] Aug. 21, 2024 Tr. 38–39, 96–97, 99.

[136] CX-8B, at 1–2.

through him. Respondent's October and November withdrawals of large sums from the account (totaling almost $20,000) to use for undisclosed purposes[137] are inconsistent with his claim that funds from the business are not available to him to pay, or make a meaningful payment on, the arbitration award. Moreover, even if it were true that JR operates the car rental business separately from Respondent (something in the circumstances that is not credible), he has offered no reason that he could not charge her for the use of the vehicles he claims as assets on his statement of financial condition and apply the money to payment of the arbitration award.

c. Respondent's Ability to Borrow from Family

Respondent claims he has asked his family "for help to cover my basic living expenses."[138] His financial records show that the family has substantial resources and that they have given him financial support beyond basic living expenses.

Respondent traveled with his family to Colombia in February 2024.[139] But his credit card and bank statements show only small charges for a few incidentals and fees for international transactions.[140] He testified that his brother paid for the trip.[141] The previous fall, in late September and early October 2023, Respondent and his family also traveled to Madrid and Italy, connecting through London. Again, Respondent testified that his brother paid for the trip.[142] He said that his brother's birthday is in September and his brother usually takes the whole family somewhere to celebrate, including Respondent's mother, his other brother, and Respondent's family.[143] If Respondent's brother has the resources to take at least half-a-dozen people on multiple international holidays, he could likely assist Respondent to make a meaningful payment on the arbitration award, either by gift or loan. But Respondent gave no evidence that he sought help from his brother or anyone else in his family, beyond the undocumented $25,000 loan from his father that he listed on his statement of financial condition.

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In sum, Respondent has failed to demonstrate that he has a bona fide inability to pay the arbitration award. He presented incomplete financial records relating to his home ownership and ability to borrow against the equity he has in that house. He failed to provide any information at all about his girlfriend's finances even though she is a member of his household and her finances and his are closely intertwined. He also failed to provide financial information about the car

[137] CX-13, at 29.

[138] CX-5, at 3.

[139] Aug. 21, 2024 Tr. 89.

[140] CX-13, at 39; Aug. 21, 2024 Tr. 89.

[141] Aug. 21, 2024 Tr. 89.

[142] Aug. 21, 2024 Tr. 89–91.

[143] CX-13, at 16; Aug. 21, 2024 Tr. 89–91.

rental business, which appears to be the source of any financial contribution that JR might make to their household. The records he did present show undocumented cash flows and an undocumented liability, the purported loan from his father.

In fact, Respondent has resources he could draw upon to pay the award or make a meaningful payment toward its satisfaction. Respondent appears to have substantial equity in his home against which he could borrow to pay the arbitration award. He also has access to and control of funds flowing in and out of the car rental business through his checking account. And his family appears to have the ability to assist him financially either by way of gift or loan.

G. Imposition of Suspension

A suspension is appropriate here, until Respondent either pays the arbitration award or asserts another valid defense to a suspension. "Conditional suspension of [a respondent's] association with FINRA members gives him an incentive to pay the award . . . [and] furthers two central purposes of the Exchange Act—serving the public interest and the protection of investors."[144]

By contrast, letting Respondent remain in the industry without paying the arbitration award and without demonstrating a bona fide inability to pay the award would undermine the arbitration process and be inconsistent with the goal of providing swift resolution of disputes and prompt satisfaction of awards. Furthermore, it would expose investors to an individual who has refused to comply with his obligations under FINRA's rules, despite having agreed to comply when he became registered as an associated person of a FINRA member firm.[145]

III. 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 as of October 14, 2024. The suspension shall remain in effect until Respondent produces sufficient documentary evidence to FINRA that: (1) he has paid the arbitration award in full; (2) he and Oppenheimer 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, or a United States Bankruptcy Court has discharged the debt representing the Award.[146] Upon Respondent making such a showing, the suspension will automatically terminate.

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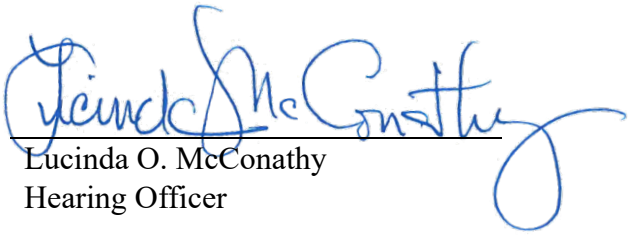
[144] *Motherway,* 2023 SEC LEXIS 753, at *13.

[145] *Id*. at *13–14.

[146] The time for filing a motion to vacate the arbitration award under the FAA (90 days) has passed.

If, however, prior to the effective date of the suspension Respondent files an application for review of this decision with the SEC and moves to stay the suspension, FINRA will delay the effectiveness of the suspension until the SEC rules on Respondent's motion to stay.

Respondent is also **ORDERED** to pay the costs of this proceeding, which include $2,329.40 for the hearing transcript plus a $750 administrative fee, for a total of $3,079.40.[147] These costs are due and payable upon the issuance of this Decision.[148]



Lucinda O. McConathy
Hearing Officer

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

[148] I have considered all the parties' arguments, even if they are not discussed here. To the extent that arguments are consistent with the conclusions here, I have accepted them, and to the extent they are not, I have rejected them.