

**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

**ORDER DENYING RESPONDENT'S FIFTH MOTION FOR
CONTINUANCE OF HEARING**

The hearing in this expedited proceeding for failure to pay an arbitration award is currently scheduled for August 14, 2024, but Respondent filed his fifth motion for an extension of time on August 7, 2024. Enforcement filed its opposition to that motion on August 8, 2024. For the reasons set forth below, I **DENY** Respondent's fifth motion to delay the hearing. The hearing will go forward by videoconference on August 14, 2024.

Originally, the hearing was to start at 2 p.m. (Eastern Time). If the parties would prefer, the hearing could start as early as 9 a.m. (Eastern Time) on August 14, 2024. The parties should confer on their preferred time and notify the Office of Hearing Officers as promptly as possible, but no later than noon on Monday, August 12, 2024. Arrangements for the court reporting service will be adjusted as needed and the Case Administrator will serve a Notice of Hearing with the details of how to participate in the hearing.

All parties are **ORDERED** to appear at the hearing. Under FINRA Rule 9559(m), a failure to appear "shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing."

DISCUSSION

On March 12, 2024, a single public arbitrator issued an award in favor of a FINRA member firm for which, at one time, Respondent Silvio Borrero had worked. The arbitrator determined that Borrero had failed to pay the FINRA member firm money he owed on a promissory note and awarded the firm \$140,694.44 in damages plus interest and costs.

Under FINRA Rule 13904(j), Borrero was required to pay the award within 30 days. He did not.

Pursuant to FINRA Rule 9554, FINRA staff then sent Borrero a notice of intent to suspend him if he did not fulfill his obligation within 21 days. But that notice also informed him that he could obtain a stay of the suspension if he filed a request for a hearing with the Office of Hearing Officers before the suspension went into effect. Borrero timely filed a request for a hearing on May 3, 2024, and asserted as his defense to the suspension that he had a bona fide inability to pay. Under FINRA Rule 9554(c), he obtained a stay of the suspension to allow for an expedited hearing on his defense.

An expedited hearing of this type runs on short deadlines. FINRA has put in place procedures designed to promote prompt payment of arbitration awards issued in its forum.¹ Under FINRA Rule 9559(f), the hearing on an asserted inability to pay usually must occur within 30 days of the filing of the request for a hearing. Accordingly, the hearing was originally set for May 31, 2024.

The hearing still has not been held, however, more than 100 days after Borrero's request for a hearing. Borrero has filed a series of motions and been granted repeated extensions of time. The Order dated July 30, 2024, recites the details. In brief, Borrero requested and received the following extensions of time:

- On May 17, 2024, Borrero filed his first motion for an extension of time to gather his financial information and present it to the Department of Enforcement. The hearing was rescheduled for June 27, 2024.
- On June 17, 2024, Borrero filed a second motion for more time because floods in Florida had hindered his ability to gather the necessary information. The hearing was rescheduled again, this time for July 16, 2024.
- On July 5, 2024, Borrero filed a third motion for more time to gather the required financial information and the hearing was rescheduled for August 1, 2024.
- On July 29, Borrero filed a fourth motion to continue the hearing, this time for two months, until October 4, 2024. For the first time, Borrero asserted that he needed to retain an attorney. Borrero's motion was granted in part for a shorter time than he requested. I rescheduled the hearing to the current hearing date of August 14, 2024.

¹ *Keith Patrick Sequeira*, Exchange Act Release No. 85231, 2019 SEC LEXIS 286, at *11–12, *18–20 (Mar. 1, 2019).

A fifth extension of time is inconsistent with the nature of this expedited proceeding. The series of extensions Borrero has already been granted has substantially delayed the hearing.

Furthermore, Borrero has failed to establish good cause for further delay. While a Hearing Officer has authority under FINRA Rules 9222 and 9559 to postpone or adjourn any hearing, “good cause” must support an extension of time. In this case, Borrero’s first three extensions requests were for the purpose of gathering the financial information necessary to establish his defense of an inability to pay the arbitration award. That constituted good cause and Enforcement consented to those requests. Borrero’s fourth request for an extension was to have the hearing put off for two months so that he could retain an attorney. Enforcement consented to a two-week extension and argued that a longer extension was not justified. Borrero has already had three months to retain an attorney if he thought he needed one. I granted a two-week extension and reset the hearing once more.

Borrero’s counsel represents in his Notice of Motion to Adjourn that he was retained on August 6, 2024. It is apparent from the filing that he was informed of the August 14, 2024 hearing date. But it also appears that he accepted the representation while knowing that he could not attend the hearing. He states that on June 7, 2024, he purchased a ticket from New York to Chicago that leaves on August 14 at 3:50 p.m. While he does not directly say that *he* is going to Chicago that day, the implication is that counsel for that reason cannot attend the hearing. He gives no explanation of the purpose of the trip or whether it could be rescheduled. He also does not say that the trip is still scheduled to happen. He only states that a ticket was purchased in June. He offers to provide documentation upon request. But, of course, requesting documentation would only delay resolution of the request for an extension of time, perhaps beyond the currently scheduled hearing date.

I decline to delay the hearing any longer. As I said in the Order dated July 30, 2024, under FINRA Rule 9141(b) a person *may* be represented by an attorney in a FINRA proceeding. But there is no requirement that a person *must* be represented by an attorney. A person does not have a *right* to have an attorney before going forward with a hearing. Borrero can proceed with or without counsel.

In fact, for three months Borrero did proceed without counsel, and the matter appears ripe for hearing. Borrero has submitted a Statement of Financial Condition to Enforcement and has responded to at least some of Enforcement’s requests for supplemental information. The parties have filed pre-hearing submissions and identified witnesses. From the material already collected, it is evident that Borrero understood that he is expected to provide financial information to support his claimed inability to pay the arbitration award. The materials that will be studied in determining whether Borrero has a bona fide inability to pay are Borrero’s own materials. He can explain them, if necessary, without an attorney.

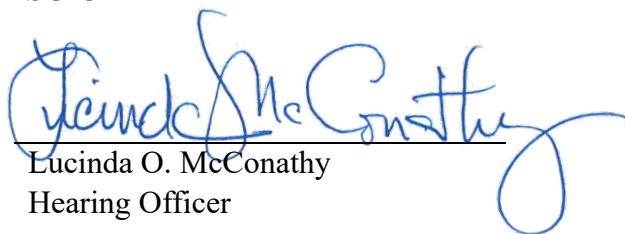
ORDER

Respondent Silvio Borrero's fifth motion for an extension of time is **DENIED**. **The hearing will be on August 14, 2024**, at a time agreed upon by the parties and communicated to the Office of Hearing Officers. All Parties are **ORDERED** to attend. The following pre-hearing deadlines are in place:

- If Enforcement made requests for supplemental information on August 1, 2024, and Respondent failed to provide responses and production by the August 6, 2024 deadline, Respondent may provide responses and supplemental production by noon Eastern Time on August 12, 2024.
- The parties may file any additional pre-hearing submissions with the Office of Hearing Officers and email the Case Administrator a list of each hearing attendee's name and email address by 6 p.m. Eastern Time on August 12, 2024.
- The Parties shall file sworn witness statements by August 12, 2024.

All other requirements of the May 6, 2024 Notice of Hearing and Case Management and Scheduling Order remain in effect.

SO ORDERED.



Lucinda O. McConathy
Hearing Officer

Dated: August 9, 2024

Copies to:

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