

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT JAMES TRACY
(CRD No. 1513899),

Respondent.

Expedited Proceeding

No. ARB240021

RCM No. 20240839559

Hearing Officer–LOM

EXPEDITED DECISION

March 10, 2025

Respondent failed to pay an arbitration award and failed to prove that he had a bona fide inability to pay or make a meaningful payment toward the award. Respondent is therefore suspended from associating with any FINRA member in any capacity until he 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: Robert James Tracy, *pro se*

DECISION

I. Introduction

Respondent Robert James Tracy is a registered representative currently employed by a FINRA member firm, LPL Financial LLC (“LPL”). When Respondent moved to LPL, he failed to pay to his former FINRA member firm employer, Wells Fargo Clearing Services, LLC (“Wells Fargo”), what he owed on a promissory note. Wells Fargo filed a claim in FINRA’s arbitration forum to recover on the note, and an arbitrator entered an award against Respondent in favor of Wells Fargo for \$384,818.10 plus interest and fees.

After Respondent failed to pay the arbitration award within the 30-day period that FINRA’s rules require, FINRA sent Respondent a notice informing him that it intended to suspend him from associating with any FINRA member firm. Respondent requested a hearing

with FINRA's Office of Hearing Officers, which stayed the imposition of FINRA's suspension. He established a defense to the suspension by requesting a New Jersey state court to vacate the arbitration award, and I granted the Department of Enforcement's motion to dismiss the proceeding without prejudice. The court later denied his request. Respondent was then required to pay the award.

When Respondent still failed to comply with his obligation to pay the arbitration award, FINRA sent him another suspension notice. That prompted Respondent again to request a hearing with the Office of Hearing Officers. He obtained another stay of the suspension by asserting that he was financially unable to pay the award, which is sometimes referred to as the "inability-to-pay defense."

When a respondent raises the inability-to-pay defense to avoid suspension, the respondent has the burden of establishing that he was unable to pay the arbitration award at any time after its issuance and lacked the ability to marshal resources even to make a meaningful partial payment on it. The burden lies with the respondent because proof of the respondent's financial condition and circumstances lies uniquely in the respondent's control.

I held a hearing by videoconference on January 10, 2025, to consider Respondent's proof of his asserted inability to pay the arbitration award.¹ For the reasons discussed below, I find that Respondent failed to establish that he has a bona fide inability to pay the award. He currently has assets with a value of at least \$550,000, much of it in home equity and two retirement accounts from which he already takes distributions. He also has two businesses, his securities brokerage business and a business selling items on eBay. The securities business might be sold or used to obtain a loan, and the eBay business might be used to raise funds as well. Respondent acknowledges that the businesses have value, albeit an uncertain value. His liabilities are in the range of \$211,000, excluding the arbitration award and some undocumented marketing expenses. Accordingly, he has a net worth of around \$339,000. He also has a positive monthly cash flow, although it varies from month to month. Respondent acknowledges that he has a very good credit score, but, nevertheless, Respondent has made no effort to borrow against his home equity. Nor has he taken any other steps to marshal his resources to pay the arbitration award or, at least, a meaningful portion of it.

¹ Two witnesses appeared at the hearing, the Respondent and Christine Harrison, a FINRA investigator. I entered into evidence all 35 Joint Exhibits the parties included in their pre-hearing submissions. Testimony is cited here with an abbreviation for transcript, "Tr.," the witness's initials in parentheses, and a page number. For example, Respondent's testimony is cited as "Tr. (RT) 25-26." The exhibits are cited by the prefix "JX," a unique identifying number, and a page number. For example, the arbitration award in favor of Respondent's former FINRA member firm is cited as "JX-2, at 3." The parties also entered stipulations, which are cited by the abbreviation "Stip." and the applicable paragraph number. For example, the parties stipulated that all the joint exhibits were admissible into evidence: "Stip. ¶¶ 18, 39."

Based on this record, I reject Respondent’s inability-to-pay defense and suspend him from associating with any FINRA member firm in any capacity until he complies with the award or demonstrates another valid defense. I also order him to pay the costs of the hearing.

II. Findings of Fact and Conclusions of Law

A. Regulatory Framework for Arbitration in FINRA’s Forum

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.² The purpose of providing an arbitration forum is “to provide parties with a speedier and less costly alternative to litigation.”³

To facilitate the speedier, less expensive resolution of disputes in its arbitration forum, FINRA has put in place procedures designed to promote prompt payment of arbitration awards issued.⁴ 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.”⁵ 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.⁶

² 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.

³ *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).

⁴ *Keith Patrick Sequeira*, Exchange Act Release No. 85231, 2019 SEC LEXIS 286, at *25 (Mar. 1, 2019), *pet. for review denied*, 816 F. App’x 703 (3rd Cir. 2020).

⁵ 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)).

⁶ 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. §§ 1–16. 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. Under the FAA, the successful party has up to a year to obtain a judicial order confirming an arbitration award, which then could be enforced.

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 or file a motion to confirm the award. Thus, FINRA’s rules contribute to the conservation of judicial resources and the efficiency and fairness of the arbitration

FINRA Rule 9554 establishes an expedited suspension procedure for failure to comply with an arbitration award. If FINRA learns that a respondent has failed to pay an arbitration award within 30 days, FINRA Rule 9554 authorizes FINRA to send a suspension notice “stating that the failure to comply within 21 days of service of the [suspension] notice will result in a suspension . . . from associating with any member.”⁷ The suspension 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.⁸

Once served with a suspension notice, a respondent may file a request for a hearing with FINRA’s Office of Hearing Officers.⁹ A hearing request stays the imposition of the proposed suspension.¹⁰ Such a request must specifically identify all defenses the respondent has to the suspension notice.¹¹ FINRA recognizes the following defenses, as members have been informed¹² and Respondent in this case was informed, both when he received notice of the issuance of the arbitration award and again when he received the notice of suspension.¹³

- 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; and
- The respondent has a bankruptcy proceeding pending in United States Bankruptcy Court, or a Bankruptcy Court has discharged the award.

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.

⁷ FINRA Rule 9554(a).

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

⁹ FINRA Rule 9554(e).

¹⁰ FINRA Rule 9554(d).

¹¹ FINRA Rule 9554(e).

¹² 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>.

¹³ JX-3; JX-4; JX-5.

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 bona fide inability to pay an award as a defense to a suspension proceeding.¹⁴

If an associated person fails to pay an arbitration award within the 30 days specified by FINRA and fails to assert and establish one of these defenses, then FINRA's By-Laws provide that the person may be suspended.¹⁵

B. Respondent and Jurisdiction

Respondent is a registered representative currently employed by FINRA member firm LPL. He joined LPL in September 2021, immediately after leaving his previous firm, Wells Fargo, where he had worked for more than ten years.¹⁶

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 currently a registered person, has agreed—and is obligated—to comply with FINRA's rules, including the rule that requires a respondent in an industry dispute to pay an arbitration award within 30 days of receiving it, FINRA Rule 13904(j).

C. The Arbitration Award

On December 22, 2023, an arbitration award was entered against Respondent in *Wells Fargo Clearing Services, LLC v. Robert James Tracy*, FINRA Dispute Resolution Services Arbitration Case No. 23-02302.¹⁷ The arbitration award granted Wells Fargo compensatory

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

¹⁵ The By-Laws authorize a suspension 15 days after notice in writing of the proposed suspension. Art. VI, Sec. 3(b). Rule 9554, however, gives a person a longer grace period within which to comply with the arbitration award, within 21 days of service of the notice of suspension.

¹⁶ Stip. ¶ 1; JX-1 (Central Registration Depository ("CRD") summary record for Tracy), at 2.

¹⁷ Stip. ¶ 3; JX-2.

damages of \$384,818.10, plus interest from November 21, 2023, until the award is paid in full, and various fees.¹⁸ The day the award was issued, FINRA sent notice of the award to Respondent.¹⁹ FINRA also sent Respondent an additional notice of the award that same day, which called attention to his obligation to pay the award within 30 days and specified that payment of the award was due January 22, 2024. That additional notice directed him to review FINRA's Notice to Members 00-55 for more information and the potential sanctions for noncompliance.²⁰

D. Respondent's Failure to Pay the Arbitration Award

1. The First Suspension Notice and Respondent's Motion to Vacate

Respondent did not pay the arbitration award by the specified deadline. As a consequence, FINRA sent Respondent a notice of intent to suspend his association with any FINRA member firm. On February 5, 2024, Respondent requested a hearing before the Office of Hearing Officers, by which he obtained a stay of the suspension.²¹

On March 13, 2024, Respondent filed a verified motion to vacate the arbitration award in a case captioned *Robert James Tracy v. Wells Fargo Clearing Corp., LLC* (Superior Court of New Jersey, Civil Division: Monmouth County, Case No. MON-L-001077-24).²²

On April 1, 2024, Enforcement moved to dismiss Expedited Proceeding No. ARB240003 without prejudice because Respondent had timely filed a motion to vacate the award and the motion was pending. That same day, I granted the motion to dismiss without prejudice.²³

On July 11, 2024, the Superior Court of New Jersey denied Respondent's motion to vacate.²⁴ Payment of the arbitration award became due.

2. The Second Suspension Notice and Respondent's Assertion of an Inability to Pay as a Defense

On October 29, 2024, after Respondent failed to pay the arbitration award, FINRA sent him via FedEx a notice of intent to suspend his association with any member firm. Respondent

¹⁸ Stip. ¶ 3; JX-2.

¹⁹ Stip. ¶ 6; JX-3.

²⁰ JX-4.

²¹ That proceeding (separate from this one) was Expedited Proceeding No. ARB240003.

²² Stip. ¶ 11.

²³ Expedited Proceeding No. ARB240003 was then closed.

²⁴ Stip. ¶ 12.

received the suspension notice on October 31, 2024. The parties have stipulated that the suspension notice was properly served.²⁵

The second suspension notice informed Respondent that he would be suspended if he failed to comply with the award or to demonstrate one of the specified defenses.²⁶ The suspension notice listed an inability to pay as one of the possible defenses.²⁷ It also advised Respondent that he could request a hearing with the Office of Hearing Officers on any claimed defense and that the request for a hearing would stay the effective date of the suspension.²⁸ The deadline to comply with the award or request a hearing was November 18, 2024, the day before Respondent's suspension was to become effective.²⁹

On November 4, 2024, Respondent timely filed a request for a hearing with the Office of Hearing Officers. As a defense, he asserted that he was unable to pay the arbitration award. That is the defense at issue in this proceeding.

E. The Inability-to-Pay Defense

When a respondent asserts a bona fide inability to pay an arbitration award 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.³⁰ The respondent must document fully his or her financial circumstances,³¹ including assets and liabilities.³² The respondent bears the burden of proof because information regarding a respondent's assets is "peculiarly within [the respondent's] knowledge."³³ The defense fails if the respondent's evidence of financial condition is insufficient or incomplete.³⁴

FINRA is entitled to make a searching inquiry into a respondent's assertion of an inability to pay an arbitration award.³⁵ 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.

²⁵ Stip. ¶¶ 13–15.

²⁶ JX-5. This is the exhibit that Enforcement moved to substitute for an earlier incorrect exhibit. Respondent did not object, and I granted that motion. See Tr. (discussion by Hearing Officer) 7–8.

²⁷ JX-5, at 1.

²⁸ JX-5, at 1.

²⁹ JX-5, at 1.

³⁰ *Daniel Paul Motherway*, Exchange Act Release No. 97180, 2023 SEC LEXIS 753, at *6–7, 11 (Mar. 21, 2023).

³¹ *Robert Tretiak*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653, at *12 n.16 (Mar. 19, 2003).

³² *Bruce M. Zipper*, Exchange Act Release No. 33376, 1993 SEC LEXIS 3525, at *8 (Dec. 23, 1993).

³³ *Id.*

³⁴ *Gallagher*, 2003 SEC LEXIS 599, at *9–11.

³⁵ *Tretiak*, 2003 SEC LEXIS 653, at *12.

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.³⁶ When a respondent chooses to use funds for purposes other than paying an arbitration award, that is a choice to prioritize those other purposes over the obligation to pay the award. That allocation choice may diminish the funds available to satisfy the arbitration award, but it does not establish a bona fide inability to pay.³⁷

The inquiry into a respondent's asserted inability to pay an arbitration award also covers more than whether a respondent could pay the 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.³⁸ As the SEC has said, "To prevail on an inability-to-pay defense a respondent must demonstrate that he is unable to make some meaningful payment toward the award from available assets or income."³⁹

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.⁴⁰ "Merely showing serious financial distress or that it would be hard or painful to pay an arbitration award does not establish the defense."⁴¹ The defense also fails if the respondent's evidence of financial condition is insufficient or incomplete.⁴²

³⁶ *E.g.*, *Dep't of Enforcement v. Shimko*, No. ARB200002, 2020 FINRA Discip. LEXIS 41, at *11–12 (OHO Sept. 15, 2020).

³⁷ *Id.* at *29–30.

³⁸ *Id.* at 10–11.

³⁹ *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)).

⁴⁰ *Dep't of Enforcement v. Helbling*, No. ARB210004, 2021 FINRA Discip. LEXIS 14, at *5 (OHO July 23, 2021).

⁴¹ *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.

⁴² *Gallagher*, 2003 SEC LEXIS 599, at *9–11.

F. Respondent's Failure to Show an Inability to Pay the Arbitration Award

1. Respondent's Substantial Resources

a. Respondent's Home Equity

Respondent originally submitted a financial statement to Enforcement on December 13, 2024, with a \$600,000 estimate of the value of his home.⁴³ He reiterated that valuation in the final financial statement he submitted on December 27, 2024.⁴⁴ At some point, however, the parties stipulated that Respondent's home has a fair market value of at least \$647,100.⁴⁵ Printouts from three real estate websites (Zillow.com; Realtor.com; and Redfin.com) show that the stipulated fair market value is on the low side of the home's estimated value. The three sites estimate the home's fair market value as ranging from \$647,100 to \$687,800 as of December 23, 2024.⁴⁶ The FINRA investigator who testified said that she used the three websites to research the value of Respondent's home because they are recognized sources for estimates of real estate value and are commonly used by FINRA investigators.⁴⁷ At the hearing, Respondent disputed that the estimates on the three real estate websites accurately reflected his home's value and argued that other houses in his town in better condition than his were being offered for sale at lower prices. He seemed to imply that his original estimate of \$600,000 was justified.⁴⁸ But Respondent provided no appraisal or alternative evidence of the value of his property.

I find, based on the stipulation and the estimates provided by independent websites that, unlike Respondent, have no interest in establishing a lower or higher value for the home, Respondent's home has a value of at least \$647,100.

Respondent's home is subject to a first mortgage to Wells Fargo, which, as of December 3, 2024, had an outstanding principal balance of \$118,179.63.⁴⁹ The home is subject to a second mortgage to Cenlar Central Loan Administration & Reporting, which, as of December 16, 2024, had an outstanding principal balance of \$70,367.83.⁵⁰ There are no other encumbrances on the property.⁵¹

⁴³ JX-6, at 1.

⁴⁴ JX-7, at 2.

⁴⁵ Stip. ¶¶ 19–20.

⁴⁶ Stip. ¶ 21; JX-15.

⁴⁷ Tr. (CH) 93–94.

⁴⁸ Tr. (RT questions of the FINRA examiner, along with assertions) 98–101.

⁴⁹ Stip. ¶¶ 22–23.

⁵⁰ Stip. ¶¶ 24–25.

⁵¹ Stip. ¶ 26.

Accordingly, after subtracting the balances on the two mortgages (a total of \$188,547.46) from the stipulated estimate of the value of Respondent’s home, I find that Respondent has at least \$458,552.54 in home equity—more than the amount of the arbitration award at the time it was issued.⁵²

I also find that Respondent has not shown that he could not borrow against his home equity. He admits that he has not even inquired with a bank about borrowing against his home equity.⁵³ He argued that his experience working at Wells Fargo showed him that any application for such a loan would be rejected because his income would not support a loan for \$200,000 to \$300,000.⁵⁴ He said, “I don’t believe that I would be able even to get a loan granted.”⁵⁵ Respondent’s personal view is insufficient to establish that no money could be realized on his substantial home equity, and his failure to take any steps to investigate whether he could obtain a loan based on his home equity suggests an intentional refusal to do anything to pay the arbitration award—not an inability to pay.⁵⁶

b. Respondent’s Retirement Accounts

i. Individual Retirement Account

Respondent provided monthly financial statements for an Interactive Brokers individual retirement account (“IRA”) beginning March 1, 2024, through November 30, 2024.⁵⁷ This account is labeled on the statements as an IRA-Traditional Rollover account.⁵⁸ According to the first statement in the series, the account had a zero balance in February 2024 but received a contribution of \$26,256.91 on March 14, 2024.⁵⁹ It also received a deposit of \$34,620.05 in April 2024.⁶⁰ As of June 1, 2024, the IRA started the month with a value of \$61,542.82.⁶¹ As of November 30, 2024, the value of the account had declined to \$46,921.63.⁶² Some of the decline was attributable to withdrawals taken by Respondent. These ranged from \$2,200 to \$3,500 per

⁵² At the time the award was issued it provided for \$384,818.10 in compensatory damages, \$22,000 in attorney fees, and \$1,300 in other fees. The award also provided for interest on the compensatory damages until the award is paid in full. JX-2.

⁵³ Tr. (RT) 42–43.

⁵⁴ Tr. (RT) 31–32.

⁵⁵ Tr. (RT) 32.

⁵⁶ *Shimko*, 2020 FINRA Discip. LEXIS 41, at *35.

⁵⁷ JX-23.

⁵⁸ JX-23, at 1.

⁵⁹ JX-23, at 3.

⁶⁰ JX-23, at 7.

⁶¹ Stip. ¶ 36; JX-23, at 15.

⁶² Stip. ¶ 35; JX-23, at 44.

month for several months, with the withdrawals totaling \$11,200.⁶³ The withdrawals were marked as distributions to someone over 59 ½ years old and were subject to federal tax withholding.⁶⁴

It is unclear where the money came from that funded the IRA rollover account. There is nothing in the record to indicate the source of that money. The two contributions to the IRA account, which were made in 2024 after the arbitration award was issued, totaled \$60,876.96. If the contributions were rolled over from some other retirement account that existed at the time the arbitration award was issued,⁶⁵ the statements from that other account are not in the record. Respondent may have had the ability to apply the money he contributed to the rollover IRA to pay the arbitration award, but it is impossible to determine that from the record.

ii. 401K

Respondent also provided monthly financial statements for his Wells Fargo 401K plan for the period starting October 1, 2023, through September 30, 2024.⁶⁶ At the end of December 2023, around the time the arbitration award was issued, the account balance was \$56,318.19, all of which was fully vested.⁶⁷ During the last quarter of 2023, Respondent withdrew \$4,000 from the account. That money came from a Roth account,⁶⁸ and was not subject to federal income tax.⁶⁹ Respondent withdrew \$11,000 from the 401K account during the first quarter of 2024.⁷⁰ By March 31, 2024, the account balance in Respondent's 401K had declined to \$49,286.29.⁷¹ The account balance declined in the next quarter ending June 30, 2024, to \$39,800.35. Respondent continued to make withdrawals from the account in that quarter, for a total of \$11,178.67 in withdrawals.⁷² Some of those withdrawals came from the Roth account and others

⁶³ JX-23, at 15–16, 18 (\$3,500 total withdrawals in June 2024), 22, 24 (\$2,200 total withdrawals in July 2024), 28, 30 (\$2,400 total withdrawals in August 2024), 38, 40 (\$3,100 total withdrawals in October 2024).

⁶⁴ JX-23, at 18, 24, 30, 40 (tax withholding treatment); *See* Distributions from Individual Retirement Arrangements (IRAs), <https://www.irs.gov/publications/p590b> (distributions from a traditional IRA are taxed as ordinary income). *See also* Are Distributions Taxable?, https://www.irs.gov/publications/p590b#en_US_2023_publink100090431.

⁶⁵ The IRS instructs that a person has 60 days from the date he or she receives an IRA or retirement plan distribution to roll it over to another plan or IRA. *See* Rollovers of retirement plan and IRA distributions, <https://www.irs.gov/retirement-plans/plan-participant-employee/rollovers-of-retirement-plan-and-ira-distributions>.

⁶⁶ JX-22.

⁶⁷ JX-22, at 1.

⁶⁸ JX-22, at 1.

⁶⁹ *See* Distributions from Individual Retirement Arrangements (IRAs), <https://www.irs.gov/publications/p590b> (distributions from a Roth IRA are not taxed if certain criteria are met). *See also* Are Distributions Taxable?, https://www.irs.gov/publications/p590b#en_US_2023_publink100089627.

⁷⁰ JX-22, at 11.

⁷¹ JX-22, at 11.

⁷² JX-22, at 21.

came from a “Safe Harbor Match” of employer contributions to the 401K account.⁷³ The account balance continued to decline. By the quarter ending September 30, 2024, it was \$34,433.67.⁷⁴ Respondent withdrew a total of \$6,500 during that quarter.⁷⁵ Altogether Respondent withdrew \$32,678.67 from the 401K account.⁷⁶

iii. Total Withdrawals

Respondent claimed that he withdrew money from his IRA and 401K accounts because he did not otherwise have enough money to cover his bills.⁷⁷ He said he was using these accounts to “fill in the blanks when I have not had money.”⁷⁸ He noted that the repeated withdrawals could, if continued, diminish the asset to zero.⁷⁹ Respondent asserted, “[This money] ‘is not from income,’”⁸⁰ rather, “[t]his is taken from an account that I’ve saved up, and I am using it for emergency purposes.”⁸¹ Respondent did not identify any specific emergency.

Based on this record, I find that funds in the two retirement accounts totaling more than \$100,000 (over \$60,000 contributed to the IRA in March 2024 and close to a \$50,000 balance in the 401K as of March 31, 2024) may have been available in spring of 2024 to apply toward satisfaction of the arbitration award. That possibility undercuts Respondent’s claimed inability to pay even a meaningful portion of the arbitration award. I further find that Respondent withdrew a total of \$43,878.70 from the two retirement accounts during the year running from the beginning of October 2023 through the end of September 2024. He did not apply those funds toward satisfaction of the arbitration award. Instead, he chose to spend that money in other ways. And I find that Respondent continues to retain funds in his retirement accounts that might be applied to pay the award. As with his refusal to access funds based on his home equity, Respondent’s intentional allocation choices regarding the retirement accounts do not prove an inability to pay the arbitration award.⁸²

⁷³ JX-22, at 21, 24.

⁷⁴ JX-22, at 31.

⁷⁵ JX-22, at 31.

⁷⁶ JX-22.

⁷⁷ Tr. (RT) 28.

⁷⁸ Tr. (RT) 29.

⁷⁹ Tr. (RT) 29.

⁸⁰ Tr. (RT) 29.

⁸¹ Tr. (RT) 29–30.

⁸² *Shimko*, 2020 FINRA Discip. LEXIS 41, at *35.

c. Respondent's Two Businesses

Respondent testified that he has two businesses. One is his securities business; the other is a business buying and selling items on eBay.⁸³

i. Securities Business

Respondent provided no appraisal of the value of his securities business or what he might realize from a sale of it. He testified, however, that he spoke with a colleague about what his business is worth. According to Respondent, his colleague told him that it would be about “one times revenue if [Respondent] were to just sell it and walk away.”⁸⁴ His colleague said that the value would be more if Respondent stayed working on the business with the purchaser for a time, perhaps a year transition period. Then the business might have a value of “two and a half to three times” revenue.⁸⁵ Respondent cautioned that he did not know if that was a correct number.⁸⁶ But he did agree that his securities business has some value, and that it could be as significant as three times revenue.⁸⁷ When Respondent joined LPL in 2021, it paid him \$46,000 to bring his business over to the firm.⁸⁸

Respondent tried to justify his failure to explore the possibility of selling his securities business for the purpose of satisfying the arbitration award. He testified that if he started to talk to firms about what he could realize on a sale of his business, it would “not always [be] a smart” thing to do. He said he didn’t want to “for no reason go out and try and get a bid on what I am worth.”⁸⁹ He noted that if he is suspended the value of his business could be no more than one times revenue.⁹⁰

I find that Respondent’s securities business has some value, and he has not shown that he could not sell it or borrow against it to raise funds to pay the arbitration award. His failure to make any effort to realize funds from this business, like his failure to investigate whether he could borrow against his home equity, evidences an intentional refusal to honor his obligation to pay the arbitration award.⁹¹

⁸³ Tr. (RT) 48–50.

⁸⁴ Tr. (RT) 50–51.

⁸⁵ Tr. (RT) 51.

⁸⁶ Tr. (RT) 51.

⁸⁷ Tr. (RT) 54–55.

⁸⁸ Tr. (RT) 50.

⁸⁹ Tr. (RT) 55.

⁹⁰ Tr. (RT) 55.

⁹¹ *Shimko*, 2020 FINRA Discip. LEXIS 41, at *35.

ii. eBay Business

Respondent testified that his eBay business is an effort to sell “odds and ends” that he has accumulated over his life and to “declutter.”⁹² But it appears that the eBay business involves more than decluttering. He wrote to Enforcement in a January 2, 2025 email, “I am selling things that I randomly buy for resale.”⁹³ Respondent testified that he had about 900 listings on eBay at the time of the hearing.⁹⁴

In the first financial statement he provided Enforcement, Respondent estimated \$100 per month net income from the sale of assets on eBay.⁹⁵ At the hearing, he characterized the amount of money he received from the business as “negligible,” saying that he realized an average of \$80-\$100 a month.⁹⁶ In a January 3, 2025 email, he said that he generated about \$1,000 per year income from his eBay business.⁹⁷ Schedule C of Respondent’s 2022 tax return showed gross receipts for his eBay business of \$5,475. He reported that after expenses of the business he had a net profit of \$2,350.⁹⁸ For tax year 2023, Respondent reported \$2,366 in gross receipts from this business and a gross profit of \$801.⁹⁹

With respect to the 900 items he had listed on eBay at the time of the hearing, Respondent did not produce any evidence regarding the nature of the items or the prices he has set for them. He did say in a December 13, 2024 letter to Enforcement that he has three paintings that might have an aggregate value of \$10,000, a stamp collection that could be worth \$1,000 to \$1,500, and a couch worth \$1,500.¹⁰⁰ It is unclear whether Respondent could realize more on his eBay business in the future than he has in the past, but it seems possible.

I find that Respondent has an on-going business of buying and selling items on eBay from which he has realized a few thousand dollars and could in the future realize additional monies. He could choose to sell assets that might have greater value, like the paintings, to generate funds to pay the arbitration award. He has not demonstrated an inability to raise funds through his eBay business to contribute to paying the arbitration award.

⁹² Tr. (RT) 49.

⁹³ JX-14, at 1.

⁹⁴ Tr. (RT) 49.

⁹⁵ JX-6, at 5.

⁹⁶ Tr. (RT) 49.

⁹⁷ JX-14, at 1.

⁹⁸ JX-33, at 19.

⁹⁹ JX-34, at 15.

¹⁰⁰ JX-9, at 1.

d. Respondent's Bank Accounts – Cash

Respondent produced records for two bank accounts owned by him. One is a Bank of America checking account with a number ending in 1258.¹⁰¹ The other is a Bank of America checking account he maintains for his LLC, with a number ending in 8479.¹⁰²

The bank statements for Respondent's checking account ending in 1258 cover the period from November 16, 2023, to December 16, 2024.¹⁰³ They show that on November 16 the account had a balance of \$5,343.68, and Respondent made deposits and other additions during the month ending December 14, 2023, in the amount of \$10,684.56.¹⁰⁴ Respondent wrote checks that month to his wife (\$1,000), to himself (\$1,731.48), to cash (\$1,500), and to his LLC (\$2,185.71) for a total of \$6,417.19.¹⁰⁵ He also wrote other checks and made other payments, so the account balance was \$1,345.06 at the end of the statement, on December 14, 2023, just before issuance of the arbitration award. In succeeding months, deposits and additions in the account ranged from a low of \$4,349.01¹⁰⁶ to, twice, more than \$17,000.¹⁰⁷ And once the deposits rose to more than \$29,000.¹⁰⁸ Respondent often wrote checks to his wife, his LLC, and himself from the account.¹⁰⁹ Those payments over the course of the year totaled \$52,705.10.¹¹⁰

The bank statements for Respondent's LLC account ending in 8479 cover the period from December 1, 2023, to November 30, 2024.¹¹¹ Respondent regularly wrote checks to himself from his LLC account.¹¹² In December 2023, he wrote three checks totaling \$6,200.¹¹³ In January 2024, he wrote a check for \$1,200 to himself.¹¹⁴ In February 2024, he wrote two checks from the

¹⁰¹ JX-9, at 1; JX-19.

¹⁰² JX-9, at 1; JX-20.

¹⁰³ JX-19.

¹⁰⁴ JX-19, at 1.

¹⁰⁵ JX-19, at 9.

¹⁰⁶ JX-19, at 107.

¹⁰⁷ JX-19, at 38, 73.

¹⁰⁸ JX-19, at 115.

¹⁰⁹ JX-19, at 29, 41, 49, 59, 79, 87, 95, 103, 111, 123.

¹¹⁰ JX-19, at 29, 41, 49, 59, 79, 87, 95, 103, 111, 123. It is unclear why Respondent was writing checks from his checking account to his LLC. It appears that the accounts were linked, because occasionally he effected an online banking transfer from the LLC account to the account ending 1258. JX-20, at 43, 49.

¹¹¹ JX-20.

¹¹² JX-20, at 7, 13, 21, 27, 45, 51, 57, 63, 69.

¹¹³ JX-20, at 7.

¹¹⁴ JX-20, at 13.

LLC account to himself for a total of \$5,000.¹¹⁵ In March 2024, he wrote another check to himself for \$3,000.¹¹⁶ Every month from June through October of 2024, Respondent wrote one or more checks to himself from the LLC account (\$1,000 on June 5; \$2,000 on July 18; \$1,000 on August 1; \$800 on September 17; \$450 on October 17; \$3,000 on October 21).¹¹⁷ The checks Respondent wrote to himself from this account totaled roughly \$23,650.

These check records show that during the year following the issuance of the arbitration award Respondent regularly received substantial amounts of money in his two checking accounts and that he wrote thousands of dollars in checks to himself and his wife. It is not clear how Respondent and his wife used that cash, but at least a portion could have been applied toward payment of the arbitration award. These records undercut Respondent's assertion that he has a bona fide inability to pay the award.¹¹⁸

2. Respondent's Liabilities

In his two financial statements, Respondent listed as a liability mortgage debt of \$188,000.¹¹⁹ He estimated that he paid around \$3,100 each month on his mortgages.¹²⁰ As evidence of these debts, Respondent provided statements for a Wells Fargo first mortgage¹²¹ and a second mortgage in the form of a home equity line of credit from the Central Loan Administration & Reporting service.¹²² Those statements show that Respondent owes between \$2,097.08 and \$2,248.15 each month on the first mortgage¹²³ and between \$975.97 and \$1,078.82 each month on the second mortgage,¹²⁴ confirming his rough estimate of \$3,100 for monthly mortgage payments. The balance on the first mortgage as of December 3, 2024, was \$118,179.63;¹²⁵ the balance on the second mortgage as of December 16, 2024, was

¹¹⁵ JX-20, at 21.

¹¹⁶ JX-20, at 27.

¹¹⁷ JX-20, at 45, 51, 57, 63, 69.

¹¹⁸ Respondent also produced bank statements for an account in his wife's name with a number ending 7240. The monthly ending balance in that account fluctuated from around \$1,800 to \$7,000. His wife appears to use the account for shopping and paying cell phone bills and the like. JX-21.

¹¹⁹ JX-6, at 2; JX-7, at 3.

¹²⁰ JX-6, at 6; JX-7, at 9.

¹²¹ JX-16.

¹²² JX-18. Although the home equity line of credit shows a credit limit of \$130,000, it also shows zero available credit. Respondent explained in a letter to Enforcement that the line of credit was so old that the period when funds were available to borrow may have expired. JX-13, at 3.

¹²³ JX-16, at 1–16.

¹²⁴ JX-18, at 1–39.

¹²⁵ Stip. ¶ 23; JX-16, at 16.

\$70,367.83.¹²⁶ Accordingly, Respondent has proven that his mortgage liability is currently around \$188,000.

Respondent also listed as a liability an estimated \$11,000 he owes in back taxes, interest, and penalties on his 2023 income tax return,¹²⁷ which he pays at the rate of \$500 monthly.¹²⁸ He provided a copy of his 2023 income tax return to corroborate that liability.¹²⁹

Respondent listed as a liability credit card debt of \$20,300.¹³⁰ He overstated this liability. As of November 15, 2024, he had a balance of \$1,900 on a AAA Visa credit card through the Commenity Capital Bank.¹³¹ As of November 16, 2024, Respondent had an outstanding balance on a Citi/Costco credit card of \$5,953.98.¹³² In November 2024, Respondent opened a new credit card account with Discover, and transferred balances from the Commenity and Citi/Costco accounts, \$1,924.84 and \$5,982.24, respectively.¹³³ With fees charged for the two transfers, the balance on the Discover card as of November 26, 2024, was \$8,144.30.¹³⁴ As of November 20, 2024, however, Respondent still had a balance of \$297.82 on the Citi/Costco card.¹³⁵ Respondent produced partial statements for a Discover credit card held in his wife's name. These pages show some transactions in November 2023 through December 17, 2024. They do not show balances or payments made on the card. It is not possible to determine whether there is any outstanding liability in connection with the card.¹³⁶ Finally, Respondent produced a one-page statement for a Home Depot credit card. The statement shows as of December 20, 2024, a previous balance of \$75.60 and a new balance of \$1,483.59.¹³⁷

¹²⁶ Stip. ¶ 25; JX-18, at 37.

¹²⁷ JX-6, at 2; JX-7, at 3.

¹²⁸ JX-6, at 6; JX-7, at 9.

¹²⁹ JX-33.

¹³⁰ JX-6, at 2; JX-7, at 3.

¹³¹ JX-27, at 10. In May 2023, the balance was \$6,520.86. JX-27, at 1. But during 2024, Respondent paid the balance down and did not use the card for any purchases. JX-27, at 3–10.

¹³² JX-28, at 38.

¹³³ JX-29, at 3.

¹³⁴ JX-29, at 1.

¹³⁵ JX-28, at 42. As of December 20, 2023, the balance on this card was \$6,121.92. JX-28, at 1. Generally, throughout 2024 until November, Respondent maintained a balance of \$6,000-\$6,500 on the account. JX-28, at 1–42.

¹³⁶ JX-30, at 1–14.

¹³⁷ JX-31.

I find that the credit card statements show that Respondent currently owes around \$12,000 on his and his wife's credit cards. The \$20,300 estimate on his financial statement is not supported by the evidence.

Respondent included as a liability on his financial statement accrued real estate taxes of \$2,700.¹³⁸ He admitted at the hearing that those taxes are collected by his mortgage company and are covered by his monthly mortgage payment.¹³⁹ I do not include the accrued real estate taxes as a separate liability or expense from Respondent's mortgage.

Respondent listed \$11,250 as a liability owed to a marketing-lead company called Apex Acquisition, and he also listed as a liability money to be paid to Apex Acquisition for Google ads at a rate of \$3,000 per month, plus \$2,000 per month "to continue with their program."¹⁴⁰ These items are unsupported by bills, contracts, or other documentation. Some of the charges appear to be discretionary payments to be made in the future. I find that Respondent did not provide sufficient evidence for these asserted liabilities.

Respondent identified \$10,000 as a liability for business coaching expenses. Respondent did not provide documentary evidence to corroborate that liability. It appears to be a discretionary expenditure. He said of the coaching expense, "I decided to invest in myself."¹⁴¹ It also appears that Respondent double counted the \$10,000 for coaching, because he testified that he financed the money to pay a business coach by putting the \$10,000 on a credit card.¹⁴² The outstanding balance on the credit card is included in the liabilities already.

In sum, I find that Respondent's liabilities may be reasonably estimated to be \$211,000 (\$188,000 for outstanding mortgage balances; \$11,000 for tax liability; and roughly \$12,000 for credit card balances).

3. Respondent's Positive Net Worth

Respondent himself calculates that he has a positive net worth. In the first financial statement he provided Enforcement, he calculated his net worth as \$41,000.¹⁴³ In the second financial statement, after making various adjustments, Respondent calculated his net worth as \$47,600.¹⁴⁴

¹³⁸ JX-6, at 2; JX-7, at 3.

¹³⁹ Tr. (RT) 56–57.

¹⁴⁰ JX-7, at 3.

¹⁴¹ Tr. (RT) 63.

¹⁴² Tr. (RT) 61, 63.

¹⁴³ JX-6, at 2.

¹⁴⁴ JX-7, at 3.

But Respondent miscalculated. He included in his liabilities the arbitration award and interest on it. Then, in calculating his net worth, he subtracted from his assets \$414,206 for the award and \$18,943.65 for the interest.¹⁴⁵ This left him a positive net worth, but a small one. Respondent's calculation of net worth in effect is what his net worth would be (based on his figures) *after paying the arbitration award and interest*. It has been recognized in other cases that including the arbitration award in the calculation of net worth "would result in a misleadingly lower valuation of net worth available for [the respondent] to make a meaningful contribution toward satisfaction of the [a]ward."¹⁴⁶

Even if I were to accept Respondent's estimates of asset values and liabilities in his second financial statement (which I do not), and I exclude the arbitration award and interest from Respondent's net worth calculation, Respondent has a substantial positive net worth. Using those figures, Respondent has a net worth of roughly \$480,749.

As discussed above, Respondent's numbers are also incorrect in other ways. He understated his assets and overstated his liabilities. I reiterate the following findings:

a. Respondent's assets currently have a value of at least \$550,000.

- Home equity of at least \$458,552.99;¹⁴⁷
- IRA with a \$46,921.63 balance at the end of November 2024;¹⁴⁸
- 401K with a \$34,433.67 balance at the end of September 2024;¹⁴⁹
- Securities business worth one to three times revenues;¹⁵⁰
- eBay business of uncertain value;¹⁵¹ and
- Cash in bank accounts, around \$15,000.¹⁵²

¹⁴⁵ JX-7, at 3.

¹⁴⁶ *Dep't of Enforcement v. Pendergast*, No. ARB240006, 2024 FINRA Discip. LEXIS 23, at *15 (NAC Sept. 23, 2024) (quoting *Dep't of Enforcement v. Henry*, No. ARB220023, 2023 FINRA Discip. LEXIS 6, at *8–9 (OHO Apr. 13, 2023)), *mot. to vacate arbitration award denied*, No. 3:23-CV-00259 (VDO), 2024 U.S. Dist. Lexis 7074, (D. Conn. 2024).

¹⁴⁷ *See supra* at 9.

¹⁴⁸ *See supra* at 10.

¹⁴⁹ *See supra* at 11.

¹⁵⁰ *See supra* at 12–13.

¹⁵¹ *See supra* at 13–14.

¹⁵² *See supra* at 14–16.

b. Respondent has shown total liabilities in the range of \$211,000:

- Wells Fargo first mortgage with an outstanding principal balance of \$118,179.63;¹⁵³
- Cenlar Central Loan Administration & Reporting second mortgage with an outstanding principal balance of \$70,367.83;¹⁵⁴
- IRS back taxes, interest, and penalty charges on taxes due for the 2023 tax year, which initially amounted to approximately \$11,000 (being paid on an installment basis at the rate of \$500 per month);¹⁵⁵and
- Credit card debt of around \$12,000.¹⁵⁶

I find that Respondent has a net worth of around \$339,000 (assets of roughly \$550,000 minus liabilities of roughly \$211,000).

4. Respondent's Positive Cash Flow

Respondent testified that he is “living literally paycheck to paycheck.”¹⁵⁷ “I don’t have a large excess amount of cash.”¹⁵⁸ He asserted that the money he withdrew from his retirement accounts was taken out “to make ends meet”¹⁵⁹ and that he has been “under financial strain for years now.”¹⁶⁰

The evidence shows that over the course of the year after the arbitration award was issued Respondent had a positive monthly cash flow, although, as he points out, his commissions from LPL varied from month to month.¹⁶¹ According to the second financial statement Respondent

¹⁵³ Stip. ¶¶ 22–23.

¹⁵⁴ Stip. ¶¶ 24–25.

¹⁵⁵ See *supra* at 16. Respondent has made some monthly payments on the tax liability, so the balance at the time of the hearing may have been lower. Tr. (RT) 58.

¹⁵⁶ See *supra* at 17.

¹⁵⁷ Tr. (RT) 87.

¹⁵⁸ Tr. (RT) 87.

¹⁵⁹ Tr. (RT) 87.

¹⁶⁰ Tr. (RT) 88. Respondent testified that he has been carrying forward a large capital loss of more than \$650,000. He generated the loss prior to 2021 in equity trading using the money he received from Wells Fargo. Tr. (RT) 33–34, 74. His 2023 income tax statement verifies the capital loss being carried forward. JX-34, at 19–20. Respondent said, “I lost that money shamefully, and I have had financial difficulties ever since.” Tr. (RT) 35.

¹⁶¹ Tr. (RT) 28 (“[T]here is an uneven amount of money [from my paychecks.]”).

provided Enforcement at the end of 2024, his annual income for 2024 was \$142,100.¹⁶² When broken down on a monthly basis, that would mean that he receives roughly \$11,800 per month from all sources over the course of the year.

In estimating his monthly income, Respondent reported \$5,583.33 in commissions paid by LPL, \$117.10 in insurance commissions, \$80 for eBay sales, \$3,556 state assistance paid to his wife by a support coordinator for their disabled son, and \$600 per month in SSI disability income paid to his son. In addition, he included the distributions he took from his two retirement accounts, which he reported as \$4,182 per month. He calculated that these figures for monthly income total \$14,126.¹⁶³ Without the distributions from the retirement accounts, Respondent has a monthly income of close to \$10,000.

I find that Respondent has a monthly income of at least \$10,000.

In his financial statement, Respondent provided a list of monthly expenses. He totaled the monthly expenses as \$7,890.¹⁶⁴ Even if I were to accept all of Respondent's figures (which I do not), he has a positive monthly cash flow, on average, of at least \$2,000.

There were inconsistencies between the first and second financial statements produced by Respondent, and many of the figures he provided for expenses are not corroborated by documentation. In at least one instance, Respondent reported a monthly expense on his financial statement that was actually the expense for the entire year 2024 (attorneys/professional fees of \$1,000-\$1,200).¹⁶⁵ At the hearing, Respondent said that professional fees included payments he made for a website and a scheduler.¹⁶⁶ But he then conceded that the expenses he was referring to were expenses that LPL deducted from the commissions it paid him.¹⁶⁷ These figures appear to be another instance of double counting to inflate Respondent's monthly expenses. In sum, Respondent's estimates of his monthly expenses cannot be relied upon.

I find that Respondent has a positive monthly cash flow of at least \$2,000.

5. Respondent's Lack of Effort to Marshal Resources to Pay

A respondent is expected to take active measures to pay an arbitration award or at least some meaningful portion of the award.¹⁶⁸ It is evident here that Respondent has taken no such

¹⁶² JX-7, at 7. The first financial statement Respondent provided had a lower annual income for 2024, \$91,000. JX-6, at 4.

¹⁶³ JX-7, at 8.

¹⁶⁴ JX-6, at 6.

¹⁶⁵ JX-7, at 6.

¹⁶⁶ Tr. (RT) 77-78.

¹⁶⁷ Tr. (RT) 77-79.

¹⁶⁸ *Shimko*, 2020 FINRA Discip. LEXIS 41, at *11.

measures. As discussed above, Respondent admits he has not investigated whether he could borrow against his substantial home equity. He also has done next to nothing to investigate whether he could sell or borrow against his securities business. He testified he asked a colleague what he thought, but that was the limit of his effort. Respondent's financial records show that he has funds in his retirement accounts that may be available to apply toward satisfaction of the award, but he has used the funds for other purposes. Respondent also has spent money on marketing and business coaching instead of applying the funds toward payment of the award.

Respondent's testimony explains his inaction. He testified that requiring him to comply with FINRA rules regarding payment of arbitration awards would be unfair. "So for FINRA to suspend my livelihood to pay Wells Fargo," he said, "I think is a very big burden to put on me versus I think literally it is a drop in the bucket to Wells Fargo."¹⁶⁹

I believe Respondent when he says payment of the arbitration award would be "a very big burden" on him. But that is not sufficient to establish an inability to pay. The record shows that Respondent has a positive net worth and a positive cash flow. He has assets from which he could marshal funds to pay the award or, at least, to pay a meaningful portion of it. Even respondents with a negative net worth have been suspended for failure to pay an arbitration award, because they nevertheless had some resources from which to marshal funds to pay a meaningful portion.¹⁷⁰

G. Conclusion

Based on the testimony and documentary evidence presented at the hearing, I find that Respondent failed to satisfy the burden of proof required to establish a bona fide inability-to-pay defense. The evidence did not show that since the arbitration award was issued, Respondent has been unable to either pay it in full or make a meaningful contribution toward satisfying it.

Respondent's sense of burden cannot justify relieving him of his obligation to pay the award or be suspended. "Honoring arbitration awards is essential to the functioning of the [FINRA] arbitration system,' and requiring 'associated persons to abide by arbitration awards enhances the effectiveness of the arbitration process.'"¹⁷¹ "Conditional suspension of [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."¹⁷²

By contrast, letting Respondent "remain in the industry without paying the award, or meeting his burden to demonstrate a bona fide inability to pay the award would . . . undermine the arbitration

¹⁶⁹ Tr. (RT) 35.

¹⁷⁰ *Pendergast*, 2024 FINRA Discip. LEXIS 23, at *12, 18; *Helbling*, 2021 FINRA Discip. LEXIS 14, at *6–12.

¹⁷¹ *Daniel Paul Motherway*, Exchange Act Release No. 97180, 2023 SEC LEXIS 753, at *13 (Mar. 21, 2023) (quoting *Gallagher*, 2003 SEC LEXIS 599, at *13).

¹⁷² *DiPietro*, 2016 SEC LEXIS 1036, at *24.

process.”¹⁷³ Doing so “would also expose investors to an individual who has refused to accept the results of that process by failing to make any effort, meaningful or otherwise, towards paying the amounts he was found to owe, despite having agreed to do so when becoming a FINRA associated person.”¹⁷⁴

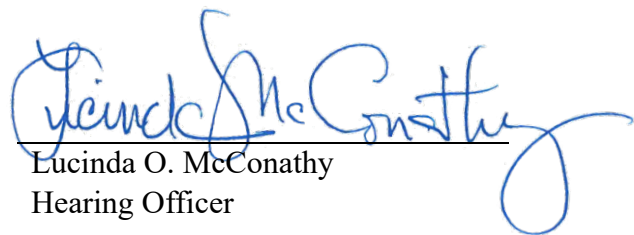
III. Order

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, upon the issuance of this Decision. The suspension shall remain in effect until Respondent produces sufficient documentary evidence to FINRA that:

- he has paid the arbitration award in full;
- he and Wells Fargo have entered into a fully executed, written settlement agreement relating to payment of the arbitration award, and he is current in fulfilling his obligations under the settlement terms; or
- he has filed a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the arbitration award.

If Respondent makes such a showing, the suspension will automatically terminate.¹⁷⁵

Respondent is also **ORDERED** to pay the costs of this proceeding, which include \$1,600.28 for the hearing transcript plus a \$750 administrative fee, for a total of \$2,350.28.¹⁷⁶ These costs are due and payable upon the issuance of this Decision.¹⁷⁷


Lucinda O. McConathy
Hearing Officer

¹⁷³ *Motherway*, 2023 SEC LEXIS 753, at *13.

¹⁷⁴ *Id.* at *13–14.

¹⁷⁵ Respondent’s motion to vacate the arbitration award was denied, and the time for filing such a motion under the FAA has expired. That is no longer an available defense.

¹⁷⁶ Respondent must pay the costs of the hearing before the suspension terminates.

¹⁷⁷ I have considered all the parties’ arguments, which I accept to the extent they are consistent with this Decision and reject to the extent they are not.

Copies to:

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Christen Sproule, Esq., FINRA Enforcement (via email)

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