

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEPHEN PAUL SEGLUND
(CRD No. 2807970),

Respondent.

Expedited Proceeding
No. ARB190040

STAR No. 20190647595

Hearing Officer–DDM

EXPEDITED DECISION

April 16, 2020

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

Appearances

For the Complainant: Todd Schneider, Esq., and Carolyn Craig, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Stephen Paul Seglund, pro se

DECISION

I. Introduction

Respondent Stephen Paul Seglund failed to pay a FINRA arbitration award he owed to his former FINRA member firm, Kestra Investment Services, LLC and its parent company, Kestra Financial, Inc. (collectively, “Kestra”). As a result, FINRA sent Seglund a Notice of Suspension pursuant to FINRA Rule 9554, notifying him that he would be suspended from associating with any FINRA member unless he paid the award or asserted a valid defense for nonpayment. Seglund stayed the suspension by timely filing a request for a hearing and asserting an inability-to-pay defense.

Seglund failed to prove his defense. At the hearing, Enforcement demonstrated that Seglund could afford to make some meaningful payment toward the award. In addition, Seglund failed to provide certain documents and information necessary to prove his inability to pay. Accordingly, Seglund is suspended from associating with any FINRA member in any capacity.

II. Findings of Fact and Conclusions of Law

A. Background

From September 2016 to May 2018, Seglund was associated in a registered capacity with Kestra.¹ Seglund is not currently registered with a FINRA member firm.² Even though he is not currently registered with FINRA, he is subject to FINRA's jurisdiction pursuant to Article V, Section 4(b) of FINRA's By-Laws.³

This matter arises from a forgivable loan Seglund received from Kestra in the amount of \$33,400, while he was associated with the firm.⁴ Seglund did not repay the loan. So on June 20, 2018, Kestra filed an arbitration claim against Seglund with FINRA Dispute Resolution seeking repayment.⁵ On October 11, 2019, a FINRA arbitration panel rendered an award in favor of Kestra and against Seglund for \$42,468.24 in total compensatory damages, plus interest, along with \$18,750 in attorneys' fees ("the Award").⁶ That same day, FINRA notified Seglund of the Award and that if he did not pay it within 30 days, FINRA could suspend Seglund's registration.⁷

Seglund did not satisfy the Award, enter into a fully executed, written settlement agreement to pay the Award, file for bankruptcy protection, or timely file a motion to vacate the Award. As a result, on November 12, 2019, FINRA served Seglund with a Notice of Suspension notifying him that his registration would be suspended effective December 3, 2019, for failing to pay the Award.⁸ The Notice of Suspension also advised Seglund that he could request a hearing, which would stay the effective date of the suspension.⁹

Seglund timely filed a request for a hearing and claimed he had a bona fide inability to pay the Award.¹⁰ Seglund participated in a hearing held by telephone on March 5, 2020.¹¹

¹ Joint Exhibit ("JX-") 66, at 4.

² JX-66, at 3.

³ Stipulations ("Stip.") ¶ 7.

⁴ JX-1, at 1.

⁵ JX-2.

⁶ JX-3, at 2-3; Stip. ¶ 1.

⁷ JX-4; JX-5.

⁸ JX-7; Stip. ¶ 5.

⁹ JX-7, at 1.

¹⁰ JX-8; Stip. ¶ 6.

¹¹ Citations to the Hearing Transcript are referred to as "Tr." followed by the page number.

B. Inability-to-Pay Standard

FINRA Rule 9554 provides a procedural mechanism for FINRA to address failures to pay arbitration awards on an expedited basis. The rule authorizes FINRA to initiate an expedited proceeding by issuing a written notice that specifies the grounds for, and the effective date of, the suspension. The notice also advises the respondent of his right to file a written request for a hearing.

A respondent may assert certain limited defenses for failure to pay an award in an expedited proceeding under FINRA Rule 9554. These include (1) the award has been paid in full; (2) the parties have agreed to settle the action, and the respondent is not in default of the terms of the settlement agreement; (3) the award has been vacated by a court; (4) a motion to vacate or modify the award is pending in a court of competent jurisdiction; and (5) the respondent has a bankruptcy petition pending in U.S. Bankruptcy Court, or a U.S. Bankruptcy Court has discharged the award.¹² A respondent may also assert a bona fide inability to pay the arbitration award.¹³

Although Seglund argued at the hearing that the arbitration award was excessive,¹⁴ a respondent in an expedited proceeding may not attack the merits of the underlying arbitration award.¹⁵ To permit such collateral attacks would “subvert [FINRA’s] procedures, which are designed to promote prompt payment of arbitration awards.”¹⁶ Accordingly Seglund’s argument that the award is excessive is rejected.

A respondent bears the burden of establishing a bona fide inability to pay.¹⁷ The Securities and Exchange Commission has stated that “[b]ecause the scope of [a respondent’s] assets is peculiarly within [his] knowledge . . . [the respondent] should properly bear the burden of adducing evidence with respect to those assets.”¹⁸ FINRA also is entitled to make a searching inquiry into a respondent’s assertion of inability to pay.¹⁹

¹² FINRA By-Laws, Art. VI, Sec. 3(b); NASD Notice to Members 00-55, at 2 (Aug. 2000), <http://www.finra.org/industry/notices/00-55>; *Dep’t of Enforcement v. Respondent*, OHO Redacted Decision ARB060031, at 4-5 (Apr. 16, 2007), http://www.finra.org/sites/default/files/OHODecision/p038228_0_0.pdf.

¹³ *William J. Gallagher*, 56 S.E.C. 163 (2003).

¹⁴ Tr. 108.

¹⁵ *Robert Tretiak*, 56 S.E.C. 209, 221 (2003).

¹⁶ *Id.*

¹⁷ *Gallagher*, 56 S.E.C. at 169.

¹⁸ *Bruce M. Zipper*, 51 S.E.C. 928, 931 (1993).

¹⁹ *Tretiak*, 56 S.E.C. at 220.

To establish an inability-to-pay defense, a respondent must show more than a current lack of funds on hand to pay the award in full:²⁰

An inability-to-pay defense may be rejected if it appears that the respondent is capable of reducing his living expenses, has the ability to divert funds from other expenditures to pay the settlement of the award, could borrow the funds, or could make some meaningful payment toward the settlement of the award from available assets or income, even if he could not pay the full amount of the award settlement.²¹

Further, the respondent “must establish that at no time after the award became due did he have the ability to pay all or any meaningful amount of the award,” not just that at “some later time his assets were insufficient to pay the award.”²²

Finally, an inability-to-pay defense may also be rejected when the evidence provided by a respondent is insufficient or incomplete.²³

C. Seglund Failed to Establish an Inability to Pay

Seglund had the burden to prove that he could not make any meaningful payment toward the Award. He did not meet that burden. Instead, the evidence demonstrated that Seglund had sufficient assets and income to make a meaningful payment to Kestra. In addition, he provided incomplete documentation and unreliable information concerning his financial condition.

1. Seglund Purchased Two Cars after the Award

Six days after the Award was entered against Seglund, he bought a 2002 Chevrolet Corvette for approximately \$19,060.²⁴ At the hearing, Seglund called this purchase “maybe a bad decision”²⁵ and “an investment for the future.”²⁶ Then, on November 26, 2019, Seglund bought

²⁰ *Dep’t of Enforcement v. Respondent*, OHO Redacted Decision ARB010013, at 9 (Jan. 25, 2002), http://www.finra.org/sites/default/files/OHODecision/p006654_0_0.pdf.

²¹ *Dep’t of Enforcement v. Respondent*, OHO Redacted Decision ARB010001, at 11 (July 26, 2001), http://www.finra.org/sites/default/files/OHODecision/p006655_0_0.pdf (citing *Dist. Bus. Conduct Comm. v. Escalator Sec., Inc.*, No. C07930034, 1998 NASD Discip. LEXIS 21, at *13 (NBCC Feb. 19, 1998)); *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *16 n.22 (Mar. 17, 2016) (citation omitted).

²² *Dep’t of Enforcement v. Tretiak*, No. C02980085, 2000 NASD Discip. LEXIS 35, at *20 (OHO Mar. 10, 2000), *aff’d*, 2001 NASD Discip. LEXIS 1 (NAC Jan. 23, 2001), *aff’d*, 56 S.E.C. 209 (2003).

²³ *Gallagher*, 56 S.E.C. at 169-70.

²⁴ Stip. ¶19; JX-42.

²⁵ Tr. 27.

²⁶ Tr. 117.

another car—a new Chevrolet Colorado, for approximately \$32,185.²⁷ Within 46 days of the Award, then, Seglund had purchased two cars in the aggregate amount of \$51,245, or approximately 84 percent of the entire Award entered against him, including compensatory damages and attorneys’ fees. Seglund is financing his car purchases and making aggregate monthly payments of \$1,007.97.²⁸ In addition to the two cars he purchased after the Award, Seglund owns two motorcycles, which he valued at an aggregate amount of \$5,000.²⁹

These two car purchases demonstrate that Seglund had an ability to make a meaningful payment toward satisfying the Award. Instead of spending over \$1,000 a month on two cars, Seglund could devote at least some of that money toward a payment on the Award.³⁰ But he acknowledged that he made no effort to borrow funds to pay off the Award.³¹ His election to pay these discretionary expenses rather than the Award reflects his choice about how to spend his money—not a genuine inability to pay.³²

2. Seglund Had Other Substantial Assets

Seglund acknowledged that he had at least two other substantial assets that he could use to make a meaningful payment toward the Award. First, according to public records, Seglund owns 50 percent of his home.³³ Using public estimates of the value of his home,³⁴ and considering the down payment and mortgage payments that have been made,³⁵ a 50-percent interest in the current equity of the home is valued at approximately \$81,000.³⁶ Seglund testified, however, that he had an unwritten “handshake agreement”³⁷ with the co-owners of the house that provided him with less than a 50-percent equity interest. Even under this unwritten agreement, however, Seglund conceded that his equity interest could be fairly valued at approximately

²⁷ Stip. ¶ 17; JX-34.

²⁸ Tr. 34-35; Stip. ¶¶ 17-20.

²⁹ JX-13, at 2.

³⁰ See *Dep’t of Enforcement v. Grady*, No. ARB170025, 2017 FINRA Discip. LEXIS 51, at *26 n.85 (OHO Dec. 14, 2017) (“Crediting the cost of an expensive vehicle against [Grady]’s obligations would effectively encourage people in [Grady]’s situation to spend extravagantly.”). Seglund also admitted that he rejected offers by Kestra to settle for approximately one-quarter of the original Award, financed by monthly payments that were less than his car payments. Tr. 100-01.

³¹ Tr. 52.

³² *DiPietro*, 2016 SEC LEXIS 1036, at *19 (rejecting respondent’s inability-to-pay defense when respondent conceded to making discretionary payments for (1) his adult children’s student loans; (2) monthly gifts to his adult child to supplement his income; (3) insurance premiums on an adult child’s car; and (4) more than minimum amounts due on credit cards instead of paying down the balance of the arbitration award).

³³ Tr. 38-40; JX-60, at 3.

³⁴ CX-1.

³⁵ Tr. 43-45.

³⁶ Tr. 45-46.

³⁷ Tr. 88.

\$37,000.³⁸ Yet Seglund made no attempt to sell or borrow against the equity of the residence to satisfy the Award.³⁹

Second, Seglund owns an investment advisory business, which he valued at between \$50,000 and \$100,000.⁴⁰ As with the equity interest in his home, Seglund admitted that he made no effort to sell his advisory business.⁴¹ Seglund claimed at the hearing that he would lose income if he sold his business.⁴² But he did not adequately explain why he could not obtain other employment after selling his business, either at a broker-dealer or another advisory firm.⁴³ Similarly, he conceded that it was difficult but still possible to merge his business with another firm.⁴⁴ It is therefore appropriate to consider his advisory business a valuable asset when determining whether he can make a meaningful payment toward the Award.⁴⁵

D. Seglund Provided Incomplete Documentation and Unreliable Information Concerning His Financial Condition

Seglund failed to prove his defense for two other reasons. First, he failed to produce certain documents necessary to prove his defense. In addition, he provided unreliable information about his financial condition.

1. Missing Documents

On December 4, 2019, this office issued a Notice of Hearing and Case Management and Scheduling Order (“CMSO”) in this case. It was served on Seglund by email and mailed to his residence. The CMSO disclosed that Seglund bore the burden of proving a bona fide inability to pay the Award.⁴⁶ It attached a blank Statement of Financial Condition form (“the Form”), and instructed Seglund to complete the Form and provide it to Enforcement, along with “all requested supporting documents and any other documents that he claims support the defense.”⁴⁷ The CMSO also warned Seglund, in bold font and on the front page, of the severe consequences of failing to provide supporting documents for his defense:

³⁸ Tr. 92-93, 101.

³⁹ Tr. 48.

⁴⁰ Tr. 53.

⁴¹ Tr. 56.

⁴² Tr. 54.

⁴³ Tr. 54-55.

⁴⁴ Tr. 56-57.

⁴⁵ See *Grady*, 2017 FINRA Discip. LEXIS 51, at *16-17 (rejecting inability-to-pay defense when respondent failed to demonstrate he could not sell his business or continue to work post-sale).

⁴⁶ CMSO at 1.

⁴⁷ *Id.*

Respondent’s failure to fully complete this form, to provide all requested supporting documents, to respond to Enforcement’s requests for additional information or documents . . . may result in a finding that Respondent has abandoned his defense, and could result in a summary suspension of his FINRA license for failure to comply with the award.

In section III of the Form, under a heading entitled “Other Information,” Seglund was asked to attach, to his completed Form, his federal and state income tax returns for the past two years. Despite repeated requests by Enforcement,⁴⁸ Seglund never provided them.⁴⁹ At one point, Seglund provided to Enforcement blank portions of a federal tax return for 2017 and 2018.⁵⁰ Shortly before the hearing, Seglund provided to Enforcement 2019 federal and state tax returns that he had not filed.⁵¹ These unfiled tax returns had several significant errors, however. He reported two substantially different amounts for his adjusted gross income in his federal return, and a third different amount in his state return.⁵² In short, Seglund produced no reliable documents about the income he declared to the government in 2017, 2018, and 2019.

2. Unreliable Information

In addition, at the hearing, Seglund failed to corroborate his assets, liabilities, expenses, and income. He conceded that the assets he listed in his Form were understated by more than \$100,000.⁵³ He also admitted that his net worth was actually between \$76,000 and \$131,000, not the negative amount he listed on the Form.⁵⁴ Further, Seglund failed to provide any documentation that he had paid income taxes, yet listed \$1,000 per month for taxes as an expense on his Form.⁵⁵ He also listed, as a monthly expense, a \$1,000 payment on a lien from the State of Oregon, but admitted that he has never made a payment for the lien “because it’s way out of line as far as what I actually owe.”⁵⁶ In fact, Seglund testified, he estimated the actual tax liability as \$1,000 *total*, not \$1,000 *per month*.⁵⁷ As Seglund acknowledged at the hearing, the documents he provided to corroborate his inability-to-pay defense actually showed a small *positive* monthly

⁴⁸ JX-9 (January 17, 2020), JX-11 (January 22, 2020), JX-14 (January 24, 2020), JX-24 (January 30, 2020), JX-27 (January 31, 2020), JX-29 (February 4, 2020).

⁴⁹ Seglund also failed to provide multiple other financial documents requested by Enforcement and the CMSO. JX-29; Tr. 84-85.

⁵⁰ JX-29, at 1.

⁵¹ JX-67.

⁵² JX-67, at 1, 3, 15.

⁵³ Tr. 60.

⁵⁴ Tr. 64.

⁵⁵ Tr. 73. In fact, according to the documents Seglund submitted to Enforcement, his only tax payment of any kind was a \$170 car tax paid to the Oregon Department of Revenue in December 2019. Tr. 73-74; JX-56, at 41.

⁵⁶ Tr. 77.

⁵⁷ Tr. 77-78.

cash flow that would have been a *substantial* positive monthly cash flow if he had not chosen to purchase two cars after the Award.⁵⁸

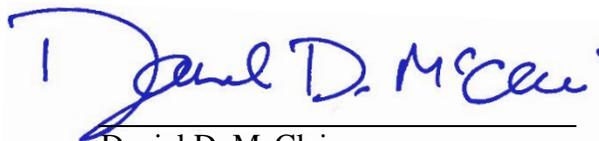
III. Conclusion

Seglund has not paid any portion of the Award. He also failed to establish any of the defenses permitted by FINRA rules or case law. Specifically, he failed to prove the defense he asserted, a bona fide inability to pay.

“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.”⁵⁹ Seglund did not honor the Award entered against him, undermining the arbitration process. “Conditionally suspending [Seglund] from association with FINRA members gives him an incentive to pay the Award. And inducing him to pay the award through suspension of his [FINRA] membership furthers the public interest and the protection of investors.”⁶⁰

Accordingly, pursuant to Article VI, Section 3 of FINRA’s By-Laws and Rule 9559(n), Seglund is suspended from associating with any FINRA member in any capacity, effective as of the date of this Decision. The suspension shall continue until Seglund provides documentary evidence to FINRA showing that (1) the Award has been paid in full; (2) he and the claimant have agreed to settle the matter (and he is in compliance with the settlement terms); or (3) he has a petition pending in a United States Bankruptcy Court, or the debt has been discharged by a United States Bankruptcy Court.

In addition, Seglund is ordered to pay costs of \$2,502.67, which includes an administrative fee of \$750 and the hearing transcript cost of \$1,752.67.⁶¹ The costs are due upon the issuance of this Decision.



Daniel D. McClain
Hearing Officer

⁵⁸ Tr. 80-81.

⁵⁹Michael David Schwartz, Exchange Act Release No. 81784, 2017 SEC LEXIS 3111, at *18 (Sept. 29, 2017) (internal quotation marks omitted) (quoting *Gallagher*, 2003 SEC LEXIS 599, at *15).

⁶⁰ *Id.*

⁶¹ I have considered all of the arguments made by the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

Copies to:

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