

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

REGULATORY OPERATIONS,

Complainant,

v.

KEITH PATRICK SEQUEIRA
(CRD No. 3127528),

Respondent.

Expedited Proceeding
No. ARB160035

STAR No. 20160510627

Hearing Officer–MC

**EXPEDITED DECISION FOLLOWING
REMAND**

Date: December 21, 2017

Respondent is suspended from associating in any capacity with any FINRA member firm for his failure to pay an arbitration award. The suspension shall continue until he provides sufficient documentary evidence to FINRA showing that: (1) he paid the award in full; (2) he entered into a written settlement agreement with Wells Fargo, and he is current in his obligations under the terms of the settlement agreement; or (3) he filed a bankruptcy petition in U. S. Bankruptcy Court pursuant to Title 11 of the United States Bankruptcy Code and the case is pending before the Bankruptcy Court (or the Bankruptcy Court has discharged the debt representing the award).

Appearances

For Complainant: Sora Lee, Esq. and Ann-Marie Mason, Esq., Regulatory Operations, Financial Industry Regulatory Authority.

For Respondent: Pro se.

DECISION

I. Background

In August 2014, a FINRA arbitration panel entered an award against Respondent Keith Patrick Sequeira. He filed a state court action to vacate the award. The court subsequently dismissed the action. Sequeira did not pay the award. Consequently, FINRA's Office of Dispute Resolution sent a Notice of Suspension to Sequeira informing him that he would be suspended from associating with any FINRA member firm for his failure to pay the award. Sequeira stayed the suspension by filing a request for an expedited hearing under FINRA Rule 9554 with the Office of Hearing Officers.

In the hearing request, Sequeira contended that FINRA could not suspend him because his motion to vacate the award had not been adjudicated on the merits by the state court. Regulatory Operations moved to dismiss Sequeira's request because it did not assert a valid defense under Rule 9554. The Hearing Officer denied the motion and held the expedited hearing on September 15, 2016.

As described below, the Hearing Officer concluded that Sequeira failed to establish a valid defense to the Notice of Suspension.¹ The Hearing Officer also concluded that in the tactics he had employed to avoid paying the award, Sequeira had acted unethically in violation of just and equitable principles of trade. In a written decision, the Hearing Officer suspended Sequeira from associating with any FINRA member firm in any capacity.

The decision imposed additional sanctions. The Hearing Officer ordered that the suspension would convert to a bar unless, within 30 days of the suspension, Sequeira provided documentary evidence to Regulatory Operations showing that he: (1) paid the award in full; (2) entered into a written settlement agreement with Wells Fargo, and was current in his obligations under the terms of the settlement agreement; or (3) filed a bankruptcy petition in U.S. Bankruptcy Court pursuant to Title 11 of the United States Bankruptcy Code and that the case was pending before the Bankruptcy Court (or the Bankruptcy Court discharged the debt representing the award). Finally, the Hearing Officer ordered Sequeira to pay costs of the hearing, including the transcript cost and an administrative fee.²

II. The Appeal and Remand

Sequeira appealed the Hearing Officer's decision to the Securities and Exchange Commission. The Commission undertook its review of the decision under Section 19(d) of the Securities Exchange Act of 1934, which authorizes the Commission to review a final disciplinary sanction or bar imposed by a self-regulatory organization. The Commission remanded the case to the Office of Hearing Officers for clarification of the nature of the sanction being imposed on Sequeira. The Commission found clarification necessary to enable it to choose the appropriate standard of review to apply in this case.

At the outset, the Commission noted that the applicable standard of review depends on whether the final sanction the Hearing Officer imposed is disciplinary or non-disciplinary in nature. If it is disciplinary, the Commission applies the standard of review set forth in Exchange Act Section 19(e), with four elements. Section 19(e) requires the Commission to consider whether: (1) the barred person committed the misconduct as found by the self-regulatory

¹ For Sequeira to defend the Notice of Suspension successfully required him to demonstrate that he had: paid the arbitration award in full; entered into a fully-executed written settlement agreement resolving the claim, and was current in meeting his obligations under it; filed a timely action to vacate or modify the award and it had not been denied; or filed a bankruptcy petition and the award had not been deemed non-dischargeable. *See* NASD Notice to Members 00-55, 2000 NASD LEXIS 63, at *2 (Aug. 10, 2000).

² *Regulatory Operations v. Sequeira*, Expedited Proceeding No. ARB160035 at 8-9 (OHO Nov. 18, 2016), available at http://www.finra.org/sites/default/files/OHO_Sequeira_ARB160035_111816_0.pdf.

organization; (2) the misconduct violated the statutes or rules the self-regulatory organization specified; (3) the self-regulatory organization applied the governing statutes and rules consistently with the purposes of the Exchange Act; and (4) the sanction places a burden on competition that is unnecessary or inconsistent with the purposes of the Exchange Act, or that is excessive or oppressive. If the sanction is non-disciplinary in nature, the Commission applies the standard of review set forth in Exchange Act Section 19(f). Section 19(f)'s standard of review is similar, but does not require the Commission to consider whether the sanction is excessive or oppressive.³

The Commission stated that the Hearing Officer, by ordering that Sequeira's suspension would automatically convert into a bar unless he complied with the enumerated conditions, appeared "to impose sanctions on a basis inconsistent with the rationale" of prior decisions in expedited proceedings such as this.⁴ The Commission found that the Hearing Officer did not sufficiently explain the nature of the sanctions. The Commission observed that imposing a suspension that could convert to a bar, and finding Sequeira's conduct "inconsistent with just and equitable principles of trade," suggested but did not clearly hold that the sanctions were disciplinary in nature.⁵ The Commission therefore remanded the case, directing the Office of Hearing Officers to clarify and "further explain the nature of and basis for the sanction imposed."⁶

The purpose of this decision is to make clear that the sanction imposed is not disciplinary in nature, but, consistent with other expedited proceedings instituted under FINRA Rule 9554, is "designed to influence Sequeira to comply with the arbitration award."⁷ Therefore, the sanction is modified as set forth below.

³ Section 19(e) requires consideration of "whether (1) the disciplined person 'has engaged in such acts or practices, or has omitted such acts, as the [SRO] has found him to have engaged in or omitted;' (2) 'such acts or practices, or omissions to act,' violate the applicable statutes or rules 'specified in the [SRO's] determination'; and (3) 'such provisions are, and were applied in a manner, consistent with the purposes of' the Exchange Act." In addition, Section 19(e) requires consideration of whether the disciplinary sanction imposes an unnecessary or inappropriate burden on competition or "is excessive or oppressive." *Keith Patrick Sequeira*, Exchange Act Release No. 81786, 2017 SEC LEXIS 3105, at *8-14 (Sept. 29, 2017) (citing 15 U.S.C. §78s(e)(2)). Section 19(f)'s standard of review differs in that it does not require consideration of whether a sanction is excessive or oppressive. *Id.* (citing 15 U.S.C. § 78s(f)).

⁴ *Sequeira*, 2017 SEC LEXIS 3105, at *16-17.

⁵ *Id.*, at *17-18.

⁶ *Id.*, at *19.

⁷ *Id.*, at *17.

III. Findings of Fact

A. Keith Patrick Sequeira

Sequeira was a registered broker with FINRA member firm Wells Fargo Advisors, LLC from 1998 until 2010.⁸ Wells Fargo discharged Sequeira in August 2010. Following his discharge, Sequeira associated with another FINRA member firm until November 18, 2016, when in this expedited proceeding the Hearing Officer suspended him from associating with any FINRA member firm in any capacity.⁹

B. Sequeira's Motion to Vacate the Arbitration Award

The underlying arbitration award giving rise to this expedited proceeding was entered against Sequeira on August 5, 2014.¹⁰ The arbitration panel ordered Sequeira to pay Wells Fargo compensatory damages in the amount of \$47,462.56 plus interest at the rate of 2.45% per annum from August 25, 2010, until paid; attorney's fees in the amount of \$30,000; and filing fees in the amount of \$1,000.

FINRA sent Sequeira a copy of the arbitrators' decision by letter dated August 5, 2014.¹¹ The letter informed Sequeira that he was obligated to pay the award in full by September 4, 2014.

Sequeira did not pay the arbitration award. Instead, on September 4, 2014, he filed a multi-count civil action against Wells Fargo, its attorneys, and FINRA in the Monmouth County Superior Court of New Jersey.¹² Sequeira's complaint sought to vacate the arbitration and recover damages and other relief for various alleged wrongful acts and omissions. However, Sequeira did not properly serve the complaint on the defendants. Thus, on March 27, 2015, the New Jersey Superior Court dismissed the complaint and marked the case closed.¹³

Sequeira then filed a motion for reconsideration, and asked the court to reinstate the complaint to the active trial list. The court denied this motion on July 10, 2015.¹⁴ The court

⁸ CX-1, at 4. (Complainant's exhibits are labeled "CX"; Respondent's exhibits are labeled "RX"; and the parties' joint exhibits are labeled "JX."). Sequeira was hired by Prudential Securities Incorporated (Prudential) in 1998 as a financial advisor. In 2003, Prudential merged with Wachovia Securities, LLC (Wachovia). Wachovia later changed its name to Wells Fargo.

⁹ *Sequeira*, ARB160035, at 8–9.

¹⁰ *Wells Fargo Advisors, LLC v. Sequeira*, No. 12-01869, 2014 FINRA Arb. LEXIS 698 (Aug. 5, 2014); JX-2.

¹¹ JX-4.

¹² *Keith P. Sequeira v. Wells Fargo Advisors, LLC*, Docket No. MON-L-003393-14. JX-6.

¹³ JX-10. On April 10, 2015, the court reopened the case to consider Sequeira's March 24, 2015 motion for an extension of time to file and serve an amended complaint, which the court had not addressed before it dismissed the complaint. JX-11. The court denied the motion and noted "this matter remains dismissed." JX-12, at 2.

¹⁴ JX-14.

recited the procedural history of the case and held that Sequeira had not provided proof of personal service of the complaint on the defendants as required.¹⁵ The court further noted that the case “remains closed.”¹⁶

For the next nearly 14 months, Sequeira took no further action. Then, two years after the arbitration award was issued, and shortly after Wells Fargo advised FINRA that he had not paid the award, Sequeira attempted to perfect service of process on Wells Fargo.¹⁷ On September 8, 2016, he filed a new motion with the New Jersey court again seeking to have the case reinstated to the active trial list.¹⁸ As of the date of the hearing in this expedited proceeding, the New Jersey Superior Court had not ruled on Sequeira’s motion.¹⁹

IV. Conclusions of Law

Article VI, Section 3(b) of FINRA’s By-Laws provides in pertinent part that FINRA may, upon written notice, suspend the registration of an associated person who fails to comply with an arbitration award when the person has not made a timely motion to vacate or modify the award, or when such a motion has been denied.

In the expedited hearing of this matter, Sequeira conceded that the New Jersey court dismissed the suit he filed to vacate the award. Nonetheless, he insisted that the dismissal did not adjudicate the merits of his claims, and therefore the suit he had filed was still “pending” before the court.²⁰

A. The Applicable Law

FINRA’s arbitration rules are “designed to provide a mechanism for the speedy resolution of disputes among members, their employees, and the public.”²¹ An essential element of FINRA’s arbitration process is the requirement that arbitration awards be honored promptly.²²

¹⁵ JX-14, at 5.

¹⁶ JX-14, at 7.

¹⁷ See RX-4 and RX-7.

¹⁸ CX-2.

¹⁹ As of October 11, 2016, the New Jersey Superior Court’s public access Internet site reflected that the court denied Sequeira’s motion on September 30, 2016.

²⁰ Brief in Support of Respondent’s Pre-Hearing Submissions, at 12–13.

²¹ *Regulatory Operations v. DiPietro*, Expedited Proceeding No. ARB140066, 2015 FINRA Discip. LEXIS 24, at *5 (OHO June 8, 2015) (quoting *Herbert Garrett Frey*, 53 S.E.C. 146, 153 (1997)), *appeal dismissed*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036 (Mar. 17, 2016).

²² See *William J. Gallagher*, 56 S.E.C. 163, 171 (2003) (“Honoring arbitration awards is essential to the functioning of the NASD arbitration system.”); *Richard R. Pendleton*, 53 S.E.C. 675, 679 (1998) (“[w]e have repeatedly stated that the NASD arbitration system provides a speedy mechanism for settling disputes, which the NASD may foster by taking prompt action against those who fail . . . to honor arbitration awards”); NASD Notice to Members 04-57, 2004 NASD LEXIS 90 (Aug. 2004); NASD Notice to Members 00-55.

Rule 13904(j) of FINRA’s Code of Arbitration Procedure for Industry Disputes requires that “[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.” When a court denies a motion to vacate or modify an award, it must be paid immediately, absent a court order staying compliance with the award.²³

To ensure the prompt payment of arbitration awards, FINRA adopted Rule 9554. It allows for expedited suspension proceedings against members, associated persons, and formerly associated persons who fail to timely pay arbitration awards.²⁴ As FINRA stated in a regulatory notice, “FINRA’s expedited proceedings under Rule 9554 use the leverage of a potential suspension to help ensure that a firm or an associated person promptly pays a valid arbitration award.”²⁵ FINRA Rule 9554(a) specifically provides:

If a member, person associated with a member or person subject to FINRA’s jurisdiction fails to comply with an arbitration award . . . FINRA staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member.

FINRA Rule 9554(a) implements Article VI, Section 3(b) of the FINRA By-Laws, which provides for the suspension of any associated person who does not pay an arbitration award.

B. Sequeira’s Defense is Without Merit

As noted above, Sequeira reasoned that his request to vacate the award remained pending before the court. The Hearing Officer rejected this argument and concluded that Sequeira must honor his obligation to pay the award.

Article VI, Section 3 of FINRA’s By-Laws and FINRA’s rules provide a strictly limited exception to the requirement that arbitration awards be paid promptly upon receipt of the award. Rule 13904(j) provides that all monetary awards shall be paid within 30 days unless a motion to vacate has been filed with a court of competent jurisdiction. Where a motion is properly and timely filed, the payment obligation is suspended while the motion is pending before the court. But, as noted above, once the court denies the motion without an order staying compliance with the award, and the award is no longer subject to a bona fide challenge, payment of the award is due immediately.²⁶

²³ NASD Notice to Members 00-55, at *6 n.5.

²⁴ *Richard R. Pendleton*, 53 S.E.C. 675, 679 (1998) (“the NASD arbitration system provides a speedy mechanism for settling disputes, which the NASD may foster by taking prompt action against those who fail . . . to honor arbitration awards”).

²⁵ FINRA Regulatory Notice 10-31, 2010 FINRA LEXIS 58, at *3 (June 2010).

²⁶ *Dep’t of Enforcement v. LH Ross & Co.*, No. CAF040042, 2004 NASD Discip. LEXIS 57, at *11–12 (OHO Dec. 15, 2004). *See* Notice to Members 00-55, at *6 n.5. As an alternative to a court order staying compliance with the award, FINRA also permits posting a supersedeas bond in an amount acceptable to FINRA.

This is true whether the court dismisses the motion to vacate on substantive or procedural grounds. This construction of Article VI, Section 3, and FINRA's rules, is consistent with FINRA's goal of fostering an effective and speedy dispute resolution system.²⁷

C. Sequeira's Additional Defense

In the expedited hearing, Sequeira filed papers asserting an additional defense. He claimed that FINRA lacks authority under its "Constitution, By-Laws, or Rules" to take any action against him based upon the "self-serving assertions of an attorney who . . . no longer represents a party in the subject arbitration."²⁸ His complaint was that FINRA instituted the expedited proceeding at the request of the attorney who represented Wells Fargo in the arbitration, but the attorney did not enter an appearance in the proceeding and refused to accept service of papers on Wells Fargo's behalf, claiming he no longer represented the firm.²⁹ Although Sequeira's meaning was unclear, he seemed to be contending that Wells Fargo (or possibly its attorney) was a necessary party to this expedited proceeding. This argument is without merit. FINRA's authority to institute a regulatory proceeding to suspend an individual who fails to honor an arbitration award is based on Article VI, Section 3(b) of FINRA's By-Laws and FINRA Rule 9554. Under Rule 9554, once FINRA initiates an expedited proceeding, it is the respondent's burden to prove one of the permitted defenses to the Notice of Suspension. An arbitration claimant is not a necessary party.

V. Conclusion

In sum, the arbitration award became final when, on March 27, 2015, the New Jersey Superior Court dismissed Sequeira's complaint seeking to have the award vacated, and payment in full was then immediately due under FINRA's rules.

VI. Order

Based on the above findings of fact and conclusions of law, and under Article VI, Section 3(b) of FINRA's By-Laws and FINRA Rule 9559(n), Respondent Keith Patrick Sequeira is suspended from associating with any FINRA member firm in any capacity, effective immediately. The suspension shall continue until Sequeira provides sufficient documentary evidence to FINRA Regulatory Operations showing that he: (1) paid the award in full; (2) entered into a written settlement agreement with Wells Fargo, and is current in his obligations under the terms of the settlement agreement; or (3) filed a bankruptcy petition in U.S. Bankruptcy Court pursuant to Title 11 of the United States Bankruptcy Code and the case is

²⁷ See *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *25 n.15 (NAC June 2, 2000) ("The purpose of the arbitration system is 'to provide speedy resolution of disputes among members, their employees, and the public.'") (quoting *James M. Bowen*, 51 S.E.C. 1152, 1153 (1994)).

²⁸ JX-1, at 3.

²⁹ See JX-7; RX-4.

pending before the Bankruptcy Court (or the Bankruptcy Court has discharged the debt representing the award).

Sequeira is also ordered to pay hearing costs of \$1,294, which include an administrative fee of \$750 and hearing transcript costs of \$544.³⁰ These costs are due and payable immediately.



Matthew Campbell
Hearing Officer

Copies to:
Keith Patrick Sequeira (via overnight courier and email)
Sora Lee, Esq. (via email)
Meredith MacVicar, Esq. (via email)
Ann-Marie Mason, Esq. (via email)

³⁰ The Hearing Officer has considered all 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.