

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

REGULATORY OPERATIONS,

Complainant,

v.

FAIRBRIDGE CAPITAL MARKETS  
(CRD No. 103818),

Respondent.

Expedited Proceeding  
No. ARB160012

STAR No. 20160494648

Hearing Officer – DRS

August 5, 2016

**Respondent’s FINRA membership is suspended for its failure to pay an arbitration award.**

**Appearances**

For the Complainant: Ann-Marie Mason, Esq., Meredith MacVicar, Esq., and Matthew Baskir, Esq., Department of Regulatory Operations, Financial Industry Regulatory Authority.

For the Respondent: Eduardo Prado, President, Fairbridge Capital Markets.

**DECISION**

**I. Introduction**

On March 14, 2016, FINRA’s Office of Dispute Resolution notified Respondent Fairbridge Capital Markets (“Fairbridge”) that its FINRA membership would be suspended effective April 4, 2016, because it had failed to pay the arbitration award entered on February 1, 2016, in the case of *Carlos Juan Miranda v. Fairbridge Capital Markets*, Case No. 15-01948.<sup>1</sup>

Fairbridge timely filed a request for a hearing.<sup>2</sup> Fairbridge asserted that it had “provided evidence of satisfying the award yet Mr. Miranda is disputing such.”<sup>3</sup>

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<sup>1</sup> Complainant’s Exhibit (“CX”) 1.

<sup>2</sup> CX-7. The timely request for a hearing stayed the effectiveness of the Suspension Notice under Rule 9559(c).

<sup>3</sup> *Id.*

Following receipt of the hearing request, the Hearing Officer issued an order scheduling the hearing. The Hearing Officer also ordered Fairbridge to give Regulatory Operations all of the financial information Fairbridge needed to support its defense.<sup>4</sup> Fairbridge provided documents to Regulatory Operations on April 18, 2016. But Regulatory Operations contended that the documents did not evidence Fairbridge's payment of the arbitration award, or any other permitted defense to the Suspension Notice under Rule 9554. Thus, Regulatory Operations moved to dismiss the case. The Hearing Officer denied the motion.<sup>5</sup>

On May 2, 2016, the parties participated in a pre-hearing conference before the Hearing Officer, during which Fairbridge more fully explained the theory of its defense. Eduardo Prado, Fairbridge's president and chief executive officer, explained that he intended to prove that Fairbridge had paid (or had otherwise satisfied) the arbitration award.<sup>6</sup> Prado contended that payment of the award is evidenced by two documents: (1) a promissory note between Fairbridge's parent company, Fairbridge Capital Partners LLC ("Fairbridge Partners"),<sup>7</sup> and the arbitration claimant in the principal amount of \$39,375 dated April 2, 2015 (approximately 10 months before the arbitration award); and (2) a wire transfer of \$2,625 made on April 1, 2016. Prado contended that the unpaid promissory note and wire transfer constitute "payment and satisfaction" of the arbitration award under California law.<sup>8</sup>

The hearing was held by telephone on May 20, 2016.<sup>9</sup>

The Hearing Officer concludes that Fairbridge has not paid the arbitration award. Thus, Fairbridge is suspended from FINRA membership. The suspension will become effective upon issuance of this decision. The suspension shall become an expulsion if Fairbridge does not pay the arbitration award in full within 14 business days after the date of this decision.

## **II. Findings of Fact**

Carlos Juan Miranda was formerly a registered broker employed by Fairbridge, a FINRA member firm. Miranda resigned from Fairbridge in June 2015 because the firm owed him \$39,000 in unpaid commissions.<sup>10</sup>

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<sup>4</sup> Order Setting Hr'g and Pre-Hr'g Schedule (Apr. 5, 2016).

<sup>5</sup> Order Den. Mot. to Dismiss and Den. Req. to Deem Notice of Suspension Final FINRA Action (Apr. 29, 2016).

<sup>6</sup> Pre-Hr'g Tr. 13.

<sup>7</sup> Fairbridge Partners is the parent company of Respondent Fairbridge.

<sup>8</sup> *Id.* at 15.

<sup>9</sup> The hearing transcript is cited as, "Hr'g Tr." Regulatory Operations' exhibits are labeled "CX" Fairbridge's exhibits are labeled "RX".

On July 30, 2015, Miranda filed an arbitration claim against Fairbridge with FINRA Dispute Resolution (FINRA Arbitration No. 15-01948).<sup>11</sup> The Statement of Claim alleged that Fairbridge had given Miranda several commission checks that were dishonored due to insufficient funds. Miranda requested an award of damages in the total sum of \$42,000, which included \$39,373.43 of unpaid commissions and \$2,626.57 of interest and expenses. On February 1, 2016, the arbitrator rendered an award in favor of Miranda and against Fairbridge in the amount of \$42,600 (“the Award”).<sup>12</sup>

On March 31, 2016, Fairbridge wired \$2,625 to Miranda in partial payment of the Award.<sup>13</sup> Fairbridge did not make any other payments after the date of the Award. Fairbridge also did not institute a court proceeding to vacate the Award. Accordingly, on March 14, 2016, FINRA’s Office of Dispute Resolution issued a notice of suspension to the firm pursuant to Rule 9554.<sup>14</sup>

### **III. Discussion**

FINRA’s arbitration process and the Code of Arbitration Procedure are designed “to provide a mechanism for the speedy resolution of disputes among members, their employees, and the public.”<sup>15</sup> Under Arbitration Rule 13904(j), awards must be paid in full within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.

To ensure compliance with arbitration awards, FINRA promulgated rules to allow for expedited suspension proceedings against members, associated persons, and formerly associated persons for failing to abide by such awards.<sup>16</sup>

A respondent in an expedited suspension proceeding under FINRA Rule 9554 may assert certain limited defenses, including that the award has been paid in full.<sup>17</sup> Here, Fairbridge

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<sup>10</sup> Hr’g Tr. 104.

<sup>11</sup> CX-4.

<sup>12</sup> CX-1. The Award includes reimbursement of the \$600 filing fee Miranda had paid to FINRA Dispute Resolution.

<sup>13</sup> CX-8, at 6.

<sup>14</sup> CX-6.

<sup>15</sup> *Herbert Garrett Frey*, 53 S.E.C. 146, 153 (1997); *Eric M. Diehm*, 51 S.E.C. 938, 939 (1994).

<sup>16</sup> FINRA By-Laws, Article VI, Section 3; FINRA Rule 9550, *et seq.* See also *Richard R. Pendleton*, 53 S.E.C. 675, 679 (1998) (“We 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 either to honor arbitration awards or to seek to have them set aside.”); NASD Notice to Members 04-57, 2004 NASD LEXIS 90 (August 2004); NASD Notice to Members 00-55, 2000 NASD LEXIS 63 (August 2000).

contends that it paid the Award or satisfied it in full because Fairbridge's parent company, Fairbridge Partners, had given Miranda a \$39,375 promissory note dated April 2, 2015<sup>18</sup> (about ten months before the date of the Award), representing the amount Fairbridge owed Miranda, and Fairbridge had wired Miranda \$2,625. At the hearing, Fairbridge also argued that it should receive credit for a \$600 payment it claims it made to FINRA Dispute Resolution to reimburse the arbitration filing fee.<sup>19</sup> However, Fairbridge produced no evidence that it made this payment.

The Hearing Officer rejects Fairbridge's arguments. First, Fairbridge had the opportunity to present its payment defense in the underlying arbitration, which it elected not to do.<sup>20</sup> Prado explained that the arbitration was about the commissions Fairbridge owed Miranda, not the promissory note.<sup>21</sup> Having failed to assert this defense in the arbitration, Fairbridge cannot now collaterally attack the Award.<sup>22</sup>

Second, Fairbridge's argument that FINRA lacks jurisdiction<sup>23</sup> to enforce the promissory note between its parent company and Miranda also is misplaced. Fairbridge argues that Miranda is obligated under the terms of the promissory note to bring a civil action against Fairbridge Partners in Orange County, California.<sup>24</sup> But this is not a collection proceeding to enforce the promissory note. This is an Expedited Proceeding under FINRA Rule 9554 to determine if Fairbridge should be suspended or expelled because it failed to timely pay the Award. The fact that Fairbridge Partners defaulted on the payment terms under the promissory note dated April 2, 2015, has no bearing on this determination. Fairbridge Partners is not a FINRA member firm, and it was not a party to the underlying FINRA arbitration that gave rise to the Award in question. Miranda may have a valid claim against Fairbridge Partners under the promissory note,

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<sup>17</sup> FINRA By-Laws, Article VI, Section 3; NASD Notice to Members 00-55, 2000 NASD LEXIS 63, at \*5; *Dep't of Enforcement v. Respondent*, FINRA Expedited Proceeding No. ARB060031, at 4 (Apr. 16, 2007), [http://www.finra.org/sites/default/files/OHODDecision/p038228\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHODDecision/p038228_0_0.pdf).

<sup>18</sup> RX-3. In March 2016, Fairbridge Partners sent Miranda two checks in payment of the promissory note—one for \$39,375 and the other for \$2,625. Both checks were returned because Fairbridge Partners placed a stop payment on them and the bank then froze the account. CX-5; Hr'g Tr. 58–62.

<sup>19</sup> Hr'g Tr. 37–40, 74–77.

<sup>20</sup> Hr'g Tr. 16.

<sup>21</sup> *Id.*

<sup>22</sup> *Regulatory Operations v. Dipietro*, Expedited Proceeding No. ARB140066, 2015 FINRA Discip. LEXIS 37, at \*6–7 (June 8, 2015) (“A respondent in an expedited proceeding may not attack the merits of the underlying arbitration award. To permit such collateral attacks would subvert FINRA's procedures, which are designed to promote prompt payment of arbitration awards.”).

<sup>23</sup> *See* Hr'g Tr. 16.

<sup>24</sup> Hr'g Tr. 28–29.

but that is not an issue before the Hearing Officer.<sup>25</sup> In conclusion, the Hearing Officer finds that Respondent failed to establish any of the defenses permitted by the FINRA rules or case law, including payment of the Award.

#### **IV. Order**

Fairbridge Capital Markets is suspended from FINRA membership under Article VI, Section 3 of FINRA's By-Laws and Rule 9559(n). The suspension is effective upon issuance of this decision. The suspension shall automatically convert to an expulsion at the close of business on August 26, 2016, unless before that date Fairbridge provides FINRA with written documentary evidence that: (1) it has paid the Award in full; (2) it has entered into a fully-executed, written settlement agreement with the claimant; (3) the Award has been vacated or modified by a court of competent jurisdiction; or (4) it has filed a petition in a United States Bankruptcy Court and the debt has been discharged by such court.

Fairbridge also shall pay to FINRA the costs of this proceeding in the sum of \$1,778.61, which include an administrative fee of \$750 and hearing transcript costs of \$1,028.61.<sup>26</sup> The costs shall be due immediately upon the issuance of this decision.

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David R. Sonnenberg  
Hearing Officer

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<sup>25</sup> The limited evidence on this point shows that Fairbridge and Fairbridge Partners are separately indebted to Miranda.

<sup>26</sup> The Hearing Officer has 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.