

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

REGULATORY OPERATIONS,

Complainant,

v.

TIMOTHY STEPHEN FANNIN  
(CRD No. 4906131),

Respondent.

Expedited Proceeding  
No. ARB170007

STAR No. 20170532031

Hearing Officer - MAD

**EXPEDITED DECISION**

August 25, 2017

**Respondent failed to pay an arbitration award and failed to demonstrate that he has a bona fide inability to pay the award. The Hearing Officer suspends Respondent from associating with any member firm in any capacity.**

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

For the Respondent: *Pro se.*

**DECISION**

**I. Introduction**

UBS Credit Corp. and UBS Financial Services Inc. (collectively, “UBS”) filed an arbitration claim against Respondent Timothy Stephen Fannin (“Fannin”) with FINRA Dispute Resolution (FINRA Arbitration No. 16-02365), stemming from three promissory notes Fannin received from UBS.<sup>1</sup> In late December 2016, a FINRA Dispute Resolution arbitration panel rendered an award in favor of UBS and against Fannin (“the Award”) in the approximate value of \$235,729, plus interest.<sup>2</sup> Fannin has made no payments to UBS; he contends that he is financially unable to do so.<sup>3</sup>

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

<sup>2</sup> Stipulations (“Stip.”) ¶ 1; CX-1. Fannin stipulates that, on or about December 23, 2016, he received notice of the Award and his obligation under FINRA Rules to pay the Award within 30 days. Stip. ¶ 2; CX-2; CX-3.

<sup>3</sup> Stip. ¶¶ 4-5; CX-7. Fannin has not filed for bankruptcy protection. Stip. ¶ 6. He has also not entered into a settlement with UBS to pay the Award. Stip. ¶ 7.

On February 1, 2017, FINRA’s Office of Dispute Resolution notified Fannin that his registration would be suspended effective February 22, 2017, because of his failure to pay the Award.<sup>4</sup> Fannin timely filed a request for a hearing and claimed a *bona fide* inability to pay the Award.<sup>5</sup>

On June 21, 2017, the parties participated in a telephone hearing before the Hearing Officer.<sup>6</sup> After reviewing the record, the Hearing Officer finds that Fannin failed to establish a *bona fide* inability to pay the Award. Accordingly, the Hearing Officer suspends Fannin from associating with any member firm in any capacity.

## **II. Findings of Fact and Conclusions of Law**

### **A. Fannin’s Employment History**

Fannin first entered the securities industry in 2003. Between November 2010 and January 2016, Fannin was associated in a registered capacity with UBS.<sup>7</sup> During the course of his employment with UBS, Fannin received three employee loans from UBS. On December 3, 2010, UBS provided Fannin with a loan in the amount of \$287,638. On March 15, 2011, UBS provided Fannin with a loan in the amount of \$86,335. And on February 20, 2013, UBS provided Fannin with a loan in the amount of \$112,359.<sup>8</sup> Fannin’s employment with UBS terminated on January 21, 2016.<sup>9</sup> At the time of his termination, the outstanding balance on Fannin’s loans was \$235,729.<sup>10</sup> On February 12, 2016, UBS filed a Form U5 terminating Fannin’s employment and

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<sup>4</sup> CX-5. Fannin stipulates that FINRA properly served him with the February 1, 2017 suspension notice. Stip. ¶ 3.

<sup>5</sup> CX-7; Stip. ¶ 4.

<sup>6</sup> The hearing transcript is cited “Tr.” followed by the page number. At the beginning of the hearing, the parties stipulated that all exhibits, Regulatory Operations exhibits CX-1—CX-38, and Fannin’s exhibit, RX-1, would be admitted. Tr. 10-11. At the conclusion of the hearing, CX-39 was also admitted. During the hearing, when Regulatory Operations began questioning Fannin about a particular exhibit, CX-14, Fannin objected to the exhibit. Tr. 88-89, 155-56. He requested that all exhibits be stricken other than a smaller set of 14 exhibits that were filed with the Office of Hearing Officers in connection with an earlier motion filed by Regulatory Operations. Tr. 77, 155-56. I overruled Fannin’s objection. I also find that Fannin’s assertion that he had not reviewed Regulatory Operations’ hearing exhibits is not credible. The prior hearing officer assigned to this case required Fannin to create a chart of his income and expenses with references to relevant exhibits. Fannin submitted RX-1. RX-1 contains citations to exhibits from the complete set of hearing exhibits filed by Regulatory Operations, indicating that Fannin not only received Regulatory Operations’ hearing exhibits but used them when making his chart.

<sup>7</sup> CX-6, at 4.

<sup>8</sup> CX-32, at 3-5.

<sup>9</sup> CX-32, at 6.

<sup>10</sup> CX-32, at 7.

noting that he had abandoned his job.<sup>11</sup> Fannin is not currently registered with a FINRA-licensed firm and has not been since his termination from UBS in January 2016.<sup>12</sup>

After leaving UBS, Fannin started Datamind Advisors, LLC (“Datamind”), an investment advisor, which is registered with the State of Florida.<sup>13</sup> Fannin is the 100% owner of Datamind.<sup>14</sup>

## **B. Inability to Pay Standard**

A respondent may assert certain limited defenses in an expedited suspension 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; and (5) the respondent has a bankruptcy petition pending in U.S. Bankruptcy Court, or a U.S. Bankruptcy Court has discharged the award.<sup>15</sup> A respondent may also assert a *bona fide* inability to pay the arbitration award.<sup>16</sup>

A respondent in an expedited proceeding may not attack the merits of the underlying arbitration award.<sup>17</sup> To permit such collateral attacks would subvert FINRA’s procedures, which are designed to promote prompt payment of arbitration awards.<sup>18</sup>

A respondent bears the burden of establishing a *bona fide* inability to pay.<sup>19</sup> 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.”<sup>20</sup> Furthermore, FINRA is entitled to make a searching inquiry into a respondent’s assertion of inability to pay.<sup>21</sup>

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<sup>11</sup> CX-34, at 2.

<sup>12</sup> CX-6; CX-34.

<sup>13</sup> CX-6, at 3.

<sup>14</sup> Stip ¶ 8.

<sup>15</sup> FINRA By-Laws, Article VI, Section 3; NASD Notice to Members 00-55, 2000 NASD LEXIS 63, at \*4; *Dep’t of Enforcement v. Respondent*, No. ARB060031, at 4-5 (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>16</sup> *William J. Gallagher*, 56 S.E.C. 163, 169 (Mar. 14, 2003); *Dep’t of Enforcement v. Respondent*, No. ARB060031, at 5.

<sup>17</sup> *Robert Tretiak*, 56 S.E.C. 209, 221 (2003) (citing *Herbert Garret Frey*, 53 S.E.C. 146, 150 (1997)).

<sup>18</sup> *Tretiak*, 56 S.E.C. at 221.

<sup>19</sup> *Gallagher*, 56 S.E.C. at 169; *Frey*, 53 S.E.C. at 151.

<sup>20</sup> *Bruce M. Zipper*, 51 S.E.C. 928, 931 (1993).

<sup>21</sup> *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.<sup>22</sup>

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 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.<sup>23</sup>

An inability-to-pay defense may be rejected when the evidence provided by a respondent is insufficient or incomplete.<sup>24</sup>

### **C. Fannin's Financial Condition**

Fannin made certain assertions regarding his financial status; however, he either did not have any records to support his assertions or his records contradicted his assertions. Throughout the hearing, Fannin was evasive when responding to questions about his finances. After carefully evaluating his testimony, I find him to be not credible and forthright. Specific examples of his lack of credibility are provided below.

#### **1. FINRA's Inquiries into Fannin's Financial Condition**

On February 13, 2017, Regulatory Operations requested that Fannin submit a detailed financial disclosure statement requiring him to respond to a set of questions and provide documentation to support each response ("Initial Request").<sup>25</sup> Regulatory Operations advised Fannin in the letter that he bore the burden of proving a *bona fide* inability to pay the Award. On March 8, 2017, Fannin submitted a partial response to Regulatory Operations.<sup>26</sup> His submission was incomplete. He failed to provide complete information and documents about his income in 2016 and 2017, his assets and his ability to borrow to contribute to payment of the Award.<sup>27</sup>

On March 15, 2017, Regulatory Operations sent Fannin a follow-up letter, requesting additional information and documents by March 22, 2017 ("the Follow-Up Letter").<sup>28</sup> The

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<sup>22</sup> *Dep't of Enforcement v. Respondent*, No. ARB010013, at 9 (Jan. 25, 2002), [http://www.finra.org/sites/default/files/OHODDecision/p006654\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHODDecision/p006654_0_0.pdf).

<sup>23</sup> *Dep't of Enforcement v. Respondent*, No. ARB010001, at 11 (July 26, 2001), [http://www.finra.org/sites/default/files/OHODDecision/p006655\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHODDecision/p006655_0_0.pdf); *Dep't of Enforcement v. Respondent*, No. ARB010032, at 3 (Mar. 15, 2002), [http://www.finra.org/sites/default/files/OHODDecision/p006652\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHODDecision/p006652_0_0.pdf).

<sup>24</sup> *Gallagher*, 56 S.E.C. at 169-70.

<sup>25</sup> CX-8.

<sup>26</sup> CX-9.

<sup>27</sup> CX-9.

<sup>28</sup> CX-10.

Follow-Up Letter requested production of documents not included in Fannin's March 8, 2017 response. After the Follow-Up Letter, Regulatory Operations sent subsequent emails to Fannin on March 22, 2017, March 24, 2017, and March 28, 2017, reiterating its request for the outstanding information and documents that Regulatory Operations required from him in order to assess his overall financial condition in light of his asserted defense of an inability to pay the Award.<sup>29</sup>

On March 28, 2017, Fannin filed a Motion for Continuance of Pre-Hearing Scheduling Dates and Hearing Date ("Respondent's Motion"), requesting a 30-day adjournment to "give Respondent time to prepare additional requested financial disclosure documents, continue to seek bankruptcy counsel, to request a home equity line of credit and to make a revised settlement offer to UBS."<sup>30</sup> The previous hearing officer granted Fannin's Motion on March 30, 2017 "[i]n an effort to enable Respondent to obtain additional credit and pursue settlement," and established April 10, 2017 as the final deadline for Fannin to provide a completed financial disclosure statement to Regulatory Operations (the "March 30 Order").

Since the March 30 Order, Regulatory Operations has sent follow-up requests to Fannin to produce specific documents and information to allow it to assess his financial condition and inability-to-pay defense, many of which repeat previous requests made in the Initial Request, Follow-Up Letter, and the March 2017 emails.

Fannin did not provide all of the requested information to Regulatory Operations.<sup>31</sup> Below I discuss Fannin's financial condition based on the information he provided. When doing so, I identify the areas where Fannin failed to provide supporting documentation for his inability to pay defense.

## **2. Fannin's Income**

Fannin's income for 2017 is difficult to determine. He claimed that Datamind's yearly revenue is approximately \$4,500.<sup>32</sup> The only supporting documentation for this was his Datamind checking account statements. His Datamind checking account reflects one deposit in the first quarter of 2017 in the amount of \$756.36, which increased his balance to \$1,820.41 as of March 31, 2017.<sup>33</sup> Fannin had not produced any other proof of income for 2017.

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<sup>29</sup> CX-22, at 11-14.

<sup>30</sup> CX-35

<sup>31</sup> *See generally* CX-9; CX-10; CX-37.

<sup>32</sup> RX-1.

<sup>33</sup> CX-30, at 22; Tr. 71.

Regarding Fannin's 2016 income, he did not produce federal or state income tax returns.<sup>34</sup> Fannin stated that he filed for an extension with the Internal Revenue Service ("IRS") for 2016; however, he did not produce any supporting documentation reflecting that he had done so.<sup>35</sup> In his March 8 response to Regulatory Operations, Fannin stated that his 2016 income was zero;<sup>36</sup> however, I do not find his assertion to be credible. His W-2 from UBS for 2016, which covers his employment from January 1 through January 21, 2016, reflects wages of \$18,903.05.<sup>37</sup> Fannin testified that UBS simply allocated that amount to him to spread his loans over separate tax years.<sup>38</sup> He provided no supporting documentation for his assertion.

Regarding Fannin's 2015 income, in his March 8 response to Regulatory Operations, he stated that it was \$3,290.<sup>39</sup> This amount is inconsistent with his 2015 tax return. His 2015 tax return reflects wages of \$90,094, as well as a tax refund of \$9,394 that was directly deposited into his checking account at some point after he electronically filed his return on August 21, 2016.<sup>40</sup> Fannin testified that he never received \$90,094 in 2015 as wages; and, as stated above, that UBS allocated that amount to him to spread the loans that it had given him over separate tax years.<sup>41</sup> Again, he provided no supporting documentation for his assertion. Not only did he represent to the IRS that his W-2 wages were \$90,094, but his W-2 federal tax withholding was \$19,353, from which he received a tax refund of \$9,394.<sup>42</sup> Fannin also received an Individual Retirement Account ("IRA") distribution of \$16,770 as reflected in his 2015 tax return.<sup>43</sup> I do not find Fannin's asserted income of \$3,290 to be credible.

Regarding Fannin's 2014 income, his 2014 tax return reflects wages of \$92,634, as well as a tax refund of \$12,071 that was directly deposited into his checking account at some point after he electronically filed his return on March 26, 2015.<sup>44</sup> Again, Fannin testified that he never received \$92,634 in 2014 as wages; rather, UBS simply allocated that amount to him to spread his loans over separate tax years.<sup>45</sup> He provided no supporting documentation for his assertion.

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<sup>34</sup> Tr. 49.

<sup>35</sup> Tr. 49-50.

<sup>36</sup> CX-9.

<sup>37</sup> CX-17.

<sup>38</sup> Tr. 52.

<sup>39</sup> CX-9.

<sup>40</sup> Tr. 48; CX-13, at 1-2, 28, 90. His 2015 tax return also reflects that Fannin made cash donations to charities totaling \$7,650, more than double his asserted income. CX-13, at 56.

<sup>41</sup> Tr. 45.

<sup>42</sup> CX-13, at 1-2, 51.

<sup>43</sup> CX-13, at 1, 38.

<sup>44</sup> CX-12, at 1-2, 45, 116. His 2014 tax return also reflects that Fannin made cash donations to charities totaling \$6,600. CX-12, at 73, 79.

<sup>45</sup> Tr. 41-42.

Not only did he represent to the IRS that his W-2 wages were \$92,634, but his W-2 federal tax withholding was \$19,873, from which he received a refund of \$12,071.<sup>46</sup> Further, when completing his 2014 tax return, Fannin confirmed that he was not eligible for certain educational tax credits because his “[i]ncome exceeds \$90,000.”<sup>47</sup> I do not find Fannin’s explanation regarding UBS’s alleged allocation of his income to be credible.

### 3. Fannin’s Expenses and Liabilities

Prior to the hearing, at the request of the prior Hearing Officer, Fannin submitted a chart containing a balance sheet and income statement.<sup>48</sup> The chart reflected that his monthly personal living expenses are \$3,900, which include a monthly mortgage payment of \$972 for his investment property, a home in Sarasota, Florida (“Sarasota Home”), that he bought in April 2015.<sup>49</sup> He also claimed yearly expenses for his Datamind business of approximately \$10,000 although he provided no supporting documentation for the \$10,000 expense.<sup>50</sup> Although not included in his chart, since 2012, Fannin has lived in a penthouse apartment in Sarasota, Florida (“Sarasota Penthouse”), paying \$2,500 per month in rent.<sup>51</sup> He has always been current on his rent.<sup>52</sup>

For liabilities, Fannin listed the following: (1) a \$85,000 mortgage on his Sarasota Home, (2) a \$25,000 loan from his mother, (3) a \$13,000 student loan, and (4) credit card balances (Discover – \$6,953, Capitol One #3659 – \$2,093, and Capitol One #3685 – \$1,909).<sup>53</sup>

Fannin paid \$110,000 for the Sarasota Home.<sup>54</sup> He made a \$22,000 down payment and has remained current on his \$972 monthly mortgage payments.<sup>55</sup>

Fannin claimed to have received a \$25,000 loan from his mother around the time that he was terminated from UBS;<sup>56</sup> however, he provided no supporting documentation such as a loan agreement or canceled checks reflecting any payments to his mother. Fannin represented that he

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<sup>46</sup> CX-12, at 1-2, 53.

<sup>47</sup> CX-12, at 49.

<sup>48</sup> RX-1.

<sup>49</sup> RX-1; CX-19, at 1.

<sup>50</sup> Tr. 73; RX-1; CX-36.

<sup>51</sup> Tr. 95-97.

<sup>52</sup> Tr. 97-98.

<sup>53</sup> RX-1.

<sup>54</sup> Tr. 86; CX-28, at 3.

<sup>55</sup> Tr. 86-87, 92.

<sup>56</sup> Tr. 137.

discussed borrowing money from his parents to enable him to make a settlement offer to UBS.<sup>57</sup> However, at the hearing, he testified that the possible loan from his parents is no longer available.<sup>58</sup>

Fannin's personal checking account statements reveal that he is paying his student loan each month in the amount of \$122.48; however, there was no documentation reflecting the current outstanding student loan amount.<sup>59</sup>

Fannin's chart reflects credit card debit totaling almost \$11,000; however, his chart is not reliable. Fannin obtained his Discover card in April 2016 when he transferred the balances from his two Capitol One credit cards to the Discover card.<sup>60</sup> Since then, he has made minimum payments every month in amounts ranging from \$142 to \$167.<sup>61</sup> For his Capitol One credit card #3659, Fannin claimed to owe \$2,093; however, the February 2017 statement, the most recent statement he provided, reflects a balance of \$1,664.46 with a minimum payment of only \$25.<sup>62</sup> It is unknown if Fannin still owes the \$1,664.46. From August 2016 until February 2017, he has paid this credit card bill in full each month in amounts ranging from \$1,210.16 to \$3,345.98.<sup>63</sup> For his Capitol One credit card #3685, Fannin claimed to owe \$1,909; however, the February 2017 statement, the most recent statement he provided, reflects a balance of \$776.05 with a minimum payment of only \$25.<sup>64</sup> It is unknown if Fannin still owes the \$776.05 because whenever he has had a credit card balance, he has paid it in full.<sup>65</sup>

#### **4. Fannin's Investment Property and Other Assets**

Fannin's chart identifies the following assets: (1) the Sarasota Home, (2) Datamind, and (3) his bank accounts, a checking and savings account.<sup>66</sup> He also has (or had) an IRA.

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<sup>57</sup> CX-9, at 3.

<sup>58</sup> Tr. 120-21.

<sup>59</sup> CX-15, at 1, 4, 7, 10, 13, 16.

<sup>60</sup> CX-16, at 34.

<sup>61</sup> CX-16, at 34-35. The Discover card statement reflects monthly payments through February 2017. CX-16, at 34-35.

<sup>62</sup> CX-16, at 28.

<sup>63</sup> *See generally* CX-16.

<sup>64</sup> CX-16, at 31.

<sup>65</sup> *See generally* CX-16.

<sup>66</sup> RX-1.



Fannin's Sarasota Home is close to downtown Sarasota.<sup>67</sup> It has two separate living units, each with two bedrooms and two bathrooms.<sup>68</sup> Although Fannin owns the Sarasota Home, he lives in the Sarasota Penthouse.<sup>69</sup> Regulatory Operations found information that tenants may be living in the Sarasota Home.<sup>70</sup> Fannin denied this and testified that he is not aware of anyone living in the house since he bought it.<sup>71</sup>

Fannin testified that after he bought the Sarasota Home, he renovated it.<sup>72</sup> Despite the improvements he made, he asserts that his home is currently only worth the \$110,000 purchase price.<sup>73</sup> However, in March 2017, zillow.com estimated the property's value at approximately \$271,000; and redfin.com estimated the property's value at approximately \$256,000.<sup>74</sup> In late January 2016, Fannin, through his realtor, listed his Sarasota Home for \$277,000.<sup>75</sup> When questioned about why he values his home at \$110,000 when he previously listed it for \$277,000, Fannin stated that his home may be worth \$220,000.<sup>76</sup> He provided no documentary evidence of any attempts to obtain a home loan or equity line of credit. He testified that he spoke to someone at his local bank who told him that he could only obtain a loan for \$25,000 based on the purchase price of \$110,000.<sup>77</sup> Fannin did not apply for that loan and did not contact any other banks for a loan.<sup>78</sup>

Although the Sarasota Home is titled in Fannin's name and he is the responsible party for the mortgage,<sup>79</sup> during the hearing, he testified that a limited liability company owns or manages the property.<sup>80</sup> Fannin was very evasive when responding to questions about the limited liability

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<sup>67</sup> CX-14, at 14.

<sup>68</sup> CX-14, at 14. Fannin was very evasive when testifying about the Sarasota Home and I find that he was not forthcoming. Despite the fact that the real estate listing clearly described the home as having two units, Fannin denied that the home had two units, and a total of four bedrooms. Tr. 76, 83-84. CX-39 demonstrates that Fannin submitted the listing to Regulatory Operations as part of his financial disclosure materials. CX-39.

<sup>69</sup> Tr. 95.

<sup>70</sup> CX-26. CX-26 contains documents from a Florida resident database indicating that other individuals are using the Sarasota Home address. That same database reflects that Fannin resides at the Sarasota Penthouse. CX-27.

<sup>71</sup> Tr. 98, 103.

<sup>72</sup> Tr. 89.

<sup>73</sup> RX-1; Tr.91.

<sup>74</sup> CX-14, at 15, 23.

<sup>75</sup> CX-14, at 14. Fannin withdrew the listing in mid-April 2016. CX-14, at 14; Tr. 87. He has made no other attempts to sell the Sarasota Home. Tr. 89.

<sup>76</sup> Tr. 101.

<sup>77</sup> Tr. 93-94.

<sup>78</sup> Tr. 92, 94-95.

<sup>79</sup> Tr. 99, 101, 104.

<sup>80</sup> Tr. 100.

company.<sup>81</sup> The limited liability company allegedly paid Fannin \$11,000 in 2016, representing half the down payment, his contribution to the property.<sup>82</sup> Although Fannin has an interest in the limited liability company and received \$11,000 from it, he did not know, or would not provide, the name of the limited liability company.<sup>83</sup> He also testified that he did not know when he received the \$11,000.<sup>84</sup> When questioned further, he stated that he received the \$11,000 at some point during 2016.<sup>85</sup> He testified that he put the money in his saving account, but the few bank account statements from 2016 that Fannin provided do not reflect a deposit of \$11,000.<sup>86</sup> Fannin did not produce any documentation referencing the \$11,000 payment or the limited liability company.<sup>87</sup>

According to Fannin, his Datamind business earns approximately \$1,100 quarterly.<sup>88</sup> He has interests in other limited liability companies in connection with other business ideas he has had.<sup>89</sup> He has registered those limited liability companies with Florida, but he stated that the companies have no assets and are not active.<sup>90</sup> Fannin has not provided any documentation regarding the other limited liability companies that are registered with Florida.<sup>91</sup>

Fannin's February 2017 bank statement, the most recent statement he provided, reflects he had \$3,700 in his checking account, and \$7,336 in his savings account.<sup>92</sup> As discussed above, Fannin took a \$16,770 distribution from his IRA in 2015. He testified that the IRA is closed, but he has not provided any documentary evidence in support of his assertion.<sup>93</sup>

#### **D. Discussion**

Based on the foregoing, I find that Fannin failed to carry his burden of proving a *bona fide* inability to pay the Award. An inability to pay defense may be rejected where, as here, the evidence provided by the respondent is insufficient or incomplete, or it appears that the

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<sup>81</sup> Tr. 98-100, 104.

<sup>82</sup> Tr. 103-04, 130.

<sup>83</sup> Tr. 105, 122.

<sup>84</sup> Tr. 104.

<sup>85</sup> Tr. 130.

<sup>86</sup> Tr. 130; CX-15 (absence of any \$11,000 deposit).

<sup>87</sup> Tr. 99, 104.

<sup>88</sup> Tr. 71-74; CX-36; RX-1.

<sup>89</sup> Tr. 73, 110.

<sup>90</sup> Tr. 110-11.

<sup>91</sup> Tr. 110-11.

<sup>92</sup> CX-15, at 16.

<sup>93</sup> Tr. 50-51.

respondent could divert funds from other expenditures to pay the award, borrow funds, or make some meaningful payment towards satisfaction of the award.<sup>94</sup>

Fannin's responses and disclosures to Regulatory Operations, as well as his hearing testimony, cause me to question his credibility overall. Given these significant questions about whether Fannin has been fully forthcoming with the details of his financial situation, I am compelled to require documentation to substantiate his claims. Fannin, however, failed to produce reliable documentation of many of his assets and liabilities despite numerous opportunities to do so.

Fannin claims that Datamind's revenue is \$4,500 per year. However, his only support for this is the Datamind checking account. He also claimed without any documentary support that Datamind's expenses are \$10,000 a year. Accepting Fannin's representation, he continues to operate Datamind at a loss of \$5,500 per year. He acknowledged that he could have made more of an effort to produce documents reflecting the value and income of Datamind.<sup>95</sup> However, he also stated that producing records is an "extreme burden."<sup>96</sup>

He offered no explanation of whether he has attempted to secure some form of employment outside of the securities and insurance industries. Although he has interests in other limited liability companies in connection with business ideas he has, he was very evasive in his responses and simply stated the companies are inactive. He provided no documentation for the other limited liability companies that he has established.

Fannin has not been forthright about his income. He claims that his federal income tax return for 2016 is not available because he requested an extension. Yet, he is incredulous at the suggestion that he could or should produce documentation to demonstrate he was granted an extension. Equally mystifying is Fannin's claim that his income in 2016 was \$0, and his income in 2015 was \$3,290. His assertion is contradicted by his federal tax returns. He claims that the income reflected in his 2014 and 2015 tax returns is inaccurate because UBS allocated the loan amounts over those years, but he provided no supporting documentation for his assertion. Further, during 2015 and 2016, he (1) paid monthly rent for the Sarasota Penthouse in the amount of \$2,500, (2) purchased the Sarasota Home and made a \$22,000 down payment, (3) paid the \$972 mortgage each month on the Sarasota Home, (4) renovated the Sarasota Home himself, (5) made monthly student loan payments of \$122.48, and (6) paid his credit card balances in full each month. These purchases and payments would not be possible based on Fannin's claimed \$3,290 income for 2015 and 2016.

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<sup>94</sup> See *William J. Gallagher*, 56 S.E.C. 163, 169-70 (2003) (rejecting inability to pay defense where respondent provided incomplete documentation and failed to demonstrate that he could not borrow against his home or otherwise to pay the arbitration award); *John G. Pearce*, 52 S.E.C. 796, 797-99 (1996) (rejecting inability to pay defense where respondent made no attempt to secure a line of credit or obtain a loan to satisfy the arbitration award).

<sup>95</sup> Tr. 125.

<sup>96</sup> Tr. 126.

Fannin was also not forthright about the Sarasota Home. For example, he testified that the Sarasota Home was not a two-unit building, but he listed the property as a two-unit building and the picture in the listing clearly shows it is a two-unit building. He claimed that the home is only worth the purchase price, yet he listed the property for \$277,000. He also denied that anyone has lived in the Sarasota Home since he purchased it in April 2015.

If Fannin's testimony is accepted, then his financial condition hinges in part on his asset-allocation choices rather than a genuine inability to pay. He has chosen to pay \$2,500 per month to live in the Sarasota Penthouse while simultaneously leaving the Sarasota Home unoccupied and continuing to pay the \$972 monthly mortgage. If Fannin had lived in the Sarasota Home after he purchased it, he could have applied approximately \$60,000 (two years' worth of rent payments since he bought the Sarasota Home) toward the Award.

Fannin provided no documentation regarding the loan from his mother or the remaining balance on his student loan. And, other than his testimony regarding a conversation he had with his local bank regarding a home loan, he has provided no evidence of any attempt to borrow funds in order to satisfy the Award.

Given the many inconsistencies in Fannin's claims, the vagueness of his responses, his attempts to conceal pertinent financial information, and the incomplete nature of the documentation that Fannin did produce, I find that Fannin failed to prove a *bona fide* inability to pay. "Without complete information and documentation, [I am] unable to ascertain Respondent's true financial situation, and for that reason alone, Respondent has failed to meet his burden of proof."<sup>97</sup>

### **III. Conclusion**

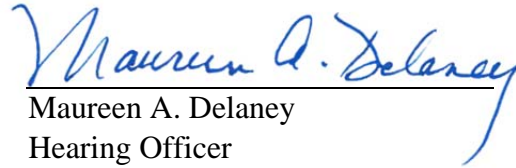
I find, and the parties do not dispute, that Fannin has failed to pay any portion of the Award. I further find that Fannin has failed to establish any of the defenses permitted by FINRA rules or case law and specifically failed to demonstrate the defense he asserted, a *bona fide* inability to pay.

Accordingly, pursuant to Article VI, Section 3 of FINRA's By-Laws and Rule 9559(n), Fannin is suspended effective as of the date of issuance of this Decision from associating with any member firm in any capacity. The suspension shall continue until Fannin 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; or (3) he has filed a petition in a United States Bankruptcy Court, or the debt has been discharged by a United States Bankruptcy Court.

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<sup>97</sup> *Dep't of Enforcement v. Respondent*, No. ARB040037, at 9 (Mar. 2, 2005), [https://www.finra.org/sites/default/files/OHODecision/p038234\\_0.pdf](https://www.finra.org/sites/default/files/OHODecision/p038234_0.pdf).

In addition, Fannin is ordered to pay FINRA costs of \$2,869.76, which includes an administrative fee of \$750 and hearing transcript costs of \$2,119.76.<sup>98</sup> The fine and costs shall become due upon the issuance of this Decision.

  
Maureen A. Delaney  
Hearing Officer

Copies to:

Timothy Stephen Fannin (via email and first-class mail)  
Matthew Baskir, Esq. (via email and first-class mail)  
Meredith MacVicar, Esq. (via email)  
Ann-Marie Mason, Esq. (via email)

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<sup>98</sup> 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.