
³⁵ *Perpetual Securities, Inc.*, Exchange Act Release No., 2003 SEC Lexis 3150, at *8–10 & n.12 (Sept. 3, 2003).

³⁶ *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC Lexis 599, at *13 (Mar. 14, 2003).

³⁷ *Id.* at *13–14.

³⁸ *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *11 (Mar. 17, 2016) (FINRA not required to delay suspension proceeding by an appeal of a decision denying a motion to vacate).

³⁹ As FINRA has said in the context of arbitrations to resolve customer disputes with securities industry professionals, “The ability to work in the securities industry carries with it, among other things, an obligation to comply with the federal securities laws, FINRA rules, and orders imposed by the disciplinary and arbitration processes. Allowing members or their associated persons that fail to pay arbitration awards to remain in the securities industry presents regulatory risks and is unfair to harmed customers.” SR-FINRA-2010-014, Proposed Rule Change Relating to FINRA Rule 9554 to Eliminate Explicitly the Inability-to-Pay Defense in the Expedited Proceedings Context, 75 Fed. Reg. 21686, (Mar. 31, 2010), *adopted by* SR-FINRA-2010-014, Order Approving Proposed Rule Change, Exchange Act Release No. 62211, 2010 SEC LEXIS 1800 (June 2, 2010). *See also Garratt*, 2021 FINRA Discip. LEXIS 27, at *14 (payment of arbitration awards and the facilitation of the arbitration process assist in the protection of investors and further the public interest).

writing and signed by a majority of the arbitrators” Respondent asserts that the typed signatures in this case are insufficient and a violation of FINRA Rule 13904(a).⁴⁰ Respondent calls it “ludicrous” to think that a person could be suspended for failing to pay an arbitration award that does not comply with FINRA’s own rules.⁴¹ To explain why the alleged violation is significant, Respondent’s counsel argued in the pre-hearing conference that such typed signatures cannot be authenticated. He insists that FINRA must provide an audit trail so that the typed signatures can be verified.⁴²

Respondent has provided no support for his assertion that the Hearing Officer has authority to consider the validity of the signatures on the arbitration award or his further assertion that I should permit discovery on the signature issue. He fails to understand the interplay between FINRA’s Arbitration Code and the FAA. While the FAA provides an avenue for review of an arbitration award, the Arbitration Code does not. And while the FAA provides three months to challenge an arbitration award, the Arbitration Code encourages more prompt action. A regulated person must either pay a monetary award or challenge it by a judicial motion to vacate within 30 days—or face a potential suspension. The FAA does not govern when FINRA might give notice of a potential suspension or suspend a regulated person.

If Respondent wanted to avoid a potential suspension, he could have moved to vacate the award in a court of competent jurisdiction within 30 days of receipt of the award. The option of

⁴⁰ Respondent’s Brief in Response to the Hearing Officer’s Authority to Hear and Rule on this Matter (“R. Br.”). Respondent has cited no authority for the proposition that the typed signatures violate FINRA’s rules. He simply presumes a violation.

⁴¹ R. Br. 4.

⁴² Tr. 23 (“This is a concern [the typed signatures] because it eliminates the ability of authentication.”). R. Br. 10 (courts have relied on audit trails in determining whether electronic signatures are valid).

I asked Respondent’s counsel at the pre-hearing conference, whether he had any reason to doubt the authenticity of the arbitration award. He said that he did—but the only basis he offered for that view was that he considers the award to be “unsigned.” Tr. 37. Respondent has not suggested any reason to doubt that the award was approved by the arbitrators and represents their genuine decision. Indeed, by paying the fees assessed by the arbitrators, the Respondent has treated the award as genuine.

Respondent has raised what he perceives to be a rule violation, but not one that casts doubt on the fairness of the arbitration proceeding. At the pre-hearing conference, Respondent’s Counsel described the typed signatures as a “technical issue.” Tr. 22.

It would be contrary to the FAA for the arbitrators’ decision to be invalidated for some “technical issue.” *See Wachovia Secs., Inc. v. Gangale*, 125 F. App’x 671, 677 (6th Cir. 2005) (“By submitting their dispute to binding arbitration instead of to a court, the parties agree to accept the result, regardless of its legal and factual accuracy.”) (quotations and citation omitted).

In fact, federal courts have rejected the argument that a possible violation of FINRA’s signature requirement is a basis for vacating an arbitration award. *See, Olson v. Wexford Clearing Servs. Corp.*, 397 F.3d 488, 491–92 (7th Cir. 2005) (ruling that an award was final even though it was not signed by a majority of the arbitrators, an arguable violation of FINRA’s rules); *Mendelka v. Penson Fin. Servs., Inc.*, No. 16-cv-7393 (PKC), 2017 U.S. Dist. LEXIS 49536, at *10 (S.D.N.Y. Mar. 31, 2017) (refusing to vacate an award for its failure to “abide” by “formalities,” including the omission of the signature of one of three arbitration panel members despite FINRA rule requiring the signatures of the arbitrators).

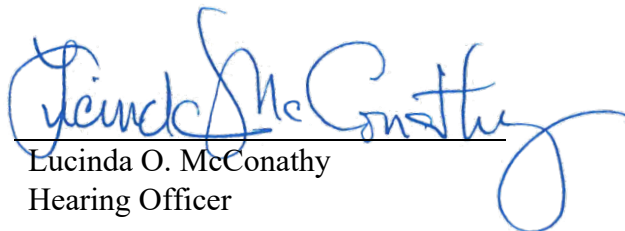
moving to vacate the award may remain open to him until the close of the three-month window under the FAA,⁴³ but Respondent has failed to act timely under FINRA's rules.

When a respondent in an expedited suspension proceeding under FINRA Rule 9554 fails to state "one or more of the permitted defenses," he "waives h[is] right to a hearing."⁴⁴ Consequently, the respondent's hearing request is dismissed, the notice of suspension is deemed final FINRA action, and the notice of suspension becomes effective.⁴⁵

IV. Order

For the reasons discussed above, this expedited suspension proceeding for failure to pay an arbitration award within 30 days is **DISMISSED**. The hearing and any other remaining due dates are removed from the calendar. The stay of suspension is no longer in effect. Accordingly, the notice of proposed suspension dated June 17, 2022, is deemed final FINRA action. Respondent's suspension shall be effective as of the date of this Order. Respondent's proposed discovery is **DENIED AS MOOT**.

SO ORDERED.


Lucinda O. McConathy
Hearing Officer

Dated: August 4, 2022

⁴³ At the pre-hearing conference, Respondent's counsel indicated that Respondent might yet file a motion to vacate under the FAA. According to counsel, the deadline for doing so is August 10. Counsel suggested that Respondent might argue on a motion to vacate that the arbitration panel failed to receive all the pertinent evidence. Tr. 16, 21-23. It was unclear from counsel's remarks whether Respondent might also raise the perceived problem with the arbitrators' signatures that he raises here.

⁴⁴ See OHO Order 09-01 (20090187451) (July 29, 2009), at 2, https://www.finra.org/sites/default/files/OHODecision/p119914_0_0_0.pdf

⁴⁵ As discussed above, the intention to file a motion to vacate in the future is not a defense to an expedited suspension proceeding and cannot prevent the suspension here from going into effect. An expedited suspension proceeding is designed to encourage prompt action to either pay the award or seek review.

However, if Respondent files a motion to vacate after the issuance of this Order, which makes the suspension effective, he may then apply to the Office of Dispute Resolution for a termination of the suspension. FINRA Rule 9554(g) provides that a person suspended in this type of expedited proceeding can file a written request for termination of the suspension on the ground of full compliance with the notice of suspension. The notice of suspension served on Respondent provides, "If you are suspended, the suspension will continue until documentary evidence is provided to FINRA that one or more of the enumerated Rule 9554 defenses has occurred." June 17 Notice 1.

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