

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFF COREY MCELROY
(CRD No. 2535214),

Respondent.

Expedited Proceeding
No. ARB220007

STAR No. 20220750470

Hearing Officer–BEK

EXPEDITED DECISION

August 18, 2022

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

Appearances

For the Complainant: Loyd Gattis, Esq., and Michael P. Manning, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Jeff Corey McElroy, pro se

DECISION

I. Introduction

Respondent Jeff Corey McElroy failed to pay a FINRA arbitration award entered against him in favor of his former employer firm, LPL Financial LLC (“LPL”). Consequently, FINRA sent McElroy a notice of suspension pursuant to FINRA Rule 9554, notifying him that he would be suspended from associating with any FINRA member firm unless he paid the award or asserted a valid defense for not paying. McElroy requested a hearing, asserting as a defense an inability to pay the award. McElroy’s hearing request stayed the imposition of the suspension. I conducted a hearing in this matter on June 29, 2022.

At the hearing, McElroy did not establish that, after the award was issued, he was unable either to pay the award in full or make a meaningful payment toward satisfying it. McElroy is therefore suspended from associating with any FINRA member firm in any capacity until he pays the award. In addition, I order him to pay the costs of the hearing.

II. Findings of Fact and Conclusions of Law

A. Regulatory Framework

FINRA's Code of Arbitration Procedure for Industry Disputes requires that an associated person pay a monetary award issued by an arbitration panel within 30 days after the person receives notice of the award.¹ When an associated person does not pay an award, FINRA Rule 9554 authorizes an expedited process by which FINRA may notify the person that failing to comply within 21 days of service of the notice will result in the person's suspension from associating with any member.² A valid hearing request stays the suspension.³ The hearing request must specify all defenses the person is relying on.⁴

B. Background and Jurisdiction

McElroy has been associated with a member firm since July 1994. Although he is no longer associated with LPL, he currently is registered with another FINRA member firm.⁵ He therefore is subject to FINRA's jurisdiction.

C. The Award and Notice of Suspension

On March 28, 2022, a FINRA Dispute Resolution Services arbitration panel entered an award against McElroy in *LPL Financial LLC v. Jeff Corey McElroy*, Arbitration Case No. 21-00997. The award was for \$90,566.65, including damages, contractual fees, attorneys' fees, and costs. Additionally, the award ordered McElroy to pay interest at the rate of (1) 4.91% on \$82,341.34 from August 20, 2019, and (2) 7.00% on \$1,754.32 from October 15, 2019, until the arbitration award is paid off.⁶ The same day, FINRA Dispute Resolution Services properly served McElroy with the award and notified him that unless he filed a motion in court to vacate the award, he had to pay it within 30 days, by April 27, 2022.⁷

McElroy did not pay the award by the deadline. Therefore, on May 2, 2022, FINRA notified McElroy that his association with FINRA would be suspended on May 23, 2022, unless he took one of several actions available to him under FINRA Rule 9554.⁸ Those actions include: (1) paying the award in full; (2) reaching a settlement agreement with LPL and complying with its terms; (3) filing a motion to vacate or modify the award that has not been denied; or (4) filing a bankruptcy petition

¹ FINRA Rule 13904(j).

² FINRA Rule 9554(a).

³ FINRA Rule 9554(d) and (g).

⁴ FINRA Rule 9554(e).

⁵ Joint Exhibit ("JX-") 5, at 1-2.

⁶ JX-1; Stipulations ("Stip.") ¶¶ 1-3.

⁷ Stip. ¶¶ 5, 7; JX-2; JX-3.

⁸ Stip. ¶ 9; JX-4.

that is pending in a United States Bankruptcy Court or has resulted in the discharge of the award.⁹ The notice also informed McElroy that he was entitled to timely request a hearing, and could stay the imposition of the suspension by asserting one of these defenses, or claiming as a defense that he is financially unable to pay the award.¹⁰ McElroy stipulates that FINRA properly served him with the notice of suspension.¹¹

McElroy timely filed a request for a hearing and claimed a bona fide inability to pay the award.¹² He participated in a hearing held by videoconference.

D. Inability to Pay Standard

To demonstrate an inability to pay, a respondent must prove more than a current lack of funds on hand to pay the award in full.¹³ A respondent must show that: (1) “he is unable to make some meaningful payment toward the award from available assets or income”;¹⁴ (2) “at no time after the award became due did he have the ability to pay all or any meaningful amount of the award”;¹⁵ and (3) “he is incapable of reducing his living expenses, diverting funds from other expenditures, [] borrowing funds,”¹⁶ or selling assets including a primary residence to pay the award.¹⁷ Moreover, the failure to come to some settlement with the arbitration claimant despite good-faith efforts is not a defense.¹⁸ In sum, if one can make meaningful payments at any time after the award was issued, the inability to pay defense fails.

⁹ JX-4; FINRA By-Laws, Art. VI, Sec. 3(b); NASD Notice to Members 00-55, at 2 (Aug. 2000), <http://www.finra.org/rules-guidance/notices/00-55>.

¹⁰ JX-4.

¹¹ Stip. ¶ 12.

¹² Stip. ¶ 13.

¹³ *Dep't of Enforcement v. Tretiak*, No. C02980085, 2000 NASD Discip. LEXIS 35, at *20 (OHO Mar. 10, 2000), *aff'd*, Nos. C02990042, C02980085, 2001 NASD Discip. LEXIS 1 (NAC Jan. 23, 2001), *aff'd*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653 (March 19, 2003).

¹⁴ *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *16 (Mar. 17, 2016) (quoting *Dep't of Enforcement v. Respondent*, No. ARB010032, at 3 (Mar. 15, 2002)).

¹⁵ *Tretiak*, 2000 NASD Discip. LEXIS 35, at *20.

¹⁶ *Id.*; *see also DiPietro*, 2016 SEC LEXIS 1036, at *16 n.22 (citation omitted).

¹⁷ *DiPietro*, 2016 SEC LEXIS 1036, at *20.

¹⁸ *See Tretiak*, 2001 NASD Discip. LEXIS 1, at *16–17.

E. McElroy Failed to Establish an Inability to Pay Defense

1. McElroy Failed to Demonstrate That He Was Unable to Make Meaningful Payments from His Income

a. McElroy Underestimated His Earning Ability

McElroy estimated his net monthly income for 2021 at \$9,500 on his Statement of Financial Condition (“SFC”).¹⁹ However, he acknowledged at the hearing that his average net monthly income for January through May 2022 was \$8,672 and his wife’s net monthly income for the same period was \$1,600, for a total net monthly income of \$10,272 for January through May 2022.²⁰ McElroy noted that his income fluctuates monthly and that it could be a little higher than stated on his SFC, but he did not believe it would be substantially higher.²¹ He did not, however, offer any support for the implication that his average net monthly income might not remain approximately \$10,272 as he continued to work. Indeed, McElroy’s gross income for 2020 was over \$200,000 and for 2021 it was over \$160,000, and he fails to demonstrate any basis for believing his net annual income in 2022 would be less than \$123,264 (based on a net monthly income of \$10,272 for 12 months).²²

b. McElroy Failed to Demonstrate That He Could Not Reduce His Expenses

McElroy estimated his monthly expenses as \$9,496 on his SFC. However, he included \$1,879 in discretionary expenses. Specifically, he included: (1) \$1,041 for private schooling for his children; (2) \$600 for their anticipated college expenses in the future; and (3) \$238 in charitable donations.²³ McElroy could have diverted these payments to make a meaningful payment on the arbitration award. It is well settled that a Respondent cannot establish an inability to pay an arbitration award if he chooses to pay discretionary expenses in lieu of paying down an arbitration award.²⁴

¹⁹ JX-6, at 5.

²⁰ JX-15, at 1–2; Hearing Transcript (“Tr.”) 46–51. McElroy’s net pay for January through May 2022 was \$43,362; this is an average net monthly pay of \$8,672.

²¹ Tr. 49.

²² JX-16, at 2; JX-17, at 1. McElroy also has \$800 of his salary invested in his 401k each month. Tr. 49–50. He explained that if he terminated this investment, it would not mean an increase of \$800 to his net monthly income because he would pay higher taxes. *Id.* Even so, he agreed that terminating this investment would result in an average net monthly income greater than \$10,272. Tr. 50. Moreover, McElroy’s gross income for January through May 2022 was \$65,545, which is an average gross monthly income of \$13,109. JX-15, at 1–2. Based on this average income, his gross income for all of 2022 should be \$157,308. This is in line with his annual gross income for 2021. JX-17, at 1.

²³ JX-6, at 6. *See also* Supplemental Stipulations (“Supp. Stip.”) ¶ 27.

²⁴ *DiPietro*, 2016 SEC LEXIS 1036, at *19.

* * *

In sum, McElroy understated his monthly income by at least \$772, overstated his monthly expenses by at least \$1,879, and failed to demonstrate that the combination totaling \$2,651 per month could not be paid toward the arbitration award.

2. McElroy Failed to Demonstrate That He Could Not Obtain a Loan

McElroy stipulates that his house has a fair market value of at least \$527,321, and he owes approximately \$348,680 on a mortgage.²⁵ This reflects equity of \$178,641, which is more than enough to pay the arbitration award. McElroy stated at the hearing that he informally asked his current employer—who holds his mortgage—if he could obtain a second loan on his house, and he was told his financial situation did not permit that.²⁶ Accepting his statement, however, he nevertheless fails to demonstrate that he could not obtain a loan from another mortgage company, whether it be an equity loan or a cash-out refinance. McElroy's report of a verbal denial of one inquiry about possibly securing a loan from one lender is insufficient to demonstrate an inability secure a loan.²⁷

3. McElroy Failed to Demonstrate That He Could Not Have Made a Meaningful Payment from His Assets

On his SFC, McElroy reported a net worth of \$119,360 after including the arbitration award as a liability.²⁸ Otherwise stated, if he liquidated his assets and paid off the arbitration award, he would still have a net worth of \$119,360. Under such circumstances, he fails to demonstrate an inability to pay the arbitration award. As noted above, McElroy has equity of \$178,641 in his house. Assuming he could not obtain a loan, he failed to demonstrate that he could not sell his house, which is another option he could take that would provide more than enough to pay the arbitration award.

In addition to the equity in his house, McElroy states on his SFC that his two cars are worth \$51,735. He owns one car outright, valued at \$19,000.²⁹ The other car is worth \$32,735, with a loan balance of about \$18,000.³⁰ Thus, McElroy may qualify for auto loan refinancing

²⁵ Supp. Stip. ¶¶ 18, 22. The parties also stipulate that the estimated value of McElroy's house on June 16, 2022, was \$527,321, as reflected on the Redfin.com website, while on June 17, 2022, it was \$652,500, as reflected on the Zillow.com website. Supp. Stip. ¶¶ 19–20.

²⁶ Tr. 18–19.

²⁷ *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *11–12 (Mar. 14, 2003) (upholding rejection of inability to pay defense when Respondent failed to provide documentary proof that he could not secure a loan on his home).

²⁸ JX-6, at 2.

²⁹ Tr. 35–36; JX-6 at 1.

³⁰ Tr. 36.

that may provide him with cash totaling as much as \$33,735. Yet, he has not attempted to refinance his cars, or sell them and replace them with less expensive ones.³¹

III. Conclusion

FINRA issued McElroy a notice of suspension under FINRA Rule 9554 on May 2, 2021, for failure to pay the arbitration award issued against him. FINRA Rule 9559(n) permits a Hearing Officer wide discretion to “approve, modify or withdraw . . . sanctions . . . imposed by the notice” and to assess costs. Based on the testimony and evidence presented at the hearing, I find that McElroy failed to substantiate that he has an actual inability to pay the award or to make a meaningful contribution toward paying it.

Allowing McElroy to remain in the securities industry without paying the arbitration award would undermine the arbitration process and be unfair to the arbitration creditor.³² “Conditionally suspending [McElroy] from association with FINRA members gives him an incentive to pay the award. And ‘[i]nducing him to pay the award through suspension of his [FINRA] membership furthers the public interest and the protection of investors.’”³³

Accordingly, I suspend McElroy from association in any capacity with any FINRA member firm.³⁴

IV. Order

Pursuant to Article VI, Section 3(b) of FINRA’s By-Laws and FINRA Rule 9559(n), I suspend Respondent Jeff Corey McElroy from associating with any FINRA member firm in any capacity, effective as of the date of this Decision. The suspension shall remain in effect until McElroy produces documentary evidence to FINRA showing that (1) the award has been paid in full; (2) McElroy and the arbitration creditor have settled the matter (and he is in compliance with the settlement terms); or (3) McElroy has a petition pending in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the award. Upon such showing, the suspension shall automatically terminate.³⁵

³¹ Tr. 21–22, 36–37. McElroy also stipulates that he has \$34,421 in his 401k account. Supp. Stip. ¶ 26. He agrees this is his money, but he states it is not available to him. Tr. 19–21, 38–39. He asserts that he could not access these funds unless he quit his job. Tr. 90. Even if he could access the funds in his 401k account, he testified, he would only receive about \$20,000 after taxes and outstanding loans from the account were paid. Tr. 54. He failed, however, to submit any documentation supporting his assertions, and he fails to demonstrate that his 401k funds could not be used to make a meaningful payment toward satisfaction of the arbitration award.

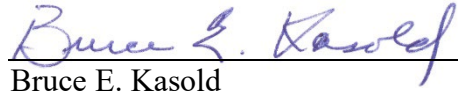
³² Cf. *DiPietro*, 2016 SEC LEXIS 1036, at *23–24.

³³ *Michael David Schwartz*, Exchange Act Release No. 81784, 2017 SEC LEXIS 3111, at *18 (Sept. 29, 2017) (quoting *Gallagher*, 2003 SEC LEXIS 599, at *13–14).

³⁴ I have considered and reject without discussion all other arguments of the parties.

³⁵ McElroy must also pay the costs of the hearing before the suspension terminates.

Further, McElroy is **ORDERED** to pay FINRA costs of \$1,787.15, which include an administrative fee of \$750 and the hearing transcript cost of \$1,037.15.


Bruce E. Kasold
Hearing Officer

Copies to:

Jeff Corey McElroy (via email, overnight courier, and first-class mail)
Loyd Gattis, Esq. (via email)
Michael P. Manning, Esq (via email)
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