

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ELMER R. FERGUSON  
(CRD No. 4249474),

Respondent.

Expedited Proceeding  
No. ARB250016

RCM No. 20250868153

Hearing Officer—MJD

**EXPEDITED DECISION**

December 24, 2025

**Respondent failed to pay a \$775,346 arbitration award and failed to prove that he had a bona fide inability to pay or make a meaningful payment toward the award. Respondent is therefore suspended from associating with any FINRA member in any capacity.**

*Appearances*

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

For the Respondent: *Pro Se*

**DECISION**

**I. Introduction**

Respondent Elmer R. Ferguson failed to pay a FINRA arbitration award in the amount of \$775,346 (the “Award”) entered against him in favor of an arbitration claimant. As a result, FINRA sent Ferguson a notice informing him that he would be suspended from associating with any FINRA member firm. Ferguson stayed the imposition of the suspension by timely requesting a hearing with FINRA’s Office of Hearing Officers (“OHO”) and asserting the defense that he is financially unable to pay the Award.

On September 24 and 30, 2025, I held a videoconference hearing. Enforcement argued that since the Award was issued Ferguson has had sufficient assets to pay at least a meaningful portion of it. Ferguson asserted that he had insufficient funds to fully satisfy the Award. A review of Ferguson’s financial condition confirms that he in fact has sufficient funds to pay the Award or, at a minimum, make a significant contribution towards satisfying the Award.

After considering the evidence and the parties’ arguments, I find that Ferguson failed to prove his defense. I therefore suspend him from associating with any FINRA member firm in

any capacity until he: (1) fully pays the Award; (2) enters into a fully executed, written settlement agreement with the arbitration claimant relating to payment of the Award, and he is current in his obligations under the terms of the settlement; or (3) files a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court discharges the debt representing the Award. I also order him to pay the costs of the hearing.

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

### **A. Regulatory Framework**

Under FINRA rules governing industry-related arbitrations, “[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.”<sup>1</sup> FINRA Rule 9554 establishes an expedited procedure for FINRA to suspend an associated person for not paying an arbitration award. The Rule authorizes FINRA to send a notice “stating that the failure to comply within 21 days of service of the notice will result in a suspension . . . from associating with any member.”<sup>2</sup> The notice must specify the grounds for, and the effective date of, the suspension and must advise respondents of their right to file a written request for a hearing.<sup>3</sup>

When served with a suspension notice, a respondent may request a hearing with OHO.<sup>4</sup> A hearing request stays the imposition of the suspension<sup>5</sup> and must specifically identify all defenses the person has to the suspension notice.<sup>6</sup> FINRA recognizes the following defenses in an expedited proceeding brought under Rule 9554: (1) the respondent has paid the arbitration award in full; (2) the arbitration parties have agreed to installment payments of the award, or have otherwise agreed to settle, and the respondent is not in default under the agreement; (3) a court has vacated the award; (4) a motion to vacate or modify the award is pending in a court; and (5) the respondent has a bankruptcy proceeding pending in United States Bankruptcy Court, or a Bankruptcy Court has discharged the award.<sup>7</sup> A respondent may also assert a bona fide inability to pay an award issued in connection with an industry dispute.<sup>8</sup>

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<sup>1</sup> FINRA Rule 13904(j).

<sup>2</sup> FINRA Rule 9554(a).

<sup>3</sup> FINRA Rule 9554(c).

<sup>4</sup> FINRA Rule 9554(e).

<sup>5</sup> FINRA Rule 9554(d).

<sup>6</sup> FINRA Rule 9554(e).

<sup>7</sup> See FINRA By-Laws, Article VI, Section 3(b); NASD Notice to Members 00-55, at 2 (Aug. 2000), <https://www.finra.org/rules-guidance/notices/00-55>.

<sup>8</sup> See, e.g., *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at \*3-4 (Mar. 14, 2003); see also SR-FINRA-2010-014, Order Eliminating Inability-to-Pay Defense, Exchange Act Release No. 62211, 2010 SEC LEXIS 1800, at \*4-5, 75 Fed. Reg. 32525 (June 2, 2010) (approving change to FINRA Rule 9554 making the defense of inability to pay an arbitration award unavailable to a respondent when the award is issued in favor of public customers, and recognizing that bona fide inability to pay is a defense in an expedited proceeding involving an industry arbitration award).

## **B. A \$775,346 Arbitration Award Is Rendered Against Ferguson**

Ferguson entered the securities industry in 2000 when he became associated with a FINRA member firm.<sup>9</sup> Ferguson was associated with MMA Securities LLC (“MMA Securities”) from September 2015 to March 2019, where he was registered as a general securities representative and general securities principal.<sup>10</sup> Since February 15, 2019, Ferguson has been employed by OneDigital, a registered investment advisor, as a senior retirement planning consultant for corporate retirement plans for employees.<sup>11</sup> His compensation from OneDigital consists of commission payments.<sup>12</sup>

In January 2020, Ferguson filed a statement of claim with FINRA Dispute Resolution Services against MMA Securities and its non-member affiliate, Marsh & McLennan Agency LLC (“Marsh & McLennan”), asserting breach of contract, misrepresentation, and tortious interference, among other claims, and alleging damages exceeding \$1.8 million.<sup>13</sup> Ferguson was employed by Marsh & McLennan during the period he was associated with MMA Securities.<sup>14</sup> On October 6, 2023, after an evidentiary hearing, an arbitration panel entered the Award of \$775,346<sup>15</sup> in favor of Marsh & McLennan on its counterclaim against Ferguson.<sup>16</sup> The Award includes compensatory damages in the amount of \$248,411, exemplary damages equal to the

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<sup>9</sup> Joint Exhibit (“JX-”) 1, at 2, 5.

<sup>10</sup> JX-1, at 3. After leaving MMA Securities, Ferguson was associated with another FINRA member firm from February 2019 to December 31, 2019. JX-1, at 2. He has not been associated with a FINRA member firm since December 31, 2019. JX-1, at 2.

<sup>11</sup> Hearing Transcript (“Tr.”) 240-42; Parties’ Stipulations (“Stip.”) ¶ 2; JX-1, at 2. Ferguson estimates that he currently has about 60 corporate retirement plan clients. Tr. 242-43.

<sup>12</sup> Tr. 241-42.

<sup>13</sup> JX-2, at 3-4.

<sup>14</sup> JX-2, at 7; JX-5, at 2-3.

<sup>15</sup> JX-2, at 39. The figures in this Expedited Decision are rounded to the nearest dollar.

<sup>16</sup> Stip. ¶¶ 3-4; JX-2, at 36. In the Award, the arbitration panel explained the unusual procedural history that led to FINRA determining it had jurisdiction over Marsh & McLennan, a non-FINRA member and non-client. It acknowledged that FINRA Dispute Resolution Services generally provides a forum for disputes between member firms and registered representatives and their clients or between member firms and registered representatives. JX-2, at 8. In this case, Marsh & McLennan had filed suit in 2019 against Ferguson in the U.S. District Court for the Southern District of New York. The court granted Ferguson’s motion to compel arbitration and stayed the action pending conclusion of the FINRA arbitration. JX-2, at 7. The arbitration panel determined that there was a sufficient relationship between Marsh & McLennan and MMA Securities to confer jurisdiction. Specifically, according to the Award, Marsh & McLennan used MMA Securities to conduct its securities activities under FINRA regulation. JX-2, at 16. Therefore, Marsh & McLennan benefited from Ferguson’s registration with MMA Securities. Furthermore, Ferguson had named Marsh & McLennan and MMA Securities as respondents in his Statement of Claim, and both entities signed arbitration submission agreements consenting to jurisdiction in FINRA’s arbitration forum. According to the Award, the arbitration panel determined that jurisdiction over Marsh & McLennan was proper. JX-2, at 8-9.

amount of the claimed lost revenue of \$248,411, attorneys' fees in the amount of \$267,064, and arbitration costs of \$11,460 owed to Marsh & McLennan.<sup>17</sup>

On October 6, 2023, FINRA served the Award on Ferguson (the "Award Service Letter").<sup>18</sup> The Award Service Letter notified Ferguson that FINRA Rules provide that all monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction or unless the award provides otherwise.<sup>19</sup> FINRA sent Ferguson an additional notice of the Award by letter the same day—October 6, 2023—which also reminded him of the deadline for paying the Award or moving to vacate it.<sup>20</sup>

On November 21, 2023, Ferguson filed a motion to vacate the Award in the United States District Court for the Southern District of New York.<sup>21</sup> On June 9, 2025, the District Court issued an Opinion and Order denying Ferguson's motion to vacate and confirming the Award.<sup>22</sup>

### **C. FINRA Takes Steps to Suspend Ferguson for Not Paying the Award**

Because Ferguson had not paid the Award, on June 23, 2025, FINRA sent him a notice of suspension ("Suspension Notice") under FINRA Rule 9554.<sup>23</sup> Ferguson received the Suspension Notice on June 24, 2025.<sup>24</sup> The Suspension Notice informed Ferguson that he would be suspended effective July 14, 2025, unless he demonstrated that he had taken one of several actions specified in the Suspension Notice.<sup>25</sup> The Suspension Notice also informed Ferguson that he could stay the effective date of the suspension if he timely requested a hearing with OHO to assert the enumerated defenses or assert the defense that he is financially unable to pay the Award.<sup>26</sup>

Ferguson timely filed a request for a hearing with OHO, claiming he had an inability to pay the Award. The request stayed the effectiveness of the Suspension Notice.<sup>27</sup> Ferguson has not paid any part of the Award, or entered into a fully executed, written settlement agreement with the arbitration claimant, or filed for bankruptcy protection.<sup>28</sup>

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<sup>17</sup> Stip. ¶ 4; JX-2, at 36.

<sup>18</sup> Stip. ¶ 6; JX-3.

<sup>19</sup> JX-3, at 1.

<sup>20</sup> Stip. ¶ 8; JX-4, at 1.

<sup>21</sup> Stip. ¶ 10; JX-5.

<sup>22</sup> Stip. ¶ 12; JX-6. On July 31, 2025, Ferguson filed a motion to stay the judgment pending his appeal of the Opinion and Order. The motion is pending. Respondent's Exhibit ("RX-") 10, at 1, 13.

<sup>23</sup> Stip. ¶ 14; JX-7.

<sup>24</sup> Stip. ¶ 15.

<sup>25</sup> JX-7, at 1.

<sup>26</sup> JX-7, at 1.

<sup>27</sup> See FINRA Rules 9554(d) and 9559(c)(1).

<sup>28</sup> Stip. ¶ 18.

FINRA has jurisdiction to bring this expedited proceeding against Ferguson pursuant to Article V, Section 4(b) of FINRA's By-Laws because it was initiated within two years after October 6, 2023, the date of entry of the Award.

#### **D. The Inability-to-Pay Defense**

A respondent asserting an inability-to-pay defense has the burden of proof and must document fully his or her financial circumstances.<sup>29</sup> “Merely showing serious financial distress or that it would be hard or painful to pay an arbitration award does not establish the defense.”<sup>30</sup> “To satisfy their burden of proof, respondents must show that since the issuance of the award, they have been unable to pay the full amount and unable to make some meaningful payment toward the award from available assets or income. . . .”<sup>31</sup> This defense may be rejected if the respondent could borrow funds to pay the award, or could make some meaningful payment toward it from available assets or income, even if the respondent could not pay the full amount.<sup>32</sup>

#### **E. Ferguson Has Failed to Show That He Is Unable to Pay the Award**

The documentary evidence consisted mainly of Ferguson's Statement of Financial Condition (executed on August 7, 2025), made under penalty of perjury (“Financial Statement”),<sup>33</sup> together with a spreadsheet Ferguson created that contains additional details,<sup>34</sup> and copies of relevant financial documents.

Ferguson testified that until three years ago, he was earning approximately \$125,000 per year.<sup>35</sup> His income has since grown considerably, and he currently earns a significant income as the number of his consulting clients has grown.<sup>36</sup> Through the first seven months of 2025—from January to July—Ferguson's gross pay was \$270,035, according to his pay stubs, an average of approximately \$38,576 per month.<sup>37</sup> At this rate, his total gross pay for 2025 would be approximately \$462,917. Through July 2025, Ferguson had already contributed the current

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<sup>29</sup> *Robert Tretiak*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653, at \*12 n.16 (Mar. 19, 2003).

<sup>30</sup> *Dep't of Enforcement v. Markus*, No. ARB210008, 2021 FINRA Discip. LEXIS 17, at \*4-5 (OHO Aug. 17, 2021); *see also Dep't of Enforcement v. Shimko*, No. ARB200002, 2020 FINRA Discip. LEXIS 41, at \*12 (OHO Sept. 15, 2020) (“That it would be difficult or painful to pay an arbitration award is not the same as a bona fide inability to pay.”).

<sup>31</sup> *Dep't of Enforcement v. Stofleth*, No. ARB210015, 2022 FINRA Discip. LEXIS 1, at \*5 & n.18 (OHO Jan. 3, 2022) (internal quotation marks omitted) (quoting *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at \*16 n.22 (Mar. 17, 2016)); *see also Dep't of Enforcement v. D'Alonzo*, No. ARB210010, 2021 FINRA Discip. LEXIS 30, at \*4 (OHO Oct. 21, 2021) (same), *application for review dismissed*, Exchange Act Release No. 99324, 2024 SEC LEXIS 72 (Jan. 11, 2024).

<sup>32</sup> *Dep't of Enforcement v. Helbling*, No. ARB210004, 2021 FINRA Discip. LEXIS 14, at \*5 (OHO July 23, 2021).

<sup>33</sup> Complainant's Exhibit (“CX- ”) 3. Ferguson is not married and has no children. Tr. 141.

<sup>34</sup> CX-4.

<sup>35</sup> Tr. 50, 71.

<sup>36</sup> Tr. 242-43.

<sup>37</sup> CX-16, at 1.

maximum allowable of \$31,000 to his 401(k) plan, \$12,800 in deferred compensation, and lesser amounts for other purposes.<sup>38</sup>

In 2024, Ferguson's gross pay was \$409,977, before various deductions, according to his final pay stub for the year.<sup>39</sup> He contributed \$30,500 to his 401(k) retirement account and \$40,998 to a deferred compensation plan in 2024.<sup>40</sup> His adjusted gross income in 2024 was \$349,968, according to his federal income tax return, after allowing for deductions and other income adjustments.<sup>41</sup> In 2023, the year the Award was issued, Ferguson's adjusted gross income was \$250,430, according to his federal tax return.<sup>42</sup>

Ferguson wholly owns two small businesses in his hometown of Aledo, Illinois. One is a restaurant called Ferg's Public House ("Ferg's").<sup>43</sup> The other is Ferguson Holdings LLC ("Ferguson Holdings"), which currently owns four real estate properties in town.<sup>44</sup> Ferguson bought the restaurant and started Ferguson Holdings sometime before 2020 for the purpose of helping revitalize Aledo, which he describes as "dying" and "depressed."<sup>45</sup> Ferguson says he has a "personal connection" to Aledo because that is where he grew up and where his parents and a sister still live.<sup>46</sup>

The two businesses were originally successful and profitable but in recent years have been a considerable drain on Ferguson's finances.<sup>47</sup> About Ferg's in particular, Ferguson testified, "I believe I can make it a success. So I have loaned the business [money] to keep it afloat."<sup>48</sup> Ferguson says that he has been trying "to sell everything of value to pay down debts and/or invest in the remaining properties so [he] can possibly sell them too."<sup>49</sup>

Ferguson's considerable expenses of running his two companies offset his net worth and net monthly income.<sup>50</sup> Ferguson testified that to support the two businesses, he rents a house in Aledo and travels there frequently from the San Francisco Bay area where he currently lives.<sup>51</sup>

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<sup>38</sup> Tr. 148-49; CX-8, at 2; CX-9, at 1; CX-16, at 1.

<sup>39</sup> CX-16, at 8.

<sup>40</sup> Tr. 149-51; CX-8, at 4; CX-16, at 8. Ferguson also made voluntary additional deductions of \$2,364 towards premium payments for a life insurance policy. Tr. 151.

<sup>41</sup> CX-3, at 4; CX-25, at 6.

<sup>42</sup> CX-24, at 9.

<sup>43</sup> Tr. 35.

<sup>44</sup> Tr. 45-48; CX-4, at 1.

<sup>45</sup> Tr. 36.

<sup>46</sup> Tr. 36-37, 251.

<sup>47</sup> Tr. 42.

<sup>48</sup> Tr. 42.

<sup>49</sup> CX-6, at 4.

<sup>50</sup> CX-4.

<sup>51</sup> Tr. 185-86, 257-59.

He also leases a residence in Aledo where he stays when he visits.<sup>52</sup> Although his intentions with respect to his hometown are laudable, I find that Ferguson's considerable liabilities and expenses associated with running the two businesses to be discretionary and therefore not supportive of his inability-to-pay defense. Ferguson's legal obligation to repay the judgment entered against him takes precedence over his desire to help his struggling hometown.

### **1. Ferguson Has an Approximate Net Worth of More Than \$427,000**

I have reviewed Ferguson's financial condition—specifically, his net worth and monthly cash flow. I have determined that he in fact has sufficient funds to at least make a meaningful payment towards satisfaction of the Award.

In his Financial Statement, Ferguson states that as of August 2025, he had a negative net worth exceeding \$954,000 based on his estimate that he had about \$645,840 in assets and \$1,599,943 in liabilities.<sup>53</sup> I find that Ferguson erred in calculating his net worth. Based on adjustments and corrections, I calculate that Ferguson's current net worth is approximately \$427,000, as I discuss below.

#### **a. Ferguson's Assets**

Aside from the properties held in Aledo by Ferguson Holdings, Ferguson does not individually own real property.<sup>54</sup> He rents the apartment where he lives in the San Francisco Bay area.<sup>55</sup>

Ferguson's largest assets consist of his 401(k) retirement account valued at \$259,955 as of August 2025<sup>56</sup> and three other pension assets together he values at \$214,786.<sup>57</sup> Ferguson does not have a securities account aside from the securities held in his retirement accounts.<sup>58</sup> Ferguson has a life insurance policy with a surrender value of \$57,523, according to an August 2025 policy statement.<sup>59</sup>

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<sup>52</sup> Tr. 183-86.

<sup>53</sup> CX-3, at 2.

<sup>54</sup> CX-6, at 1.

<sup>55</sup> Tr. 33, 72; CX-4, at 2.

<sup>56</sup> Tr. 55; CX-3, at 1; CX-8, at 1.

<sup>57</sup> CX-3, at 1. These include a self-directed Individual Retirement Account administered by Accuplan Benefits Services that Ferguson values at \$71,500. The amount consists solely of three promissory notes from two individuals and no securities or other funds. The administrator does not generate monthly statements when there is no change in the asset valuation. Tr. 53-54; CX-6, at 1-2. A pension plan, administered by OneDigital, is valued at \$75,979 as of August 2025. Tr. 133-34; CX-3, at 1; CX-9. Ferguson has a Health Savings Account valued at \$67,307 as of July 2025. Tr. 55-56; CX-10, at 1. Ferguson is approximately 56 years old. CX-1, at 1.

<sup>58</sup> Tr. 34-35.

<sup>59</sup> Tr. 110-11; CX-11, at 1. Ferguson pays a \$450 quarterly premium for the life insurance coverage. Tr. 112; CX-11, at 2.

Ferguson does not have a savings account.<sup>60</sup> He has \$4,724 in two personal checking accounts—\$2,157 at one bank and \$2,567 at another bank as of late July 2025.<sup>61</sup>

He estimates the current value of his household belongings at \$500<sup>62</sup> and three older model vehicles at \$9,358, using Kelley Blue Book estimates.<sup>63</sup>

Ferguson Holdings owns four properties in Aledo and has a checking account.<sup>64</sup> Ferguson estimates that the four properties have a combined market value of \$263,080.<sup>65</sup> The ground floor of the most valuable of the four properties is leased to Ferg's, where the restaurant is located.<sup>66</sup> The property also has an apartment on the second floor above the restaurant. Using a 2021 appraisal, Ferguson values the property (described as an "old brick commercial building") at \$126,000.<sup>67</sup>

Ferguson has tried to sell at least one of the four properties but without success.<sup>68</sup> He values that property, also described by Ferguson as an "old brick commercial building," at \$90,000 (relying on a 2021 appraisal), although he listed it for sale unsuccessfully at \$150,000 in 2024, then lowered the price to \$115,000.<sup>69</sup> (This property and the one leased to Ferg's are encumbered by mortgages, as discussed below.)<sup>70</sup>

Ferguson describes a third property as a small two-bedroom residential rental and says it is worth \$42,080 based on a 2022 county tax valuation.<sup>71</sup> According to two real estate aggregation websites, this residential property has a market value greater than Ferguson's estimate. A September 2025 Redfin estimate places the value at \$64,565, while Zillow says it is worth approximately \$93,400.<sup>72</sup> Based on the two commercial estimates, I think it is appropriate

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<sup>60</sup> Tr. 32.

<sup>61</sup> CX-17, at 3; CX-18, at 1. Ferguson incorrectly listed just \$745 on his Financial Statement as the total amount held in his checking accounts. CX-3, at 1; CX-4, at 1.

<sup>62</sup> Tr. 33; CX-3, at 1; CX-6, at 1.

<sup>63</sup> Tr. 33-34; CX-3, at 1, 6; CX-28, at 2; CX-29, at 2; CX-30, at 2.

<sup>64</sup> Tr. 48, 119; CX-4, at 1; CX-6, at 1; CX-20.

<sup>65</sup> CX-4, at 1. Ferguson Holdings has no financial statements. Because he wholly owns Ferguson Holdings, a limited liability company, Ferguson states that his personal income tax returns include Ferguson Holdings. CX-6, at 1.

<sup>66</sup> Tr. 49.

<sup>67</sup> Tr. 45; CX-4, at 1; CX-15, at 1-4, 24-25.

<sup>68</sup> Tr. 47; CX-3, at 6.

<sup>69</sup> Tr. 46-47; CX-4, at 1; CX-14, at 1-4.

<sup>70</sup> CX-4, at 1.

<sup>71</sup> Tr. 48; CX-4, at 1. Ferguson testified that he cannot afford to pay for property appraisals. Tr. 48.

<sup>72</sup> Tr. 196-99; CX-12, at 2; CX-13, at 1. Ferguson bought the property for \$34,000 in 2015. Tr. 236; CX-13, at 5. Redfin and Zillow do not have valuations for the other three Ferguson Holdings properties because they are commercial and not residential properties. Tr. 197.



to apply a valuation higher than the one Ferguson uses. I conclude that \$60,000 is a reasonable value for the property.

The fourth property belonging to Ferguson Holdings is an empty “grass and dirt” lot that Ferguson values at \$5,000 because that is what he paid for it.<sup>73</sup>

Accordingly, excluding mortgage balances, I find that the four properties are worth \$281,000—which is the sum of \$126,000, \$90,000, \$60,000, and \$5,000. Ferguson Holdings also has \$15,403 in a checking account.<sup>74</sup>

Ferg’s has a checking account in its name. The most recent monthly statement, for the period ending June 2025, shows an ending balance of \$20,282.<sup>75</sup>

Ferguson testified that after balancing Ferg’s assets and liabilities the restaurant has no positive valuation. He relies on the retained earnings calculation in Ferg’s 2024 federal income tax return, which he says reflects a negative net worth exceeding \$255,000.<sup>76</sup> He therefore does not list Ferg’s business as an asset or a liability on his Financial Statement.<sup>77</sup> Enforcement disputes Ferguson’s reasoning and points instead to the value of Ferg’s assets, which the 2024 tax return states is over \$54,000, as the better indicator of Ferg’s value.<sup>78</sup> The record is insufficient to permit me to determine the valuation, if any, of Ferg’s restaurant.

Accordingly, based on the foregoing, I find that Ferguson’s assets total \$863,531.

#### **b. Ferguson’s Liabilities**

Ferguson’s liabilities include a balance owing of \$28,394 on a loan he took against his 401(k) account.<sup>79</sup> He also owes \$40,006 on his credit cards.<sup>80</sup> Ferguson lists legal fees still owing to a law firm he personally retained totaling \$62,312, which he testified is the amount reflected on the last invoice he received dated May 2022,<sup>81</sup> and \$45,482 owed on loans taken against his

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<sup>73</sup> Tr. 47-48; CX-4, at 1.

<sup>74</sup> Tr. 48; CX-4, at 1. Ferguson Holdings’ checking account statement for the period ending July 31, 2025, shows a balance of \$5,633 but Ferguson relied on a more current balance on his Financial Statement. *See* CX-4, at 1; CX-20, at 1. I therefore use the balance amount of \$15,403 that Ferguson used on his Financial Statement.

<sup>75</sup> CX-19, at 1. Ferguson includes a balance of just \$5,113 for Ferg’s checking account on the spreadsheet he created. Tr. 42; CX-4, at 1. He omits any checking account balance for Ferg’s on the Financial Statement. *See* CX-3, at 1.

<sup>76</sup> Tr. 40-41; CX-4, at 1; CX-27, at 6-7.

<sup>77</sup> CX-3, at 1-2.

<sup>78</sup> Tr. 117-19; CX-27, at 6.

<sup>79</sup> Tr. 58; CX-3, at 2.

<sup>80</sup> Tr. 58; CX-3, at 2; CX-4, at 1; CX-21, at 1.

<sup>81</sup> Tr. 65, 139; CX-3, at 2. Enforcement does not dispute that Ferguson owes a law firm \$62,312, but contests that he is currently paying \$1,000 monthly towards the debt. *See* Tr. 217-18; CX-6, at 3.

life insurance policy.<sup>82</sup> Because he is the sole owner of Ferg’s, and ultimately liable for its debts, Ferguson also lists a debt of \$14,376 owed on a credit card in the restaurant’s name.<sup>83</sup>

Ferguson also lists as a liability on his Financial Statement four loans or notes payable totaling \$101,500. Of this amount, Ferguson Holdings owes \$71,500 on three loans made by two individuals.<sup>84</sup> Ferg’s owes another \$30,000 to one of the two individuals.<sup>85</sup>

There are mortgages on the two most valuable properties owned by Ferguson Holdings—the one leased to Ferg’s and the other commercial building—with a total of \$143,866 currently outstanding, according to Ferguson.<sup>86</sup> He does not receive mortgage statements, he says.<sup>87</sup>

Ferguson includes \$763,886 as a liability, which is equal to the Award amount of \$775,346 less \$11,460 in costs payable to the arbitration claimant.<sup>88</sup> I find that it is not appropriate to include this amount when analyzing an inability-to-pay defense. Including the Award (or even any part of it), “would result in a misleadingly lower valuation of net worth available for Respondent to make a meaningful contribution toward satisfaction of the Award.”<sup>89</sup> I therefore do not include the Award as a liability for purposes of evaluating Ferguson’s defense.

He also includes as a current liability a purported judgment rendered by the Southern District of New York in the amount of \$543,985 for attorneys’ fees in favor of the arbitration claimant.<sup>90</sup> But there is no evidence that the court separately entered such a judgment amount specifically for attorneys’ fees, a fact which Ferguson reluctantly concedes.<sup>91</sup> Ferguson also did

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<sup>82</sup> Tr. 58; CX-4, at 1.

<sup>83</sup> Tr. 60-61; CX-3, at 2. Ferguson acknowledges that he incorrectly double counted Ferg’s \$14,376 credit card debt as an “installment loan” on his Financial Statement. Tr. 60-61.

<sup>84</sup> Tr. 53-55; CX-3, at 2; CX-4, at 1.

<sup>85</sup> Tr. 61-62; CX-4, at 1. On the supporting spreadsheet, Ferguson calculated that he, or Ferg’s, currently owes \$58,462 to the individual who loaned the restaurant \$30,000. He uses this liability amount to emphasize that, in his view, Ferg’s has no positive value. *See* CX-4, at 1. Because Ferguson does not include the larger liability amount on his Financial Statement, I do not either. *See* CX-3, at 2.

<sup>86</sup> CX-4, at 1.

<sup>87</sup> Tr. 125; CX-3, at 8; CX-6, at 6. Ferguson also claims that Ferguson Holdings has an additional \$31,645 in liabilities but he arrives at this figure by including future mortgage, property tax, and property insurance payments, which are not current liabilities. CX-4, at 1. I therefore exclude these.

<sup>88</sup> CX-3, at 2; CX-6, at 3. Ferguson did not explain why he excluded \$11,460 in costs from his Award liability calculation. JX-2, at 36.

<sup>89</sup> *See, e.g., Dep’t of Enforcement v. Lake*, No. ARB190024, 2019 FINRA Discip. LEXIS 48, at \*8 n.41 (OHO Nov. 11, 2019) (citing *Reg. Operations v. Grady*, No. ARB170025, 2017 FINRA Discip. LEXIS 51, at \*18 (OHO Dec. 14, 2017) (“As to whether the Award should be included among [a respondent’s] liabilities, while [the respondent] is correct that a net worth calculation should ordinarily include all liabilities, the more useful analysis in this case excludes the Award.”)).

<sup>90</sup> CX-3, at 1; CX-4, at 1; CX-6, at 3.

<sup>91</sup> Tr. 63-65, 188-90; JX-6, at 16. In effect, Ferguson testified that the unpaid attorneys’ fees constituted a debt that he anticipated would someday be reduced to a judgment. Tr. 188-90. Ferguson provided no evidence of the underlying debt.

not produce any evidence that he owes this amount in attorneys' fees. I note that the Award already includes attorneys' fees of \$267,064, an amount that is specifically included in the District Court's judgment affirming the Award.<sup>92</sup> The Award also considered and rejected Marsh & McLennan's claim for more than \$1 million in attorneys' fees, which the District Court also affirmed in its judgment.<sup>93</sup>

I find that Ferguson's properly allowable liabilities total \$435,936. He therefore has a net worth of approximately \$427,595 based on estimated assets of \$863,531 less allowable liabilities of \$435,936.

## **2. Ferguson's Monthly Income Exceeds His Expenses by More Than \$9,000**

I turn next to Ferguson's monthly income and expenses. Ferguson estimated that his monthly expenses exceed his income by approximately \$547.<sup>94</sup> I find that, after removing inappropriate, discretionary, or excessive expenses, and making other adjustments, Ferguson currently has a significant positive monthly balance. His compensation, offset by reasonable and allowable expenses, results in a net monthly income that exceeds \$9,000, as I describe below.

### **a. Monthly Income**

Ferguson says that his income is solely from commissions paid by OneDigital.<sup>95</sup> He calculates that his average net monthly income for the 12 months ending July 2025 is \$16,036, after OneDigital deducts taxes, insurance, pension contributions and other miscellaneous contributions.<sup>96</sup> Because Ferg's and Ferguson Holdings both lose money, according to Ferguson, he says that he derives no income from the businesses.<sup>97</sup>

Accordingly, I find that Ferguson's monthly income is approximately \$16,036.

### **b. Monthly Expenses**

Ferguson estimates that his monthly expenses are \$16,584.<sup>98</sup> I find that excluding inappropriate and discretionary spending, they are in fact considerably less—approximately \$6,722, as set forth below.

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<sup>92</sup> JX-2, at 36.

<sup>93</sup> JX-2, at 5, 36; JX-6, at 16.

<sup>94</sup> CX-3, at 5-6; CX-4, at 2.

<sup>95</sup> CX-6, at 4.

<sup>96</sup> Tr. 145-47; CX-3, at 5; CX-4, at 2; CX-6, at 4, § 16.b. Enforcement does not dispute Ferguson's calculation of his net monthly income from OneDigital. Tr. 235; CX-31.

<sup>97</sup> CX-6, at 4.

<sup>98</sup> CX-3, at 6; CX-4, at 2.

He pays \$1,550 for an apartment he shares in the San Francisco area.<sup>99</sup> Ferguson estimates that his monthly utilities and “home expenses” are \$191, the cost of his cell phone is \$180, cable (including streaming services and an online subscription to the Wall Street Journal) is \$127, automobile expenses (including gas) are \$298, life insurance premium is \$500, and miscellaneous clothing and grooming are \$61.<sup>100</sup>

Ferguson estimates that he spends \$129 on “general supplies” at stores like Walmart and Target, \$512 on entertainment, \$500 on “general tips, homeless donations, misc. expenses,” and \$150 to support his parents.<sup>101</sup> He makes \$1,000 monthly installment payments towards the amount he owes to his former attorneys<sup>102</sup> and incurs another \$245 in current ongoing legal expenses.<sup>103</sup> Ferguson also pays \$629 in interest payments on loans he has taken out.<sup>104</sup>

Ferguson also lists \$1,981 in monthly food expenses. I find this excessive, and the figure may overlap with his stated spending of \$1,012 combined on entertainment and miscellaneous expenses.<sup>105</sup> Ferguson also concedes that this number is “a little high.”<sup>106</sup> An appropriate and more reasonable amount is approximately one-third of Ferguson’s estimate, or \$650.

The foregoing allowable monthly expenses not associated with the businesses in Aledo total \$6,722.

Ferguson spends considerable amounts on expenses that I find are discretionary and therefore not properly chargeable against his net income and evidence of an inability to pay the Award.<sup>107</sup> These various amounts total approximately \$8,530. The largest portion is directly or indirectly associated with running the two businesses in Aledo. He includes \$3,702 in monthly out-of-pocket loans that he extends to Ferg’s and Ferguson Holdings and that offset his net monthly income.<sup>108</sup> He estimates that he spends \$1,644 each month on average in travel to and from Aledo to manage the two businesses.<sup>109</sup> He pays another \$1,300 a month for a house in

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<sup>99</sup> CX-4, at 2. Ferguson pays \$1,400 in rent, plus \$150 for internet and television. CX-6, at 4.

<sup>100</sup> CX-4, at 2.

<sup>101</sup> Tr. 187; CX-4, at 2; RX-9, at 1.

<sup>102</sup> Tr. 66, 80, 86-88. Enforcement disputed that Ferguson paid \$1,000 monthly to his former counsel. Ferguson submitted a copy of a recent cancelled check in that amount that I find is sufficient evidence to substantiate this expense. Tr. 187-88; RX-9, at 1. His bank account statements also consistently show \$1,000 monthly withdrawals. *See, e.g.*, CX-17, at 3, 7, 17.

<sup>103</sup> CX-4, at 2.

<sup>104</sup> CX-4, at 2.

<sup>105</sup> CX-4, at 2.

<sup>106</sup> Tr. 74-75.

<sup>107</sup> *DiPietro*, 2016 SEC LEXIS 1036, at \*19 (finding that respondent failed to establish an inability-to-pay defense when he chose to favor paying discretionary expenses instead of paying down the balance of the arbitration award).

<sup>108</sup> CX-4, at 2.

<sup>109</sup> CX-4, at 2.

Aledo where he stays when he visits to manage the two businesses and see his parents.<sup>110</sup> He pays \$745 in local real estate taxes to operate the businesses. Ferguson Holdings, Ferguson testified, does not have the money to pay the taxes, and if he did not personally pay them, he would lose the business.<sup>111</sup>

Ferguson incurs other discretionary expenses that are not associated with the two businesses. He donates \$112 to a book club in Mongolia,<sup>112</sup> and \$527 towards other charities that he does not name.<sup>113</sup> He also includes \$500 for “college payments” for the benefit of a daughter of a friend, which he testified he has ceased paying because the woman is now out of college.<sup>114</sup>

Ferguson’s monthly expenses identified on his Financial Statement that I determine are discretionary, and therefore do not properly offset his monthly income, total approximately \$8,530.

Based on these categorizations, I find that Ferguson has a monthly positive balance of approximately \$9,314 (income of \$16,036 less \$6,722 in reasonable, non-discretionary expenses).

\* \* \*

I have also considered that when an opportunity arose to pay some amount towards the Award, Ferguson did not do so. In December 2024, Ferguson sold a property in Aledo owned by Ferguson Holdings. Later that month, he deposited \$65,868 of the proceeds from the sale into Ferguson Holdings’ checking account.<sup>115</sup> In January and February 2025, Ferguson transferred \$67,565 from the Ferguson Holdings checking account to a checking account in Ferg’s name.<sup>116</sup>

I further note that Ferguson made contributions to retirement plans in 2024 and through July 2025 totaling more than \$115,000.<sup>117</sup> These funds could have gone towards paying down the Award.

I also note that Ferguson has spent considerable sums on personal travel and vacations in the past two years, a period during which his annual compensation increased substantially. Based

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<sup>110</sup> CX-4, at 2; CX-6, at 5. Ferguson’s verbal arrangement with the owner (a friend of his) of the Aledo property is to pay utilities and “general upkeep”—not a fixed monthly rent. He does not have a written lease for the Aledo property. Tr. 73-74.

<sup>111</sup> Tr. 75-76.

<sup>112</sup> Tr. 81; CX-4, at 2.

<sup>113</sup> CX-4, at 2.

<sup>114</sup> Tr. 142, 187-88; CX-4, at 2; RX-9, at 2.

<sup>115</sup> Tr. 202, 239; CX-20, at 29.

<sup>116</sup> CX-20, at 21-22, 25-26; CX-33.

<sup>117</sup> As referenced above, Ferguson contributed \$30,500 and \$31,000 to his 401(k) plan in 2024 and 2025, respectively, and \$40,998 in 2024 and \$12,800 to date in 2025 to a deferred compensation plan. CX-8, at 2, 4; CX-9, at 1; CX-16, at 1, 8.

on activity in Ferguson's Visa and American Express monthly credit card statements, Enforcement calculated that for a period of about 22 months—from October 6, 2023, when the Award was entered, until early August 2025—he spent over \$79,000 on entertainment, restaurant dining, and travel.<sup>118</sup> Nearly \$46,000 of that amount, Enforcement estimates, was for travel expenses.<sup>119</sup>

His personal travel in the past two years includes trips to Amsterdam, Hawaii, and other destinations. In 2024, for example, he incurred over \$5,000 in credit card charges for a trip to Amsterdam.<sup>120</sup> He took two trips to Hawaii, in December 2023 and January 2025, incurring thousands of dollars in airfare and hotel charges.<sup>121</sup> He also paid at least some of the expenses so that a friend could accompany him.<sup>122</sup> In 2024, he also vacationed in Lake Tahoe and Maine, incurring thousands of dollars in costs.<sup>123</sup>

Ferguson has paid nothing toward the Award and has failed to show that he could not make at least a meaningful payment toward the Award. Instead, he has spent considerable amounts of money on his two businesses and recently—when his income increased considerably—on personal travel and entertainment.

Ferguson apparently believes that his retirement funds should not be counted as an asset in evaluating an inability-to-pay defense because, he says, under California law, retirement funds are protected from creditors.<sup>124</sup> However, the value of Ferguson's retirement funds is relevant to an overall determination of his inability-to-pay defense. Ferguson's allocation decisions regarding his retirement accounts do not demonstrate that he has an inability to pay the Award.<sup>125</sup>

Ferguson also argues, in defense of his failure to pay the Award, that the arbitration claimant has not been willing to negotiate a payment plan or negotiate a settlement.<sup>126</sup> However, Ferguson cannot make payment of the Award contingent on a settlement agreement. An

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<sup>118</sup> CX-32, at 1.

<sup>119</sup> CX-32, at 1. Ferguson testified that some of the expenses—for example, to San Diego in June 2024 for a company conference—were for business trips that OneDigital later reimbursed him for or that he incurred without seeking reimbursement from his employer. Tr. 243-45, 256; CX-32, at 5.

<sup>120</sup> Tr. 256-57; CX-32, at 5-6.

<sup>121</sup> Tr. 253-54, 258-59; CX-32, at 3, 8.

<sup>122</sup> Tr. 254-55.

<sup>123</sup> Tr. 255, 262; CX-32, at 3-4, 7.

<sup>124</sup> Tr. 34-35.

<sup>125</sup> *Shimko*, 2020 FINRA Discip. LEXIS 41, at \*11 (finding that respondent could make a meaningful payment towards an arbitration award from available assets or income).

<sup>126</sup> Tr. 283-84.

arbitration claimant is entitled to full payment and is not obligated to accept less or agree to an installment payment plan.<sup>127</sup>

### III. Conclusion

Based on Ferguson’s testimony and documentary evidence presented at the hearing, I find that he failed to satisfy the burden of proof needed to establish his inability-to-pay defense. The evidence does not show that since the Award was issued in October 2023, Ferguson has been unable to either pay the Award in full or make a meaningful contribution toward satisfying the Award.

FINRA sent Ferguson the Suspension Notice under FINRA Rule 9554 for his failure to pay the Award. FINRA Rule 9559(n)(1) permits a Hearing Officer wide discretion to “approve, modify or withdraw . . . sanctions . . . imposed by the notice” and to assess costs. “‘Honoring arbitration awards is essential to the functioning of the [FINRA] arbitration system,’ and requiring ‘associated persons to abide by arbitration awards enhances the effectiveness of the arbitration process.’”<sup>128</sup> “Conditional suspension of [a respondent’s] association with FINRA members gives him an incentive to pay the award . . . [and] furthers two central purposes of the Exchange Act—serving the public interest and the protection of investors.”<sup>129</sup> Allowing Ferguson the opportunity to return to the industry without paying the Award “‘would also expose investors to an individual who has refused to accept the results of that process by failing to make any effort, meaningful or otherwise, towards paying the amounts he was found to owe, despite having agreed to do so when becoming a FINRA associated person.’”<sup>130</sup>

### IV. Order

Based on the foregoing, and pursuant to Article VI, Section 3(b) of FINRA’s By-Laws, and FINRA Rule 9559(n), I **SUSPEND** Elmer R. Ferguson from associating with any FINRA member firm in any capacity, effective upon the issuance of this Decision. The suspension shall remain in effect until Ferguson produces sufficient documentary evidence to FINRA that (1) he has paid the Award in full; (2) he and the arbitration claimant have entered into a fully executed, written settlement agreement relating to payment of the Award, and he is current in fulfilling his obligations under the terms of the settlement; or (3) he has filed a petition in a United States Bankruptcy Court, or a United States Bankruptcy Court has discharged the debt representing the Award. Should Ferguson make such a showing, the suspension will automatically terminate.

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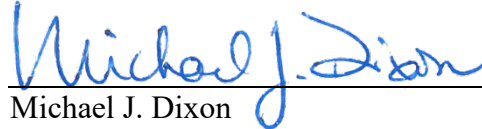
<sup>127</sup> *Reg. Operations v. Pincus*, No. ARB180031, 2019 FINRA Discip. LEXIS 7, at \*21 (OHO Feb. 7, 2019).

<sup>128</sup> *Dep’t of Enforcement v. Henry*, No. ARB220023, 2023 FINRA Discip. LEXIS 6, at \*15 (OHO Apr. 13, 2023) (quoting *Daniel Paul Motherway*, Exchange Act Release No. 97180, 2023 SEC LEXIS 753, at \*13 (Mar. 21, 2023)).

<sup>129</sup> *DiPietro*, 2016 SEC LEXIS 1036, at \*24.

<sup>130</sup> *Henry*, 2023 FINRA Discip. LEXIS 6, at \*15-16 (quoting *Motherway*, 2023 SEC LEXIS 753, at \*13-14).

Ferguson is also **ORDERED** to pay the costs of this proceeding, which include \$3,078.62 for the hearing transcript plus a \$750 administrative fee, for a total of \$3,828.62.<sup>131</sup> These costs are due and payable upon the issuance of this Decision.<sup>132</sup>

  
Michael J. Dixon  
Hearing Officer

Copies to:

Elmer R. Ferguson, Respondent (via email, overnight courier, and first-class mail)  
Christen Sproule, Esq., FINRA Enforcement (via email)  
Michael P. Manning, Esq., FINRA Enforcement (via email)

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<sup>131</sup> Ferguson must pay the costs of the hearing before the suspension terminates.

<sup>132</sup> I considered and rejected without discussion all other arguments by the parties.