

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ADAM SCOTT KAPLAN
(CRD No. 6609019)

and

DANIEL EVAN KAPLAN
(CRD No. 6609015),

Respondents.

Expedited Proceeding
No. ARB250018

RCM No. 20250870904

Hearing Officer—MJD

EXPEDITED DECISION

February 2, 2026

For their failure to pay a \$100,000 FINRA arbitration award in favor of three customers, Respondents are suspended from associating with any FINRA member firm in any capacity until they comply with the award or establish one of the recognized defenses to a suspension for failure to pay.

Appearances

For the Complainant: Jean Bickhart, Esq., and John Luburic, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: Arthur D. Felsenfeld, Esq., and Steven R. Schlesinger, Esq., Jaspan Schlesinger Narendran LLP

DECISION

I. Introduction

Respondents Adam Scott Kaplan and Daniel Evan Kaplan (together the “Kaplans” or “Respondents”) failed to pay a FINRA arbitration award in the amount of \$100,000 (the “Award”) entered against them in favor of three customers. As a result, FINRA sent each of them a notice informing them that they would be suspended from associating with any FINRA member firm. Respondents stayed the imposition of the suspensions by timely requesting a hearing with FINRA’s Office of Hearing Officers (“OHO”) and asserting various defenses.

The parties filed pre-hearing briefs. I held a hearing by videoconference. Enforcement presented the testimony of one witness—Raina Burke, a case management analyst in FINRA’s Dispute Resolution Services—to establish the facts that led to the initiation of this proceeding. Respondents did not call any witnesses. I admitted all of Enforcement’s exhibits, CX-1 through CX-12, and all the exhibits that Respondents moved to admit into evidence, RX-1 through RX-3. After Burke testified, the parties presented oral argument.

After considering the testimony and documentary evidence presented at the hearing and the parties’ legal arguments, I find that the Respondents failed to prove any of their defenses. I therefore suspend each Respondent from associating with any FINRA member firm in any capacity until the Respondent: (1) fully pays the Award; (2) enters into a fully executed, written settlement agreement with the arbitration claimants relating to payment of the Award, and 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 Respondents to pay the costs of the hearing.

II. Findings of Fact and Conclusions of Law

A. Regulatory Framework

Under FINRA rules governing customer 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.”¹ 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.”² 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.³

When served with a suspension notice, a respondent may request a hearing with OHO.⁴ A hearing request stays the imposition of the suspension⁵ and must specifically identify all defenses the person has to the suspension notice.⁶ 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,

¹ FINRA Rule 12904(j).

² FINRA Rule 9554(a).

³ FINRA Rule 9554(c).

⁴ FINRA Rule 9554(e).

⁵ FINRA Rule 9554(d).

⁶ FINRA Rule 9554(e).

or a Bankruptcy Court has discharged the award.⁷ In the case of an unpaid arbitration award not involving a customer, a respondent may also assert as a defense to a suspension proceeding a bona fide inability to pay an award issued in connection with an industry dispute.⁸ Because the Award in this case involves customers, this defense is not available to the Kaplans.⁹

B. The Kaplans' Background

The Kaplans are brothers who entered the securities industry in 2016 when they both became associated as general securities representatives with FINRA member firm Morgan Stanley.¹⁰ They were next associated with Merrill Lynch Pierce, Fenner & Smith Incorporated from May 2017 until April 5, 2018, when the firm terminated each of their registrations for “[c]onduct involving utilizing client logon credentials to access client accounts.”¹¹ Respondents have not been associated with a FINRA member firm since April 5, 2018.¹²

C. Jurisdiction

FINRA has jurisdiction to bring this expedited proceeding against the Kaplans pursuant to Article V, Section 4(b) of FINRA’s By-Laws because it was initiated within two years after January 31, 2024, the date of entry of the Award.

The Kaplans have not contested that FINRA has jurisdiction to bring this expedited proceeding, only the way FINRA is exercising its jurisdiction.

D. A \$100,000 Arbitration Award Is Rendered Against the Kaplans

In March 2020, the Kaplans filed a Statement of Claim with FINRA Dispute Resolution Services against their former employer Morgan Stanley and three former customers, asserting defamation per se, slander, libel, and tortious interference with existing and prospective business relations.¹³ The three former customers counterclaimed, alleging fraud, conversion, breach of contract, and intentional infliction of emotional distress, among other claims.¹⁴ After hearing oral argument, on January 31, 2024, the arbitration panel issued the Award dismissing the Kaplans’

⁷ See FINRA’s By-Laws, Art. VI, Sec. 3(b); NASD Notice to Members 00-55, at 2 (Aug. 2000), <https://www.finra.org/rules-guidance/notices/00-55>; FINRA Regulatory Notice 10-31, at 2 (June 2010), <https://www.finra.org/rules-guidance/notices/10-31>).

⁸ See, e.g., *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *3-4 (Mar. 14, 2003).

⁹ FINRA Rule 9554(a). See FINRA Regulatory Notice 10-31, at 2 (notifying securities industry that the Securities and Exchange Commission (“SEC”) had recently approved an amendment to FINRA Rule 9554(a) eliminating the inability-to-pay defense in expedited proceedings for failure to pay arbitration awards involving customers).

¹⁰ Hearing Transcript (“Tr.”) 26 (Burke); Complainant’s Exhibit (“CX-”) 1, at 1-2, 4; CX-2, at 1-2, 4.

¹¹ CX-1, at 3; CX-2, at 3.

¹² From May 2018 until November 2021, Respondents were registered with two investment advisors. CX-1, at 2-3; CX-2, at 2-3.

¹³ CX-3, at 1-2.

¹⁴ CX-3, at 2. Morgan Stanley denied the Kaplans’ allegations and asserted various affirmative defenses, but did not file a counterclaim. CX-3, at 2. In 2021, the Kaplans dismissed their claims against Morgan Stanley. CX-3, at 2.

claims and the customers' counterclaims. The arbitration panel nonetheless entered the Award in the amount of \$100,000 in favor of the three customers and against the Kaplans, jointly and severally.¹⁵ This amount, according to the Award, represented attorneys' fees as a sanction for the Kaplans' failure to abide by the panel's discovery orders.¹⁶

On January 31, 2024, FINRA served the Award on the Kaplans' arbitration counsel (the "Award Service Letter").¹⁷ The Award Service Letter notified the Kaplans through counsel 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.¹⁸ FINRA sent the Kaplans' counsel an additional notice of the Award by letter the same day—January 31, 2024—which also reminded the Kaplans of the 30-day deadline for paying the Award or moving to vacate it.¹⁹

E. FINRA Takes Steps to Suspend the Kaplans for Not Paying the Award

Because the Kaplans had not paid the Award, on March 6, 2024, FINRA sent them each a notice of suspension ("Suspension Notice") under FINRA Rule 9554. FINRA served the Suspension Notice by sending it by Fedex overnight delivery to their residential addresses as recorded in FINRA's Central Registration Depository ("CRD").²⁰ The Suspension Notices informed the Kaplans that they would be suspended effective March 27, 2024, unless they demonstrated that they had taken one of several actions specified in the Suspension Notices.²¹ The Suspension Notices also informed them that they could stay the effective date of the suspensions if they timely requested a hearing with OHO to assert one of the enumerated defenses.²²

On March 19, 2024, the Kaplans, through their arbitration counsel, filed a motion to vacate or modify the Award in the Supreme Court of the State of New York for New York County.²³ The motion to vacate the Award stayed the imposition of the suspensions.²⁴

One year later, on April 3, 2025, the New York state court denied the Kaplans' motion to vacate the Award, granted the customers' cross-petition to confirm the Award, and entered judgment for the three customers in the amount of \$100,000, plus interest from January 31, 2024,

¹⁵ CX-3, at 3.

¹⁶ CX-3, at 3.

¹⁷ CX-4.

¹⁸ CX-4, at 1.

¹⁹ CX-5, at 1.

²⁰ Tr. 25-26; CX-6, at 1, 3-6.

²¹ CX-6, at 1, 5.

²² CX-6, at 1, 5.

²³ CX-7.

²⁴ See FINRA Rules 9554(d) and 9559(c)(1).

the date of the Award.²⁵ On April 25, 2025, the Kaplans appealed the denial of their motion to vacate the Award and entry of judgment in favor of the customers.²⁶

On July 22, 2025, after learning that the motion to vacate had been denied, Burke asked the Kaplans' arbitration counsel via email whether they had obtained a supersedeas bond,²⁷ which would have halted the suspension process.²⁸ She did not ask counsel who represented the Kaplans in the state action about the bond because that action was separate from the arbitration proceeding.²⁹

Because the Kaplans had not paid the Award within 30 days after the denial of their motion to vacate, on July 24, 2025, FINRA again initiated the suspension process by sending each of them another Suspension Notice (the "July 24, 2025, Suspension Notices") to their residential addresses as recorded in CRD.³⁰ FINRA sent the Suspension Notices via FedEx overnight delivery and both were delivered the next day—July 25, 2025.³¹ FINRA also sent copies of the Suspension Notices to counsel who represented the Kaplans in the arbitration proceeding.³² The Suspension Notices informed the Kaplans that they would be suspended effective August 14, 2025, unless before that date they demonstrated that they satisfied one of the specified defenses—they had paid the Award in full, entered into a written settlement agreement with the customers, filed an action to vacate the Award, or filed a bankruptcy petition or a bankruptcy court had discharged the Award.³³

On August 13, 2025, through new counsel retained to represent them in this proceeding, the Kaplans timely filed a request for a hearing with OHO.³⁴ This stayed the imposition of the suspensions.³⁵ The hearing request stated that the Kaplans, who have not been associated with a member firm since 2018, "will not seek to register with any FINRA member firms at any time in the future."³⁶ The request noted that the former customers' counsel had not responded to the

²⁵ CX-8.

²⁶ CX-9, at 1-4. The attorney who represented the Kaplans in the arbitration proceeding filed the motion to vacate the Award. CX-7, at 1, 18. The Kaplans' April 25, 2025, appeal of the denial of the motion to vacate was filed by counsel who was not involved in the FINRA arbitration proceeding but later entered an appearance in this proceeding. CX-9, at 1, 11.

²⁷ The filing of a supersedeas bond, also called a writ of supersedeas, suspends a judgment creditor's power to levy execution, usually pending an appeal by the debtor. *See Black's Law Dictionary* 1667 (10th ed. 2014).

²⁸ Tr. 36-38 (Burke); CX-10.

²⁹ Tr. 51-52 (Burke).

³⁰ CX-11, at 4-7.

³¹ CX-11, at 2-3, 8-12.

³² Tr. 44 (Burke); CX-11, at 5, 7.

³³ CX-11, at 4, 6.

³⁴ CX-12.

³⁵ *See* Rule 9554(d).

³⁶ CX-12, at 2.

Kaplans' counsel's efforts to discuss settlement.³⁷ "Under these circumstances," the request continued, "FINRA's threatened suspension[s] would serve no legitimate purpose, would be defamatory, and highly prejudicial to [the Kaplans] at this time, particularly in light of their upcoming criminal trial."³⁸

The hearing request further stated that at the hearing the Kaplans "intend to assert all available defenses, including, but not limited to, the defense that any suspension under the above-stated facts, would be an abuse of discretion, the invalidity of the notice as set forth in the July 24, 2025, letters and the fact that [the Kaplans'] motion to vacate the underlying award has not been finally determined, in light of the pendency of a timely-filed appeal."³⁹

F. Respondents File a Statement of Defenses

On August 18, 2025, I held a pre-hearing conference with the parties. Counsel for the Kaplans informed me that they were criminal defendants in a case pending in the U.S. District Court for the Eastern District of New York. Trial was scheduled to begin on September 8, 2025, and take three to six weeks.⁴⁰

During the conference, I informed the Kaplans' counsel that the defenses to the Suspension Notices as set forth in their hearing request did not comply with FINRA Rule 9554(e).⁴¹ The Rule provides that "[a] request for a hearing must set forth with specificity any and all defenses to the FINRA action." The hearing request did not rely on any of the permitted defenses listed in the Suspension Notices and it stated vaguely that the Kaplans were going to assert all "available defenses" at the hearing.⁴²

I also informed the parties that, assuming they could agree on joint stipulations of facts that were not reasonably in dispute, the case should be decided primarily, if not solely, on legal arguments.⁴³ I afforded the Kaplans another opportunity to set forth their defenses. Also, with the consent of the parties, I agreed to schedule the hearing for October 30, 2025, to allow sufficient time for the criminal trial to conclude.⁴⁴

³⁷ CX-12, at 2.

³⁸ CX-12, at 2.

³⁹ CX-12, at 2.

⁴⁰ Transcript of Pre-Hearing Conference (Aug. 18, 2025) 6.

⁴¹ Transcript of Pre-Hearing Conference (Aug. 18, 2025) 28-29.

⁴² CX-12, at 2.

⁴³ Transcript of Pre-Hearing Conference (Aug. 18, 2025) 10-11, 16-17, 22.

⁴⁴ Transcript of Pre-Hearing Conference (Aug. 18, 2025) 25-27. FINRA Rule 9559(f)(4) provides that in a case brought under FINRA Rule 9554 a hearing should be held within 30 days after a respondent files a request for a hearing. Because the Kaplans filed their hearing request on August 13, 2025, a hearing should therefore have been held by September 12, 2025. Because of the pending criminal trial, I found that good cause existed to schedule it for October 30, 2025.

The next day, August 19, 2025, I issued an order confirming the October 30, 2025, hearing date and establishing a briefing schedule for the parties to submit pre-hearing briefs setting forth their legal arguments. It also included a deadline for the Kaplans to file “a statement setting forth with specificity their defenses to this FINRA action, as required by FINRA Rule 9554(e).”⁴⁵

On September 3, 2025, the Kaplans filed a Statement of Defenses, which essentially repeated the various statements made in their August 13, 2025, request for a hearing.⁴⁶ They asserted that the suspension action is an abuse of discretion because the Kaplans had not been associated with a FINRA member since 2018 and were named defendants facing an imminent criminal trial—then set for September 8, 2025—in the U.S. District Court for the Eastern District of New York, while Adam Kaplan was at the time incarcerated.⁴⁷ If I did not agree to a dismissal, they urged that I stay the proceeding “pending the resolution or disposition of the criminal trial.”⁴⁸

The Kaplans further stated that the Suspension Notices were not properly served on them and were also “invalid” because they were inconsistent with Rule 9554 and did not include the possibility of posting a supersedeas bond as a means to halt the suspension process.⁴⁹ The Statement of Defenses additionally claimed that the proceeding should be stayed until their appeal of the denial of the motion to vacate the Award is “finally determined.”⁵⁰ As their last defense, they claimed that, despite their counsel’s efforts, the Kaplans have been unable to successfully negotiate a settlement with the former customers.⁵¹

G. The Hearing Was Stayed Until After the Criminal Trial

On September 25, 2025, the Kaplans filed their Opening Brief elaborating on the defenses identified in their hearing request and Statement of Defenses.⁵² On November 10, 2025, Enforcement filed its response brief,⁵³ and on November 19, 2025, the Kaplans filed their reply brief.⁵⁴

⁴⁵ See Order Governing Briefing Schedule, at 2 (Aug. 19, 2025). In the Order, I also directed counsel for the Kaplans to NASD Notice to Members 00-55 which provides notice to the securities industry of the recognized defenses to a suspension notice for failure to pay a customer arbitration award. *Id.* n.1. In Regulatory Notice 10-31, at 2, FINRA provided additional notice of the available defenses.

⁴⁶ Respondents’ Statement of Defenses (Sept. 3, 2025).

⁴⁷ *Id.* ¶ 1.

⁴⁸ *Id.* ¶ 2.

⁴⁹ *Id.* ¶¶ 3-5.

⁵⁰ *Id.* ¶ 6.

⁵¹ *Id.* ¶ 7.

⁵² Respondents’ Opening Brief (“Resp. Opening Brief”) (Sept. 25, 2025).

⁵³ Department of Enforcement’s Response to Respondents’ Opening Brief (“Enf. Brief”) (Nov. 10, 2025).

⁵⁴ Respondents’ Reply Brief (“Resp. Reply Brief”) (Nov. 19, 2025).

The Kaplans first argued that the hearing in this expedited proceeding should be temporarily stayed until the conclusion of the criminal trial.⁵⁵ They argued that it would be unfair for them to face “practical and logistical issues . . . if they were forced to defend both actions simultaneously,” especially because they are not currently associated with a member firm.⁵⁶ Their criminal trial—originally scheduled to begin on September 8, 2025—got under way instead on September 22, 2025.⁵⁷ As a result, the Kaplans did not think that the criminal trial would conclude by October 30, 2025, the original hearing date.⁵⁸

On September 26, 2025, I held a second pre-hearing conference with the parties. After hearing argument about the timing of the hearing, I granted the Kaplans’ request to postpone it until after their criminal trial. In the interests of justice, and after determining that good cause existed, I continued the hearing from October 30 to December 5, 2025, a date that the Kaplans’ counsel believed would certainly be after the conclusion of their criminal trial and that the parties stated they were available.⁵⁹ In ordering the continuance, I considered the unusual circumstances present in this case—that Respondents were simultaneously preparing for a criminal trial and that one Respondent was then incarcerated. The additional time would provide the Kaplans an opportunity to assist counsel in this proceeding and to attend the hearing. The criminal trial concluded on November 13, 2025, three weeks before the hearing in this matter, which allowed Daniel Kaplan to attend the hearing.⁶⁰

H. Discussion

Based on Burke’s testimony and the documentary evidence presented at the hearing⁶¹ and the parties’ legal arguments, I find that the Kaplans have failed to carry their burden of proof. The Kaplans presented no evidence that they paid the Award, entered into a written settlement agreement with the customers, or filed a bankruptcy petition that is still pending or that a bankruptcy court has discharged the amount owed under the Award. As I discuss below, none of the defenses that the Kaplans actually presented at the hearing is recognized in a suspension proceeding brought under Rule 9554. Nonetheless, I carefully considered the arguments made in support of each of their defenses. I find that they have no merit.

⁵⁵ Resp. Opening Brief at 11.

⁵⁶ *Id.* at 6.

⁵⁷ *Id.* at 3.

⁵⁸ *Id.* at 3.

⁵⁹ Transcript of Pre-Hearing Conference (Sept. 26, 2025) 27.

⁶⁰ Tr. 7, 56, 100-01 (Kaplans’ counsel); Resp. Reply Brief at 2.

⁶¹ On November 24, 2025, I held a third pre-hearing conference with the parties. The parties had not yet been able to agree on stipulations of fact or the admissibility of potential hearing exhibits that would create a factual record on which to decide the case. I therefore required that Enforcement be prepared to call a witness to establish such a factual record. Transcript of Pre-Hearing Conference (Nov. 24, 2025) 10-12.

1. FINRA's Threatened Suspensions Are Not an Abuse of Discretion

According to the Kaplans, FINRA's threat to suspend them is an abuse of discretion because Rule 9554(a) does not mandate the initiation of suspension proceedings.⁶² They point out that the Rule provides,

If a member, person associated with a member or person subject to FINRA's jurisdiction fails to comply with an arbitration award or settlement agreement related to an arbitration or mediation under Article VI, Section 3 of FINRA's By-Laws or a FINRA order of restitution or FINRA settlement agreement providing for restitution, FINRA staff *may provide* written notice to such member or person stating that failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member. [Emphasis added.]

Because the Rule uses the phrase "may provide," the Kaplans assert that the initiation of suspension proceedings, according to FINRA's own Rules, is "discretionary."⁶³ They represent that they will not seek to re-register with any FINRA firms at any time in the future.⁶⁴ I infer from this that their argument is that FINRA should exercise its discretion not to pursue suspension because Respondents say they will not re-register in the future.

The Kaplans misunderstand the purpose of a Rule 9554 suspension proceeding. Rule 9554 applies to formerly associated persons who have not paid an arbitration award as well as currently associated persons. FINRA uses Rule 9554 proceedings as "leverage of a potential suspension to help ensure that a firm or an associated person promptly pays a valid arbitration award."⁶⁵ Such proceedings therefore encourage respondents to comply with arbitration awards. The Kaplans suggest that this proceeding is unfair and unnecessary because they are not associated with a member and do not intend to join a firm in the future, so the investing public would not be harmed by dismissing this proceeding.⁶⁶ However, the Kaplans' former customers already have been harmed by their failure to pay the Award, a fact that is not in dispute. Regardless of the Kaplans' intent not to re-register with FINRA, it is appropriate under Rule 9554 for FINRA to seek and impose a suspension.

Because the Kaplans have not paid the Award, I find that FINRA did not abuse its discretion by initiating this suspension proceeding pursuant to Rule 9554.

⁶² Resp. Opening Brief at 6.

⁶³ *Id.* at 6.

⁶⁴ *Id.* at 7.

⁶⁵ FINRA Regulatory Notice 10-31, at 2.

⁶⁶ Resp. Opening Brief at 7.

2. The Suspension Notices Are Not Inconsistent with Rule 9554

The Kaplans' next argument is that the July 24, 2025, Suspension Notices "are inconsistent with Rule 9554" because they list only four available defenses to a suspension.⁶⁷ This limitation, according to the Kaplans, has no basis in the text of Rule 9554.⁶⁸ They claim that they should have available to them "any defense going to the due process and fairness of this proceeding."⁶⁹ The Kaplans thus jump to the conclusion that the July 24, 2025, Suspension Notices "misstate Respondents' rights and are accordingly invalid," and "undermine the validity of FINRA's suspension process and accordingly, this proceeding should be dismissed."⁷⁰

Regardless of the defenses listed in or omitted from the July 24, 2025, Suspension Notices, I afforded the Kaplans the opportunity to present all their defenses at the hearing—not just those listed in the Suspension Notices—through written briefing and then in oral argument at the hearing. Any possible deficiency in the Suspension Notices was rendered moot when OHO accepted the Kaplans' hearing request. FINRA provided the Kaplans with fair notice of the expedited suspension proceeding and a fair hearing.

Furthermore, the July 24, 2025, Suspension Notices FINRA sent the Kaplans complied with the requirements of Rule 9554(c). They provided the specific grounds and factual basis for the expedited proceeding, including the specific date the suspensions would go into effect and what they had to do to avoid that action.⁷¹ They further informed the Kaplans they could file a written request for a hearing with OHO that stated "all claimed defenses" and provided the filing deadline.⁷² They also made clear the Suspension Notices would constitute final FINRA action if the Kaplans did not timely request a hearing.⁷³ Finally, the Suspension Notices explained that the Hearing Officer could "approve, modify or withdraw any and all sanctions or limitations imposed" by the Suspension Notices and "may impose any other fitting sanction."⁷⁴

I reject this defense because the Suspension Notices complied with the requirements of Rule 9554.

3. The Suspension Notices Are Not Inconsistent with the July 22, 2025, Email FINRA Sent the Kaplans About a Supersedeas Bond

Similar to the preceding argument, the Kaplans state that the July 24, 2025, Suspension Notices are "inaccurate, misleading and invalid" because they failed to inform them that

⁶⁷ *Id.* at 7.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.* at 8.

⁷⁰ *Id.* at 8. *See also* Tr. 57-59 (Kaplans' argument).

⁷¹ CX-11, at 4, 6.

⁷² CX-11, at 4, 6.

⁷³ CX-11, at 5, 7.

⁷⁴ CX-11, at 5, 7.

obtaining a supersedeas bond was an additional means of halting the suspension process. “A suspension process premised on such invalid notice should accordingly be dismissed,” they argue.⁷⁵ This omission in the July 24, 2025, Suspension Notices, according to the Kaplans, “infects the process and requires the denial of FINRA’s intended suspension[s].”⁷⁶

The July 22, 2025, email that Burke—Dispute Resolution Services’ case management analyst—sent the Kaplans’ arbitration counsel asked him to produce evidence that they posted a supersedeas bond in connection with their appeal of the denial of the motion to vacate the Award.⁷⁷ It is completely irrelevant and of no consequence that the Suspension Notices—sent just two days after the email—do not also refer to the supersedeas bond because the Kaplans never posted a bond. According to Burke, the filing of a supersedeas bond would halt the suspension process.⁷⁸ Her query to the Kaplans’ counsel does not mean that such a bond would have served as a recognized defense in this action.

I therefore find that the July 24, 2025, Suspension Notices are not inconsistent with the email Burke sent to the Kaplans’ arbitration counsel on July 22, 2025.

4. The Kaplans’ Appeal of the Denial of the Motion to Vacate Does Not Stay the Imposition of the Suspensions

The Kaplans contend that because they appealed the denial of their motion to vacate the Award, this proceeding “should be stayed until the action to vacate the [Award] is finally determined.”⁷⁹ FINRA’s By-Laws do not support the Kaplans’ assertion. Nor do existing FINRA and SEC precedent, which provide additional guidance rejecting this argument.

Article VI, Section 3(b) of FINRA’s By-Laws permits FINRA to suspend a person from association with a FINRA member where “a timely motion to vacate or modify such award has not been made . . . or where *such motion has been denied*.”⁸⁰ NASD Notice to Members 00-55 provides additional guidance: “An award must be paid immediately when a court denies a motion to vacate or modify an award, absent a court order staying compliance with the award.”⁸¹

⁷⁵ Resp. Opening Brief at 9.

⁷⁶ Resp. Reply Brief at 4. *See also* Tr. 60 (Kaplans’ argument) (“The bottom line is that the July 24 letters fail to accurately set forth respondents’ rights and are therefore invalid.”).

⁷⁷ CX-10. Burke is responsible for tracking the payment of arbitration awards. She also sent the Kaplans the July 24, 2025, Suspension Notices. Tr. 14; CX-11, at 2-3, 5, 7.

⁷⁸ Tr. 36-39 (Burke).

⁷⁹ Resp. Opening Brief at 9.

⁸⁰ FINRA’s By-Laws Art. VI, Sec. 3(b) (emphasis added). This provision of the By-Laws states that FINRA “after 15 days notice in writing, may suspend or cancel the membership of any member or suspend from association with any member any person, for failure to comply with an award of arbitrators properly rendered pursuant to [FINRA’s] Rules, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such motion has been denied, or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to [FINRA’s] Rules.”

⁸¹ NASD Notice to Members 00-55, at 2 n.5.

FINRA’s decisions confirm that FINRA is not required to halt its suspension process until the appeal of a motion to vacate is denied. In a recent case, OHO rejected the defense presented by two respondents that even though their motion to vacate was denied FINRA had to stay suspension proceedings because they appealed the denial of their motions to vacate.⁸² “Once a motion to vacate has been denied, the obligation to pay is immediate; and FINRA is authorized to commence a suspension proceeding if payment is not forthcoming.”⁸³ The threat of suspension is an incentive for a respondent to comply with an arbitration award.⁸⁴

The SEC has also rejected the argument that there is no obligation to pay an arbitration award until every avenue of appeal is exhausted.⁸⁵ FINRA is not obligated “to delay the effective date of a suspension or the commencement of suspension proceedings until after the resolution of an appeal from a district court’s denial of a motion to vacate.”⁸⁶

The Kaplans also rely on a development that occurred in the New York state action after they filed their hearing request with OHO. On October 2, 2025, a week after the Kaplans filed their Opening Brief, the trial court *sua sponte* issued an amended Order confirming the entry of judgment but clarifying that the clerk of court “shall enter judgment of the award in favor of [the customers] and as against the [the Kaplans], jointly and severally in the amount of \$100,000 plus interest from January 31, 2024,” the date of the Award.⁸⁷ The Kaplans claim this amendment “supersede[s]” the original order denying the motion to vacate and effectively starts the clock all over.⁸⁸ The Kaplans argue that the addition of the “joint and several” language is “a substantive change” that should require FINRA to re-issue its Suspension Notices.⁸⁹

On October 8, 2025, the Kaplans appealed the amended Order.⁹⁰ On October 30, 2025, the New York court entered judgment in favor of the customers and against the Kaplans, jointly

⁸² *Dep’t of Enforcement v. Barrows*, Nos. ARB250005 and ARB250007, 2025 FINRA Discip. LEXIS 10, at *27-29 (OHO May 7, 2025) *appeal docketed*, No. 3-22477 (SEC May 22, 2025).

⁸³ *Id.* at *28.

⁸⁴ *Id.* at *29 (“Respondents’ insistence that they need not comply with the award and should not be suspended so long as their appeal is pending is inconsistent with the framework for arbitration, inconsistent with the language of Article VI, Section 3(b) of FINRA’s By-Laws, and inconsistent with all relevant precedents and guidance.”).

⁸⁵ *Gallagher*, 2003 SEC LEXIS 599, at *13-14.

⁸⁶ *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *11 (Mar. 17, 2016) (FINRA may suspend a person’s association for failure to pay an award after the denial of a motion to vacate.). *See also Keith Patrick Sequeira*, Exchange Act Release No. 85231, 2019 SEC LEXIS 286, at * 18-19 (Mar. 1, 2019), *pet. for review denied*, 816 F. App’x 703 (3rd Cir. 2020) (“We have explained that the possibility that a litigant may prevail in an appeal of the dismissal of a lawsuit seeking to vacate an arbitration award does not present a basis to avoid suspension for failure to pay the award.”).

⁸⁷ *Compare* CX-8, at 2-3, with Respondents’ Exhibit (“RX-”) 2, at 3.

⁸⁸ Resp. Reply Brief at 4.

⁸⁹ Tr. 61 (Kaplans’ argument). The addition of the “joint and several” language in the amended Order is consistent with the language in the Award finding Respondent “jointly and severally liable.” *See* CX-3, at 3; RX-2, at 3.

⁹⁰ RX-3.

and severally, in the amount of \$115,731.51, which includes interest of \$15,731.51 calculated at nine percent from January 31, 2024.⁹¹

I find that the trial court's October 2, 2025, amended Order is solely clerical or administrative in nature and does not affect the court's denial, on April 3, 2025, of the motion to vacate the Award or require that I dismiss this proceeding. I also find that FINRA properly initiated the suspension proceedings after the denial of the Kaplans' motion to vacate the Award even though the Kaplans appealed the denial.

5. FINRA Properly Served the Kaplans with the Suspension Notices

The Kaplans assert that neither of them was properly served with a Suspension Notice because they did not receive actual notice directly from FINRA of its intent to suspend. Instead, they obtained "actual notice" from their counsel in the arbitration proceeding, who received email notifications of the Suspension Notices via FINRA's Dispute Resolution Portal.⁹² "This," they insist, "is not valid service under FINRA Rule 9554."⁹³

As noted above, FINRA served the Suspension Notices by FedEx. The Kaplans do not dispute that FINRA sent the Suspension Notices via FedEx overnight delivery to their CRD addresses. They claim instead that they do not know the person who signed for the deliveries, according to the FedEx records provided to them by Enforcement, and, in any event, they did not authorize the person to accept service.⁹⁴

They further argue that Adam Kaplan has been incarcerated at the Metropolitan Detention Center in Brooklyn, New York, since September 2024, "which FINRA Enforcement either knew or should have known."⁹⁵ Because FINRA was in touch with arbitration counsel, according to the Kaplans, FINRA staff "would have had to have known" that Adam Kaplan was incarcerated.⁹⁶ Consequently, serving the Suspension Notices at Adam Kaplan's CRD address was not reasonable, they assert.⁹⁷

Daniel Kaplan also claims that he never received the July 24, 2025, Suspension Notice sent to his CRD address. The address FINRA used for the FedEx overnight delivery excluded the apartment number,⁹⁸ which, they argue, constitutes another basis to find service ineffective.⁹⁹

⁹¹ RX-1, at 4.

⁹² Tr. 44 (Burke).

⁹³ Resp. Opening Brief at 10.

⁹⁴ *Id.* at 10.

⁹⁵ *Id.* See also Tr. 62-64 (Kaplans' argument).

⁹⁶ Resp. Reply Brief at 5.

⁹⁷ *Id.* FINRA Dispute Resolution Services served the Kaplans with the Suspension Notices, not Enforcement. See Tr. 40; CX-11.

⁹⁸ See CX-11, at 6.

⁹⁹ Resp. Opening Brief at 10.

FINRA, however, used the precise address Daniel Kaplan reported in CRD, which did not include the apartment number.¹⁰⁰

FINRA Rule 9554(b) states that FINRA staff “shall serve the member or person with such notice . . . in accordance with . . . Rule 9134 or by facsimile or email.”¹⁰¹ It also states that “[s]ervice is complete upon . . . sending the notice . . . through a courier service.”¹⁰² For service on individuals, Rule 9134(b)(1) states that papers may be served “at the natural person’s residential address, as reflected in [CRD].”¹⁰³ If FINRA has “actual knowledge that the natural person’s [CRD] address is out of date, duplicate copies shall be served on the natural person at the natural person’s last known residential address and the business address in the [CRD] of the entity with which the natural person is employed or affiliated.”¹⁰⁴ Rule 9134(b)(3) states that “Personal service and service by courier or express delivery are complete upon delivery. Service by mail is complete upon mailing.”¹⁰⁵

FINRA complied with the service requirements of Rules 9134 and 9554(b). FINRA served each Respondent using FedEx overnight delivery at the residential addresses exactly as recorded in CRD. FedEx generated confirmations of the deliveries further evidencing that FINRA complied with Rule 9134(b)(3). It is the responsibility of an associated person to keep current the residential address recorded in CRD.¹⁰⁶ Dispute Resolution Services’ Burke, who

¹⁰⁰ The Kaplans resided at the same street address. While Adam Kaplan included the apartment number in the residential address that he provided to CRD, Daniel Kaplan did not. He provided only the street number without identifying the apartment number. *Compare* CX-1, at 1, with CX-2, at 2. The Kaplans further argue that because they have not been registered since 2018 it is not reasonable for FINRA to rely on service of the Suspension Notices at their CRD addresses. Tr. 65 (Kaplans’ argument).

¹⁰¹ FINRA Rule 9554(b). The Kaplans argue that FINRA’s “technical compliance” with Rules 9134 and 9554 is not sufficient to demonstrate that service was proper. Resp. Reply Brief at 4.

¹⁰² FINRA Rule 9554(b).

¹⁰³ FINRA Rule 9134(b)(1).

¹⁰⁴ FINRA Rule 9134(b)(1).

¹⁰⁵ FINRA Rule 9134(b)(3).

¹⁰⁶ *See Ashton Noshir Gowadia*, Exchange Act Release No. 40410, 1998 SEC LEXIS 1887, at *8-9 (Sept. 8, 1998) (It was the respondent’s responsibility “to provide the CRD with a current address at which he would receive documents mailed to him. Otherwise an association member could avoid liability simply by moving without leaving a forwarding address.”); *Nazmi C. Hassanieh*, Exchange Act Release No. 35029, 1994 SEC LEXIS 3862, at *8 (Nov. 30, 1994) (holding that “all registered representatives are required to sign and file with the NASD a Form U-4 [Uniform Application for Securities Industry Registration or Transfer], which obligates them to keep a current address on file with the NASD at all times”).

By submitting a Form U4 to FINRA, a registered person consents to service at his or her CRD address. The Form U4 version in effect since 2009 contains the following affirmation by an applicant: “I consent that the service of any process, pleading, subpoena, or other document in any investigation or administrative proceeding conducted by the SEC, CFTC or a jurisdiction or in any civil action in which the SEC, CFTC or a jurisdiction are plaintiffs, or the notice of any investigation or proceeding by any SRO against the applicant, may be made by personal service or by regular, registered or certified mail or confirmed telegram to me at my most recent business or home address as reflected in this Form U4, or any amendment thereto, by leaving such documents or notice at such address, or by any other legally permissible means.” (Emphasis omitted.) *See* Form U4, at 16, Section 15A (Individual/Applicant’s Acknowledgement and Consent), ¶ 7, <https://www.finra.org/sites/default/files/form-u4.pdf>.

sent the July 24, 2025 Suspension Notices, convincingly testified under on cross-examination that she did not know that the Kaplans' CRD addresses were out of date or that Adam Kaplan was incarcerated.¹⁰⁷ FINRA therefore was not obligated to send duplicate copies of the Suspension Notices to new addresses.

Even though the Kaplans may not have received the copies of the Suspension Notices sent to their CRD addresses, FINRA complied with Rules 9134 and 9554(b) because service by courier or express delivery was complete upon delivery. The Rules do not require actual delivery to, or receipt by, the respondent. The evidence shows that FedEx accomplished such deliveries. It is irrelevant that the Kaplans did not authorize someone to accept service.

Furthermore, the Kaplans do not dispute that they received actual notice of the pending suspensions from their arbitration counsel. This allowed them to timely request a hearing, demonstrating that they suffered no harm from the fact that they did not actually receive the copies of the Suspension Notices sent to their CRD addresses.

For the foregoing reasons, I find that FINRA properly served the Kaplans with the Suspension Notices pursuant to FINRA Rules 9134 and 9554.

6. The Customers' Decision to Ignore the Kaplans' Efforts to Settle Is Not a Defense to a Suspension Proceeding

The Kaplans' final argument is that after repeated attempts to contact opposing counsel in the arbitration proceeding to discuss settlement, in August 2025, counsel for the Kaplans was finally able to make a settlement offer but had not yet received a response. According to the Kaplans, the "pendency of such settlement discussions provides yet further reason for the stay of this proceeding."¹⁰⁸

The Kaplans appear to believe that they are entitled to renegotiate the Award and that such efforts should result in an indefinite stay of this proceeding. Efforts to potentially settle an award are not a sufficient basis to halt suspension proceedings under Rule 9554. A customer is not obligated to negotiate a settlement with a respondent who has not paid an award. Instead, a customer is entitled to full payment of an award.¹⁰⁹ Forcing an arbitration claimant to wait for satisfaction of an arbitration award and requiring the claimant to pursue legal avenues to collect is not in the public interest.¹¹⁰ If the Kaplans had reached a settlement with the customers and were current on their payment obligations under the settlement, they would have had a defense to a suspension imposed under Rule 9554.

¹⁰⁷ Tr. 43-44, 52-53 (Burke).

¹⁰⁸ Resp. Opening Brief at 11.

¹⁰⁹ *Reg. Operations v. Pincus*, No. ARB180031, 2019 FINRA Discip. LEXIS 7, at *21 (OHO Feb. 7, 2019).

¹¹⁰ *Barrows*, 2025 FINRA Discip. LEXIS 10, at *28 (citing *Sequeira*, 2019 SEC LEXIS 286, at *23).

I find that the Kaplans' failure or inability to reach a settlement agreement with the former customers is not a defense to a suspension proceeding or a justification to stay the proceeding.

III. Conclusion

Based on testimony and the documentary evidence admitted at the hearing, together with the parties' legal arguments as set forth in their pre-hearing briefs and in oral argument, I find that the Kaplans failed to prove any of their asserted defenses. Their defenses did not include any of those permitted by FINRA Rules and identified in the July 24, 2025, Suspension Notices. I nonetheless carefully considered the defenses that they actually asserted in this proceeding and, as I explain above, find that all of them lack merit.

FINRA sent the Kaplans the Suspension Notices under FINRA Rule 9554 for their failure to pay the \$100,000 Award to their former customers. 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.'"¹¹¹ "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."¹¹² Allowing the Kaplans 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 [the arbitration] 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.'"¹¹³

IV. Order

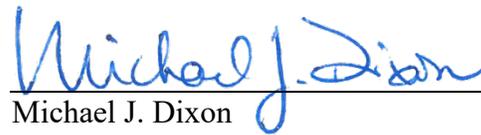
Based on the foregoing, and pursuant to Article VI, Section 3(b) of FINRA's By-Laws, and FINRA Rule 9559(n), I **SUSPEND** Respondents Adam Scott Kaplan and Daniel Evan Kaplan from associating with any FINRA member firm in any capacity, effective immediately upon the issuance of this decision, until they comply with the Award or establish one of the other recognized defenses to a suspension for failure to pay an arbitration award.

¹¹¹ *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)).

¹¹² *DiPietro*, 2016 SEC LEXIS 1036, at *24.

¹¹³ *Henry*, 2023 FINRA Discip. LEXIS 6, at *15-16 (quoting *Motherway*, 2023 SEC LEXIS 753, at *13-14).

Respondents are also **ORDERED** to pay the costs of this proceeding, which include \$1,172.84 for the hearing transcript plus a \$750 administrative fee, for a total of \$1,922.84.¹¹⁴ These costs are due and payable upon the issuance of this Decision.¹¹⁵


Michael J. Dixon
Hearing Officer

Copies to:

Adam Scott Kaplan, Respondent (overnight courier and first-class mail)
Daniel Evan Kaplan, Respondent (overnight courier and first-class mail)
Arthur D. Felsenfeld, Esq., Counsel for Respondents (via email)
Steven R. Schlesinger, Esq., Counsel for Respondents (via email)
Jean Bickhart, Esq., FINRA Enforcement (via email)
John Luburic, Esq., FINRA Enforcement (via email)

¹¹⁴ Respondents must pay the costs of the hearing before the suspensions terminate.

¹¹⁵ I considered and rejected without discussion all other arguments by the parties.