

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

REGULATORY OPERATIONS,

Complainant,

v.

DAKOTA SECURITIES
INTERNATIONAL, INC.,
(CRD No. 132700),

Respondent.

Expedited Proceeding
No. DFC170004

STAR No. 20170560282

Hearing Officer–CC

EXPEDITED DECISION

February 6, 2018

Respondent failed to pay fees assessed in connection with a customer-initiated arbitration and did not demonstrate a *bona fide* inability to pay. Respondent’s FINRA membership is therefore suspended until Respondent pays the outstanding balance in full.

Appearances

For the Complainant: Sora Lee, Esq., Meredith MacVicar, Esq., and Ann-Marie Mason, Esq., for Regulatory Operations, Financial Industry Regulatory Authority.

For the Respondent: Elizabeth Dianne Alexander, Principal, for Dakota Securities International, Inc.

DECISION

I. Background

Dakota Securities International, Inc. agreed to submit to arbitration in FINRA Arbitration No. 15-02495 (hereinafter “the Arbitration”), and FINRA Dispute Resolution (“Dispute Resolution”) thereafter assessed a variety of arbitration fees totaling \$11,650. Over the course of 20 months, Dispute Resolution billed Dakota Securities. Dakota Securities requested a hardship waiver of the arbitration fees. Dispute Resolution denied the request, and the firm failed to pay the fees.

On October 16, 2017, FINRA notified Dakota Securities of its intent, effective November 6, 2017, to suspend the firm’s membership based on its failure to pay arbitration fees. Dakota Securities requested a hearing, which occurred on November 28, 2017.

Dakota Securities argued that it requested a hardship waiver in late 2015, when the firm had minimal excess net capital and little or no revenues. Dakota Securities contended that FINRA did not respond to the request, improperly added additional fees, and waited 18 months

to deny the request. Dakota Securities argued that FINRA acted improperly by failing to timely consider its hardship waiver request. It argued that, in assessing its claimed inability to pay, I should confine my consideration of the firm's finances to the period from late 2015 through the first quarter of 2016, when it purportedly filed its initial hardship waiver request to which it did not receive a response.

Regulatory Operations contended that the firm had not established that it filed a hardship waiver request in late 2015 and, in any event, it must demonstrate a current inability to pay the fees in order to avoid suspension.

II. Findings of Fact

A. Dakota Securities' Communications with FINRA and Participation in the Arbitration

Dakota Securities is a FINRA member firm.¹ On September 23, 2015, the claimants in the Arbitration filed a statement of claim against Dakota Securities and another individual with Dispute Resolution.² On November 13, 2015, Dakota Securities, by and through its former president, Bruce Zipper ("Zipper"), executed a FINRA Arbitration Submission Agreement in the Arbitration.³ Pursuant to the terms of the Submission Agreement, Dakota Securities agreed to be bound by FINRA's By-Laws, Rules, and Code of Arbitration Procedure.⁴

Dakota Securities received a September 30, 2015 Dispute Resolution invoice for a member surcharge fee of \$2,475 related to the Arbitration.⁵ On November 30, 2015, Dispute Resolution issued a list of potential arbitrators for the Arbitration to all of the parties to the arbitration, including Dakota Securities.⁶ Thereafter, Dakota Securities received a November 30, 2015 Dispute Resolution invoice for a member process fee of \$5,075 related to the Arbitration.⁷ Dakota Securities participated in three pre-hearing conference sessions with an arbitrator on February 11, 2016, February 23, 2016, and May 25, 2016.⁸

¹ Joint Exhibit ("JX-") 28.

² JX-37; November 27, 2017 Stipulations ("Stip.") ¶ 1. The Stipulations were admitted into evidence as JX-40.

³ JX-2; Stip. ¶ 3.

⁴ JX-2, at 1.

⁵ JX-1; Stip. ¶ 2.

⁶ JX-38; Stip. ¶ 4.

⁷ JX-3; Stip. ¶ 5.

⁸ Stip. ¶ 7.

Zipper testified that he settled the Arbitration sometime in late 2015 or early 2016.⁹ The arbitration claimants notified Dispute Resolution of the settlement on October 21, 2016.¹⁰

Dakota Securities does not dispute that it did not pay the September 2015 and November 2015 invoices. FINRA first contacted Dakota Securities to inquire into its failure to pay the invoices in May 2016, when DB, an accountant in FINRA's Finance Department, contacted Zipper.¹¹ Zipper advised DB that Dakota Securities had requested a hardship waiver from Dispute Resolution.¹² Zipper testified that, when he received the two invoices in the fall of 2015, he spoke to a representative of Dispute Resolution who advised him that the firm could apply for a hardship waiver of the arbitration fees and provided an email address to which he could send a hardship waiver request.¹³ Zipper testified that he emailed a hardship waiver request as instructed, but at the hearing he did not produce a copy of the firm's emailed hardship waiver request.¹⁴

On February 3, 2016, Zipper, on behalf of Dakota Securities, emailed FINRA Dispute Resolution stating:

I was told back in December of 2015 that if I want to ask for a waiver relating to FINRA fees in [the Arbitration] to address my letter to [KB], at FINRA Dispute Resolution, 165 Broadway, 27th floor, N.Y.C., N.Y. 10006. Today February 3, 2016 I get that letter that I sent to [KB] on December 18, 2015 back to my home stating return to sender, attempted-NOT KNOWN, unable to forward.¹⁵

A Dispute Resolution case assistant advised Zipper that the address was correct, but suggested that the firm send the materials to an email address that she provided.¹⁶ Zipper testified that he did not email the documents because he did not have the ability to scan them. He instead mailed

⁹ Transcript of November 28, 2017 hearing ("Tr.") 18, 42.

¹⁰ JX-9, at 2; Stip. ¶ 7.

¹¹ Tr. 149-50; JX-6. DB testified that his office's standard practice in 2016 was to send an invoice on behalf of Dispute Resolution, wait 30 days, and if the invoice recipient had not paid, contact the recipient to commence collection efforts. Tr. 147. He testified that the Finance Department continued contact every 30 days thereafter until it successfully completed collection. Tr. 147-48. DB could not explain why FINRA made no effort to collect from Dakota Securities until six months after FINRA sent the second invoice. Tr. 150-51.

¹² Tr. 163-65; JX-6.

¹³ Tr. 18-19.

¹⁴ Zipper testified that, sometime in 2016, Dakota Securities changed email service providers. Tr. 61-62. He testified that, given Dakota Securities' limited resources, the firm did not attempt to obtain a copy of his email for this proceeding. Tr. 58-62. He suggested that Dispute Resolution could have just as easily searched its incoming email to find his original request. Tr. 56-59.

¹⁵ JX-5, at 2.

¹⁶ JX-5, at 1.

the package again to Dispute Resolution's New York office.¹⁷ Dakota Securities did not produce as evidence a copy of the materials that Zipper mailed to Dispute Resolution's New York office.

Dakota Securities next heard from FINRA in February 2017, when a representative of the Finance Department emailed the firm asking if the hardship waiver had been approved (by Dispute Resolution) and requesting copies of the paperwork.¹⁸ In March 2017, the Finance Department again contacted Dakota Securities about the unpaid invoices.¹⁹ On March 21, 2017, Zipper responded on behalf of Dakota Securities:

I requested at the time of those cases which have been settled that I and my firm did not have the ability to pay those costs and the cases were without merit . . . (sic) I was told where to send to (sic) those statements about 2 years ago and was informed that those costs would be waived. These invoices should be voided.²⁰

A representative of the Finance Department responded on March 28, 2017, asking who Zipper spoke with about a hardship waiver and requesting copies of the financial documents he submitted.²¹ The next communication in the email chain is a May 24, 2017 email from the Finance Department to Zipper stating "We received the hardship paperwork. It has been forwarded to another department for review."²² In the interim, on May 18, 2017, Dakota Securities provided FINRA's Finance Department with documents related to Zipper's personal finances (a copy of his personal bankruptcy petition filed on May 31, 2016, and copies of his joint tax returns for 2015 and 2016).²³

In early May 2017, the arbitration panel in the Arbitration issued an award in favor of the claimants and against the firm's co-defendant (Dakota Securities had previously settled).²⁴ The panel ordered that, in addition to the member surcharge and process fees assessed in September and November 2015 invoices, Dakota Securities must pay \$1,300 each for the three pre-hearing sessions in which the firm participated (totaling \$3,900) and a \$200 discovery fee.²⁵

The Finance Department advised Dakota Securities on May 31, 2017, that Dispute Resolution denied its hardship waiver request and noted that the firm had provided Zipper's personal financial information, not the firm's financial information. The Finance Department

¹⁷ Tr. 67-68, 77.

¹⁸ JX-7. Zipper testified that he does not recall seeing the email. Tr. 72.

¹⁹ JX-8, at 4.

²⁰ JX-8, at 4.

²¹ JX-8, at 3.

²² JX-8, at 3.

²³ JX-10; Stip. ¶ 9.

²⁴ JX-9; Stip. ¶ 8.

²⁵ JX-9, at 4. The \$200 discovery fee related to the arbitrators' January 28, 2016 issuance of a subpoena in the Arbitration. JX-4; Stip. ¶ 6.

requested that Dakota Securities provide its financial information for consideration.²⁶ The same day, Zipper submitted Dakota Securities' independent financial audit for 2016.²⁷ In that communication, Zipper reiterated that, immediately upon receiving the September and November 2015 invoices, he requested a hardship waiver of the fees and, after hearing nothing from FINRA about the request for more than a year, he assumed the firm had been granted a waiver.²⁸

Thereafter, Dakota Securities received a May 31, 2017 Dispute Resolution invoice for a discovery motion fee of \$200 and hearing session fees of \$3,900 related to the Arbitration.²⁹ On June 20, 2017, Zipper emailed the Finance Department indicating that he received the final bill for \$4,100 and questioned how FINRA could charge Dakota Securities for 2017 hearing session fees when the firm had already settled with the claimant and did not participate in the hearing.³⁰ The arbitration award in the Arbitration (against the co-defendant) specified that the \$3,900 "hearing fee" was in fact a \$1,300 fee for each of three pre-hearing conference sessions in which Dakota Securities participated before it settled.³¹ David Carey, an associate director in Dispute Resolution, testified that Dakota Securities was not billed session fees for the hearing in the Arbitration.³²

On June 22, 2017, the Finance Department denied the firm's hardship waiver request, but offered for the firm to make monthly payments of \$970.83 as an accommodation.³³ Dakota Securities rejected the payment plan.³⁴

On October 16, 2017, FINRA Finance issued a notice of suspension pursuant to FINRA Rule 9553 to Dakota Securities.³⁵ Dakota Securities thereafter requested a hearing.³⁶

B. Dakota Securities' Financial Situation in 2015, 2016, and 2017

Zipper testified that Dakota Securities was losing money in 2015 and early 2016 and had excess net capital of only \$7,000.³⁷ The firm's request for hearing included limited 2015

²⁶ JX-8, at 1-2.

²⁷ JX-12; Stip. ¶ 11.

²⁸ JX-12, at 1-2.

²⁹ JX-13; Stip. ¶ 10.

³⁰ JX-14, at 2.

³¹ JX-9, at 4.

³² Tr. 195-96. David Carey also testified that it is not unusual for FINRA to bill parties for pre-hearing sessions after the arbitration panel issues an award rather than at the time of the pre-hearing sessions. Tr. 195-96.

³³ JX-14, at 1; Stip. ¶ 12.

³⁴ Stip. ¶ 12.

³⁵ JX-16; Stip. ¶ 13. Dakota Securities admitted that it was properly served with the suspension notice. Stip. ¶ 13.

³⁶ JX-35.

³⁷ Tr. 19-20.

financial information. A document titled “Profit and Loss by Class” appears to report that, for the period from January 1 through November 3, 2015, the firm generated total income of \$108,393, total expenses of \$52,929, gross profit of \$7,417, and a net loss of \$(45,512).³⁸ Dakota Securities also appended to its hearing request a portion of a November 3, 2015 bank statement for a firm checking account that listed available cash of \$3,042 as of November 3, 2015.³⁹ In the financial disclosure documents the firm filed in connection with this matter, it reported total income for all of 2015 of \$234,779.⁴⁰ Dakota Securities’ 2015 federal income tax return reported gross receipts or sales of \$216,898, total income of \$120,867, and ordinary business loss of \$(99,691).⁴¹

Zipper testified that he did not take a salary from Dakota Securities in 2016 in order to enable the firm to maintain adequate net capital.⁴² Dakota Securities’ annual audited report for the year ending December 31, 2016, reported total assets of \$105,491, total revenues of \$204,292, net income of \$19,905, and cash of \$40,282.⁴³ The firm reported net capital of \$44,427 on December 31, 2016, which was \$39,427 in excess of its required net capital of \$5,000.⁴⁴ Dakota Securities’ 2016 federal income tax return reported gross receipts or sales of \$141,147, total income of \$92,836, and ordinary business income of \$19,905.⁴⁵ In the financial disclosure documents Dakota Securities filed in connection with this matter, the firm reported total income for all of 2016 of \$194,291.⁴⁶

Gary Cuccia (“Cuccia”), Dakota Securities’ current chief operating officer, financial and operations principal (“FINOP”), and chief compliance officer testified that he recently joined the firm and reviewed its historical financial information.⁴⁷ Cuccia testified that he filed a Financial and Operational Combined Uniform Single (“FOCUS”) Report for Dakota Securities on October 31, 2017, in which the firm reported excess net capital of \$44,000.⁴⁸ He testified that, as of October 2017, the firm had the ability to pay the outstanding fees.⁴⁹ He also testified that, in late 2015 when Dakota Securities filed its original hardship waiver request, the firm did not have sufficient funds to pay the fees.⁵⁰

³⁸ JX-35, at 12.

³⁹ JX-35, at 13.

⁴⁰ JX-18, at 1.

⁴¹ JX-25, at 6.

⁴² Tr. 83, 92, 108.

⁴³ JX-12, at 8-11. As of December 31, 2016, Dakota Securities had \$50,000 on deposit with its clearing firm as required by its clearing agreement. JX-12, at 14.

⁴⁴ JX-12, at 15.

⁴⁵ JX-25, at 1; Stip. ¶ 17.

⁴⁶ JX-18, at 1.

⁴⁷ Tr. 136-37.

⁴⁸ Tr. 137-38.

⁴⁹ Tr. 138.

⁵⁰ Tr. 138.

Dakota Securities' unaudited balance sheet as of September 30, 2017, reported total assets of \$150,109 and total liabilities of \$60,838.⁵¹ For September 2017, financial documentation that the firm submitted in connection with this matter showed gross profits of \$11,237, net income of \$4,220, cash of \$78,310, and net capital of \$87,394.⁵² Account statements for Dakota Securities' two checking accounts demonstrated that, as of September 30, 2017, the firm's total cash balance was \$78,310.⁵³ Dakota Securities submitted in this matter a profit and loss statement for the period of January 2017 through October 2017, which reported total income of \$326,508, gross profit of \$120,311, total expenses of \$76,514, and net income of \$43,797.⁵⁴ Part IIA of Dakota Securities' September 30, 2017 FOCUS Report showed excess net capital of \$87,394⁵⁵ and net income of \$18,809.

Dakota Securities represented that it has not made any efforts since September 15, 2015, to obtain financing to pay the arbitration fees, and the firm does not hold any lines of credit or have outstanding loans.⁵⁶

III. Conclusions of Law

A. FINRA Properly Assessed Arbitration Fees

FINRA's arbitration process is designed "to provide a mechanism for the speedy resolution of disputes among members, their employees, and the public."⁵⁷ To fund the process, FINRA apportions various fees to all participants. Here, the Finance Department billed Dakota Securities for a member surcharge fee, a member process fee, a discovery fee, and three pre-hearing conference fees (identified generally in the invoice as "hearing session fee").⁵⁸ Rule 12901 of FINRA's Code of Arbitration Procedure for Customer Disputes allows for the assessment of a member surcharge against any member named in an arbitration proceeding. Rule 12903 states that member firms named in arbitration proceedings may be assessed a member process fee. Rule 12902 enables arbitrators to assess hearing session fees and other expenses.⁵⁹ By executing an application for FINRA membership, Dakota Securities agreed to pay dues, fees, and other charges assessed according to FINRA's rules.⁶⁰ FINRA thus properly charged Dakota

⁵¹ JX-19, at 23; JX-27, at 2.

⁵² JX-27, at 3-4, 7.

⁵³ Stip. ¶ 15.

⁵⁴ JX-25, at 18-19; Stip. ¶ 16.

⁵⁵ JX-32, at 1-8. The Stipulations indicate that this number is actually \$82,394. Stip. ¶ 14.

⁵⁶ JX-18, at 3.

⁵⁷ *Herbert Garrett Frey*, 53 S.E.C. 146, 153 (1997); *accord Eric M. Diehm*, 51 S.E.C. 938, 939 (1994).

⁵⁸ JX-1; JX-3; JX-13.

⁵⁹ The term "hearing session" means any meeting between the parties and one or more arbitrators for four hours or less, including a pre-hearing conference. *See* Rule 12100(p). Dakota Securities participated in three pre-hearing sessions with an arbitrator, Stip. ¶ 7, for which the arbitrators assessed three \$1,300 hearing session fees (totaling \$3,900) against the firm. JX-9, at 4. Rule 12902(d) enables arbitrators to assess fees or costs incurred for discovery. In the arbitration award, the arbitrators assessed a \$200 discovery fee against Dakota Securities. JX-9, at 4.

⁶⁰ *See* Article IV, Section 1(a)(2) of FINRA's By-Laws.

Securities arbitration fees of \$11,650, in accordance with its Code of Arbitration Procedure for Customer Disputes.

Arbitration fees are due when assessed and become delinquent if unpaid for 60 days.⁶¹ Furthermore, surcharge fees and process fees are non-refundable, and if a member concludes its involvement in an arbitration case through settlement, FINRA assesses the fees that have accrued to that point.⁶²

B. FINRA Properly Moved to Suspend Dakota Securities for Non-Payment

FINRA Rule 9553(a) provides that, if a member fails to pay any fees, dues, assessment or other charge required to be paid under FINRA's By-Laws or rules, FINRA may issue a written notice to the member stating that the failure to pay the amount due within 21 days will result in suspension or cancellation of membership. FINRA Rule 9553(e) states that a member served with a notice of suspension or cancellation under the rule may request a hearing pursuant to Rule 9559 and requires that the request "set forth with specificity any and all defenses to the FINRA action." The defenses available under Rule 9553 are limited to: the respondent has (1) paid the amount due in full; (2) entered into a fully-executed, written installment payment plan with FINRA and the payments are current; (3) timely filed an action to vacate or modify the award that was issued in the arbitration proceeding for which outstanding fees were assessed, and the motion has not been denied; or (4) filed for bankruptcy protection and the outstanding fees have not been deemed by a federal court to be non-dischargeable.⁶³ Additionally, "[a] *bona fide* inability to pay arbitration fees may be a factor in determining whether any sanction for failure to pay fees is excessive or oppressive."⁶⁴

C. Inability to Pay Standard

Dakota Securities argued that, when it filed its initial hardship waiver request, it had a *bona fide* inability to pay. To prevail on an inability-to-pay defense, Dakota Securities must demonstrate that it is financially unable to make any meaningful payment toward satisfaction of the outstanding fees.⁶⁵ "An inability to pay defense may be rejected if it appears that the respondent could divert funds from other expenditures to pay the [fees], or could borrow the funds, or could make some meaningful payment . . . from available assets or income"⁶⁶

⁶¹ See FINRA Regulatory Notice 08-45, 2008 FINRA LEXIS 42, at *5 (Aug. 2008) (stating that arbitration fees are considered delinquent if they are not paid within 60 days after the date of an invoice).

⁶² OHO Redacted Decision No. DFC020014, at 5 (OHO Oct. 3, 2002), http://www.finra.org/sites/default/files/OHODecision/p006700_0_0. Cf. FINRA Rule 12902(d) (stating that parties remain subject to hearing session fees for sessions already held even after they resolve the arbitration by settlement).

⁶³ See *NASD Treasurer v. Fisher*, No. DFC050011, at 4 (OHO Apr. 5, 2006), http://www.finra.org/sites/default/files/OHODecision/p017099_0_0.pdf; OHO Redacted Decision No. DFC20014, at 2 n.2.

⁶⁴ *Id.*

⁶⁵ *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at *16 (citations omitted).

⁶⁶ *Dep't of Enforcement v. Respondent*, No. ARB040037, at 7-8 (OHO Mar. 2, 2005), http://www.finra.org/sites/default/files/OHODecision/p038234_0.pdf.

Respondent bears the burden of establishing a *bona fide* inability to pay.⁶⁷ “Because the scope of [a respondent’s] assets is peculiarly within [its] knowledge,” a respondent bears the burden of adducing evidence with respect to those assets.⁶⁸

D. Dakota Securities Did Not Prove a Bona Fide Inability to Pay

Dakota Securities has not demonstrated a *bona fide* inability to pay. The firm argued that, although it admittedly has a current ability to pay the fees, it did not have the ability when it originally applied for a hardship waiver in late 2015. Dakota Securities urged me to consider its financial situation at the time of its initial request. The guiding case law, however, directs me to consider the firm’s “available assets or income,” which in this case suggests a current ability to pay the arbitration fees.⁶⁹ The record suggests that FINRA may have been slow in following up on its outstanding invoices, but this does not compel me to ignore the firm’s current available assets. In fact, Dakota Securities benefitted from FINRA’s inaction in that it has been allowed to maintain its membership and avoid FINRA’s collection efforts for nearly two years.⁷⁰

As to Dakota Securities’ current ability to pay, the record supports a finding that the firm has sufficient means to make a “meaningful payment” toward satisfaction of the outstanding amount.⁷¹ Dakota Securities’ annual audited report for the year ending December 31, 2016, reported total assets of \$105,491, total revenues of \$204,292, net income of \$19,905, and cash of \$40,282.⁷² Dakota Securities’ current FINOP, Cuccia, testified that the firm’s October 31, 2017 FOCUS report showed excess net capital of \$44,000.⁷³ Its September 30, 2017 FOCUS report showed excess net capital of \$87,394⁷⁴ and net income of \$18,809. Account statements for Dakota Securities’ two checking accounts demonstrated that, as of September 30, 2017, the

⁶⁷ *DiPietro*, 2016 SEC LEXIS 1036, at *16; *Regulatory Operations v. McGaffey*, No. ARB160047, at 4 (OHO Mar. 16, 2017), http://www.finra.org/sites/default/files/OHO_McGaffey_ARB160047_031617.pdf.

⁶⁸ *Bruce M. Zipper*, 51 S.E.C. 928, 931 (1993).

⁶⁹ *DiPietro*, 2016 SEC LEXIS 1036, at *16.

⁷⁰ Additionally, although I need not determine whether Dakota Securities has proven that it filed a hardship waiver request as early as the fourth quarter of 2015, the evidence of such a filing is scant. Zipper, the firm’s former president, testified that he emailed a hardship waiver request in the fall of 2015, Tr. 18-20, but the firm did not produce a copy of the email. Zipper indicated in a February 2016 email, JX-5, at 2, that he mailed a hard copy of a hardship waiver request and accompanying financial information to Dispute Resolution in December 2015, but the firm did not produce a copy of that documentation either. Zipper represented that the December 2015 packet of financial materials was returned to the firm in February 2016, JX-5, at 2, but rather than finding a way to resubmit the materials electronically as instructed by Dispute Resolution, he mailed them to the same address. Tr. 67-68, 77. Dakota Securities never followed up on the hardship waiver request, even though a full year passed before FINRA again contacted the firm about outstanding arbitration fees. JX-7.

⁷¹ See *DiPietro*, 2016 SEC LEXIS 1036, at *16 n.22 (stating that the critical point is whether respondent has the ability to make a meaningful payment toward the amount due, including by reducing other expenses or selling or borrowing against available assets).

⁷² JX-12, at 8-11.

⁷³ Tr. 137-38.

⁷⁴ JX-32, at 4. The Stipulations indicate that this number is actually \$82,394. Stip. ¶ 14. This does not change my conclusion.

firm's total cash balance was \$78,310.⁷⁵ The firm's profit and loss statement for January through October 2017 reported total income of \$326,508 and a gross profit of \$120,311, while its total expenses were \$76,514.⁷⁶ These figures do not demonstrate an inability to pay.

An inability to pay defense may also be rejected where a respondent could borrow the funds or make meaningful payment towards the full amount even if it is unable to pay the full amount due.⁷⁷ Dakota Securities represented it has not made any efforts since September 15, 2015, to obtain financing or some other form of credit to pay the arbitration fees.⁷⁸ The firm also rejected the 12-month payment plan that FINRA's Finance Department offered in June 2017.⁷⁹

Finally, even if I were to focus solely on Dakota Securities' financial status as of late 2015 and early 2016, based on the record before me, the firm has not established a *bona fide* inability to pay. The record includes incomplete financial information for 2015. Zipper testified that Dakota Securities was losing money in 2015 and early 2016 and had minimal excess net capital, but the firm did not offer into evidence audited financial statements, complete sets of 2015 bank account records, or the testimony of the firm's 2015 FINOP or other principal equipped to explain the firm's 2015 finances in detail. Zipper testified repeatedly, and Cuccia agreed, that the firm had inadequate funds in late 2015, but the documentary evidence to support this claim is not sufficient.

Based on the foregoing, Dakota Securities did not meet its burden of demonstrating an inability to pay the arbitration fees. As such, pursuant to FINRA Rules 9553 and 9559, I suspend the FINRA membership of Dakota Securities until the firm pays the outstanding arbitration fees.

IV. Order

The FINRA membership of Dakota Securities International, Inc. is suspended until the firm pays the outstanding arbitration fees totaling \$11,650. The suspension will become effective 14 calendar days after issuance of this decision and shall constitute final FINRA action.

In addition, Dakota Securities is ordered to pay FINRA costs of \$2,462.09, which includes an administrative fee of \$750 and hearing transcript costs of \$1,712.09. The costs shall become due upon issuance of this decision.



Carla Carloni
Carla Carloni
Hearing Officer

⁷⁵ Stip. ¶ 15.

⁷⁶ Stip. ¶ 16.

⁷⁷ See *McGaffey*, No. ARB160047, at 4; *Dep't of Enforcement v. Respondent*, No. ARB060031, at 8-9 (OHO Apr. 6, 2017), http://www.finra.org/sites/default/files/OHODecision/p038228_0_0.pdf.

⁷⁸ JX-18, at 3.

⁷⁹ Stip. ¶ 12.

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