

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

REGULATORY OPERATIONS,

Complainant,

v.

ROBERT JAY PINCUS  
(CRD No. 1811693),

Respondent.

Expedited Proceeding  
No. ARB180031

STAR No. 20180600911

Hearing Officer– JLC

**EXPEDITED DECISION**

February 7, 2019

**Respondent failed to pay an arbitration award and failed to prove that he has a bona fide inability to pay the award. Respondent is suspended from associating with any FINRA member in any capacity until he provides documentary evidence to FINRA showing that (1) the award has been paid in full; (2) he and the claimant have agreed to settle the matter (and Respondent is in compliance with the settlement terms); or (3) he has a petition pending in a United States Bankruptcy Court, or the debt has been discharged by a United States Bankruptcy Court.**

*Appearances*

For the Complainant: Sora Lee, Esq., Deon McNeil-Lambkin, Esq., Ann-Marie Mason, Esq.,  
Regulatory Operations, Financial Industry Regulatory Authority.

For the Respondent: Seth Huberman, Esq., Seth Huberman PA.

**DECISION**

**I. Introduction**

Respondent Robert Jay Pincus failed to pay a FINRA arbitration award he owed to his former firm, FINRA member Oppenheimer & Co., Inc. (“Oppenheimer”). As a result, FINRA sent Pincus a Notice of Suspension, pursuant to FINRA Rule 9554, notifying him that he would be suspended from associating with any FINRA member unless he paid the award or asserted a valid defense for nonpayment. Pincus stayed the suspension by timely filing a request for a hearing and asserting an inability-to-pay defense.

At the hearing, Pincus failed to prove his defense. The evidence shows that, among other things, he could afford to make some meaningful payment toward the award. Accordingly, I suspend Pincus from associating with any FINRA member in any capacity.

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

### **A. Background**

Pincus has worked in the securities industry since 1997.<sup>1</sup> Between May 2015 and April 2017, Pincus was associated in a registered capacity with Oppenheimer.<sup>2</sup> He is currently associated in a registered capacity with another FINRA member.<sup>3</sup>

This matter arises from three forgivable loans Pincus received from Oppenheimer while he was associated with the firm. When Pincus left the firm in April 2017, the outstanding balance on those loans was \$279,308.47.<sup>4</sup> Pincus did not repay the loans. So on June 9, 2017, Oppenheimer filed an arbitration claim against Pincus with FINRA Dispute Resolution (FINRA Arbitration No. 17-01514) seeking repayment.<sup>5</sup> On November 9, 2017, a FINRA arbitration panel rendered an award in favor of Oppenheimer and against Pincus for \$288,863.12, plus interest and fees (“Award”).<sup>6</sup> On that date, FINRA notified Pincus’s counsel of the Award and that if Pincus did not pay it within 30 days, FINRA could suspend Pincus’s registration.<sup>7</sup>

Pincus did not satisfy the Award, enter into a fully executed, written settlement agreement to pay the Award, file for bankruptcy protection, or file a motion to vacate the Award. As a result, on September 24, 2018, FINRA served Pincus with a Notice of Suspension notifying him that his registration would be suspended effective October 15, 2018, for failing to pay the Award.<sup>8</sup> The Notice of Suspension also advised Pincus that he could request a hearing, which would stay the effective date of the suspension.<sup>9</sup> Pincus timely filed a request for a hearing and

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<sup>1</sup> Joint Exhibit (“JX”) 1, at 7-8.

<sup>2</sup> JX-1, at 4, 12.

<sup>3</sup> JX-1, at 3-4.

<sup>4</sup> JX-29.

<sup>5</sup> JX-2 (Stipulated Award referencing June 9, 2017 Statement of Claim).

<sup>6</sup> Stipulations (“Stip.”) ¶ 1; JX-2. The amount of the Award represents the total amount outstanding on the three forgivable loans (\$279,308.47) *plus* repayment of a stabilization overpayment Oppenheimer made to Pincus (\$9,462.89) and repayment of a trade error loss Pincus caused in a client account (\$91.76). *See* JX-29.

<sup>7</sup> Stip. ¶ 2; JX-3; JX-4.

<sup>8</sup> Stip. ¶ 4; JX-6.

<sup>9</sup> JX-6.

claimed he has a bona fide inability to pay the Award.<sup>10</sup> A hearing was held by telephone on November 29, 2018.<sup>11</sup>

## **B. Inability-to-Pay Standard**

FINRA Rule 9554 provides a procedural mechanism for FINRA to address failures to pay arbitration awards on an expedited basis. The rule authorizes FINRA to initiate an expedited proceeding by issuing a written notice that specifies the grounds for, and the effective date of, the suspension. The notice also advises the respondent of his right to file a written request for a hearing.

A respondent may assert certain limited defenses in an expedited proceeding under FINRA Rule 9554. These include (1) the award has been paid in full; (2) the parties have agreed to settle the action, and the respondent is not in default of the terms of the settlement agreement; (3) the award has been vacated by a court; (4) a motion to vacate or modify the award is pending in a court; and (5) the respondent has a bankruptcy petition pending in U.S. Bankruptcy Court, or a U.S. Bankruptcy Court has discharged the award.<sup>12</sup> A respondent may also assert a bona fide inability to pay the arbitration award.<sup>13</sup>

A respondent in an expedited proceeding may not attack the merits of the underlying arbitration award.<sup>14</sup> To permit such collateral attacks would “subvert [FINRA’s] procedures, which are designed to promote prompt payment of arbitration awards.”<sup>15</sup>

A respondent bears the burden of establishing a bona fide inability to pay.<sup>16</sup> The Securities and Exchange Commission has stated that “[b]ecause the scope of [a respondent’s] assets is peculiarly within [his] knowledge, ... [the respondent] should properly bear the burden of adducing evidence with respect to those assets.”<sup>17</sup> FINRA also is entitled to make a searching inquiry into a respondent’s assertion of inability to pay.<sup>18</sup>

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<sup>10</sup> Stip. ¶ 5; JX-7.

<sup>11</sup> Citations to the Hearing Transcript are referred to as “Tr.” followed by the page number.

<sup>12</sup> FINRA By-Laws, Art. VI, Sec. 3(b); NASD Notice to Members 00-55 (Aug. 2000), <http://www.finra.org/industry/notices/00-55>, at 2; *Dep’t of Enforcement v. Respondent*, Expedited Proc. No. ARB060031, at 4-5 (Apr. 16, 2007), [http://www.finra.org/sites/default/files/OHODecision/p038228\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHODecision/p038228_0_0.pdf).

<sup>13</sup> *William J. Gallagher*, 56 S.E.C. 163 (2003).

<sup>14</sup> *Robert Tretiak*, 56 S.E.C. 209, 221 (2003).

<sup>15</sup> *Tretiak*, 56 S.E.C. at 221.

<sup>16</sup> *Gallagher*, 56 S.E.C. at 169.

<sup>17</sup> *Bruce M. Zipper*, 51 S.E.C. 928, 931 (1993).

<sup>18</sup> *Tretiak*, 56 S.E.C. at 220.

To establish an inability-to-pay defense, a respondent must show more than a current lack of funds on hand to pay the award in full.<sup>19</sup>

An inability-to-pay defense may be rejected if it appears that the respondent is capable of reducing his living expenses, has the ability to divert funds from other expenditures to pay the award, could borrow the funds, or could make some meaningful payment toward the settlement of the award from available assets or income, even if he could not pay the full amount of the award.<sup>20</sup>

Further, the respondent “must establish that at no time after the award became due did he have the ability to pay all or any meaningful amount of the award,” not just that at “some later time his assets were insufficient to pay the award.”<sup>21</sup>

An inability-to-pay defense may also be rejected when the evidence provided by a respondent is insufficient or incomplete.<sup>22</sup>

### **C. Pincus Failed to Establish An Inability to Pay**

The key issue here is whether Pincus proved that he lacked sufficient assets or income to make some meaningful payment toward the Award, including by reducing his current use of income for other expenses, or selling or borrowing against available assets. He did not. First of all, Pincus had sufficient excess income to make some meaningful payment toward the Award. Rather than pay the Award, he spent a substantial amount investing in the stock market and paying discretionary expenses. Second, he provided unreliable and incomplete information concerning his financial condition. And third, he failed to show that he could not borrow the funds to make a meaningful payment toward the Award.

#### **1. Pincus Could Afford to Make a Meaningful Payment Toward the Award**

Since the date of the Award, Pincus has had sufficient income to make some meaningful payment toward the Award. The evidence overwhelmingly shows that Pincus’s failure to pay

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<sup>19</sup> *Dep’t of Enforcement v. Respondent*, OHO Redacted Decision ARB010013, at 9 (Jan. 25, 2002), [http://www.finra.org/sites/default/files/OHODecision/p006654\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHODecision/p006654_0_0.pdf).

<sup>20</sup> *Dep’t of Enforcement v. Respondent*, OHO Redacted Decision ARB010001, at 11 (July 26, 2001), [http://www.finra.org/sites/default/files/OHODecision/p006655\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHODecision/p006655_0_0.pdf) (citing *Dist. Bus. Conduct Comm. v. Escalator Sec., Inc.*, No. C07930034, 1998 NASD Discip. LEXIS 21, at \*13 (NBCC Feb. 19, 1998)); *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036, at \*16 n.22 (Mar. 17, 2016) (citation omitted).

<sup>21</sup> *Dep’t of Enforcement v. Tretiak*, No. C02980085, 2000 NASD Discip. LEXIS 35, at \*20 (OHO Mar. 10, 2000), *aff’d*, 2001 NASD Discip. LEXIS 1 (NAC Jan. 23, 2001), *aff’d*, 56 S.E.C. 209 (2003).

<sup>22</sup> *Gallagher*, 56 S.E.C. at 169-70.

down the balance of the Award is a result of his asset-allocation choices rather than a genuine inability to pay.

Pincus's most costly asset-allocation choice was his decision to invest a substantial portion of his net income into the stock market. Specifically, from November 2017 through September 2018 (the "Relevant Period"), Pincus earned at least \$77,421.98<sup>23</sup> in net income from his current employer.<sup>24</sup> During this same period, Pincus deposited \$53,135 into his personal brokerage account.<sup>25</sup> These deposits were sourced from his net income.<sup>26</sup> Pincus spent \$50,574.73 investing in options and equities in his personal brokerage account.<sup>27</sup> He funded \$47,291.46<sup>28</sup> of those investments with his net income.<sup>29</sup> This means that during the Relevant Period Pincus spent 61% of his total net income investing in the stock market.

Pincus claims that he made these investments "in hopes that [his money] would grow" and he could satisfy the Award.<sup>30</sup> But he acknowledges that his decision to invest his money into the stock market was a mistake.<sup>31</sup> Indeed it was. Pincus lost all of the money he invested.<sup>32</sup> Pincus's choice to risk his money in the stock market rather than pay down the balance of the Award is one of asset allocation.<sup>33</sup> I therefore reject his inability-to-pay defense. He could have

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<sup>23</sup> JX-13, at 35-37, 44, 46, 50, 52, 54, 56, 58; JX-17, at 2. Pincus provided no documentation or testimony concerning his monthly pay for March 2018. It is therefore unclear from the record whether he earned any income in March 2018.

<sup>24</sup> Pincus's net income represented the total amount he took home after he paid taxes, alimony, child support, medical expenses, and his monthly loan repayment to his current employer. Tr. 42-49.

<sup>25</sup> JX-14, at 2-3, 10-11, 18, 21, 37-38, 45, 47, 54-55, 187, 189; JX-15, at 6-8, 11, 22-23, 26, 30-32, 36-37, 39.

<sup>26</sup> See JX-17.

<sup>27</sup> JX-14, at 3, 10, 20, 38, 46, 54, 189; JX-15, at 6, 9-10, 22, 24-25, 30-31, 36, 38.

<sup>28</sup> I calculated this number by *subtracting* Pincus's beginning account value in his brokerage account on November 1, 2017 (\$3,282.10) *and* the income he earned in his brokerage account during the Relevant Period (\$1.17) *from* the total amount Pincus invested in the market during the Relevant Period (\$50,574.73). (\$50,574.73 - \$3,282.10 - \$1.17 = \$47,291.46). See JX-14, at 1-3, 9-10, 17, 20, 36-38, 44-46, 53-54, 186-87, 189; JX-15, at 6, 8-10, 22-25, 30-31, 36, 38.

<sup>29</sup> Pincus funded the remaining investments with the money (\$3,282.10) he had in his brokerage account before the Award was issued. JX-14, at 186-95.

<sup>30</sup> Tr. 53-54, 138-39, 141, 146.

<sup>31</sup> Tr. 146.

<sup>32</sup> Tr. 135-46; JX-14, at 5, 13, 24, 40, 49, 58, 192; JX-15, at 36.

<sup>33</sup> *DiPietro*, 2016 SEC LEXIS 1036, at \*19 (rejecting inability-to-pay defense when respondent's failure to pay arbitration award hinged on asset-allocation choices to pay discretionary expenses); *Dep't of Enforcement v. Respondent*, OHO Redacted Decision ARB010032, at 5 (Mar. 12, 2002), [http://www.finra.org/sites/default/files/OHODecision/p006652\\_0\\_0.pdf](http://www.finra.org/sites/default/files/OHODecision/p006652_0_0.pdf) (rejecting inability-to-pay defense when respondent elected to save retirement assets rather than pay his arbitration award); *Dep't of Enforcement v. Bronzino*, 1998 NASD Discip. LEXIS 54, at \*12-13 (June 29, 1998) (rejecting inability-to-pay defense when respondent chose to use his gambling winnings for a purpose other than paying the arbitration award).

used the \$50,000 he wagered in the stock market to make a meaningful payment toward the Award.

Pincus also could have diverted funds from other expenses to make a meaningful payment toward the satisfaction of the Award. At the hearing, Pincus conceded that his monthly expenses included paying his adult children's student loans and tuition (which his children were responsible for paying);<sup>34</sup> making payments for more than the minimum amounts due on his credit cards;<sup>35</sup> paying his adult child's car insurance premium;<sup>36</sup> and giving his three children (two of whom are adults) spending money every month.<sup>37</sup> Pincus's election to pay these discretionary expenses rather than the Award reflects an asset-allocation choice—not a genuine inability to pay.<sup>38</sup>

## **2. Pincus Provided Incomplete and Unreliable Information Concerning His Financial Condition**

I reject Pincus's defense for another reason. He did not provide reliable or complete information or documentation from which to ascertain his true financial condition. I cannot ascertain Pincus's true financial condition because the information he provided concerning his average monthly expenses was inconsistent and, in several instances, uncorroborated by any documentation.

On October 12, 2018, FINRA's Regulatory Operations ("Reg Ops") sent Pincus a letter asking him to submit a detailed financial disclosure statement showing his bona fide inability to pay the Award.<sup>39</sup> In this letter, Reg Ops advised Pincus that he bore the burden of demonstrating his inability to pay.<sup>40</sup> As part of the financial disclosure statement, Reg Ops asked Pincus to list all of his average monthly expenditures and provide the last two statements or bills for each

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<sup>34</sup> Tr. 33, 54-56, 79-80, 87-88, 90-92, 109. Pincus has three children. His first child is 23 years old and a college graduate. His second child is 21 years old and in his last year of college. His third child is 14 years old. Tr. 87-92, 109. Pincus initially testified at the hearing that he paid \$975 per month toward his two adult children's student loans (\$500 for his oldest son and \$475 per month for his middle son). Later in the hearing, he testified that his middle son's student loan expense was actually a tuition expense, which Pincus paid in full for 2018. Tr. 90-92.

<sup>35</sup> Tr. 101-04; *see, e.g.*, JX-19, at 17, 23 (minimum payment due was \$29 but he paid \$1,986 toward the balance); JX-19, at 25, 29, 31 (minimum payment due was \$38 but he paid \$1,000 toward the balance); JX-20, at 8, 11, 13 (minimum payment due was \$92 but he paid \$1,000 toward the balance); JX-20, at 14, 17, 19 (minimum payment due was \$120 but he paid \$1,500 toward the balance).

<sup>36</sup> Tr. 54, 107-09.

<sup>37</sup> Tr. 56, 132; JX-9, at 3 (Response No. 17 (o)).

<sup>38</sup> *DiPietro*, 2016 SEC LEXIS 1036, at \*19 (rejecting respondent's inability-to-pay defense when respondent conceded to making discretionary payments for (1) his adult children's student loans; (2) monthly gifts to his adult child to supplement his income; (3) insurance premiums on an adult child's car; and (4) more than minimum amounts due on credit cards instead of paying down the balance of the award).

<sup>39</sup> JX-8.

<sup>40</sup> JX-8, at 1.

expenditure.<sup>41</sup> Reg Ops also asked Pincus to “list and provide details for all deposits to and withdrawals from” all of his financial accounts.<sup>42</sup>

In response, Pincus provided Reg Ops with a list of his average monthly expenses, along with six months of statements (from mid-April 2018 to mid-October 2018) for his three credit card accounts and his bank account, which he claimed reflect his average monthly expenditures.<sup>43</sup> Pincus represented to Reg Ops that his average monthly expenses, excluding expenses associated with alimony, child support, and repayment of his firm loan, are \$6,090.<sup>44</sup> Pincus did not list or provide details for all deposits to and withdrawals from his financial accounts. His only response to this request was, “[I] deposited the proceeds of paychecks into the account for investment purposes.”<sup>45</sup>

At the hearing, Pincus again detailed his average monthly expenses.<sup>46</sup> His testimony concerning his monthly expenses, however, was inconsistent with his prior representations to Reg Ops. He testified that his average monthly expenses, excluding expenses associated with alimony, child support, and repayment of his firm loan, are \$7,096<sup>47</sup>—about \$1,000 higher than the amount he previously told Reg Ops.

In addition, many of Pincus’s claimed expenses are uncorroborated by any documentation. For example, Pincus did not have documentation to support his claimed monthly (1) car lease expense (\$385); (2) non-reimbursable business expenses (\$300); (3) dry cleaning expense (\$100); (4) car insurance expense (\$395); or (5) food expense (\$750). While Pincus claimed these monthly expenses are reflected in his credit card and bank account statements, they are either not reflected at all or reflected in amounts that materially differ from his claimed amount.

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<sup>41</sup> JX-8, at 4 (Request No. 17).

<sup>42</sup> JX-8, at 3 (Request No. 8).

<sup>43</sup> JX-9, at 2-3; JX-17 to JX-20.

<sup>44</sup> JX-9, at 2-3 (Response Nos. 4 and 17) (car lease [\$345]; student loans and credit card loan [\$1,000]; IRS payment [\$155]; rent [\$1,500]; food [\$250]; clothing [\$150]; laundry and dry cleaning [\$100]; medical and dental [\$200]; transportation (exclusive of car payments) [\$250]; recreation, clubs, entertainment [\$350]; life insurance [\$150]; car insurance [\$350]; adult son’s study abroad money [\$250]; unreimbursed business expenses [\$300]; minor son’s braces [\$75]; ex-wife’s medical co-pay [\$500]; cell phone [\$165]).

<sup>45</sup> JX-9, at 2 (Response No. 8).

<sup>46</sup> Tr. 54-57.

<sup>47</sup> Tr. 54-57 (rent [\$1,500]; car lease [\$385]; car insurance for Pincus and his son [\$395]; cell phone [\$165]; student loan [\$151]; adult children’s student loans [\$975]; life insurance [\$150]; IRS payment plan [\$150]; minor son’s braces [\$75]; credit card payments [\$750]; medical co-pay for kids along with spending money [\$500]; dry cleaning [\$100]; gas, tolls, repairs [\$300]; doctor and medical bills [\$200]; unreimbursed business expenses [\$300]; food [\$750]; storage facility [\$250]).

Given the inconsistencies in Pincus's claimed monthly expenses and the incomplete nature of Pincus's documentation to corroborate his claimed expenses, I am unable to ascertain his true financial condition.<sup>48</sup> Because Pincus has the burden of proof, he must bear the consequences of any uncertainty caused by his failure to submit reliable and complete information concerning his financial condition. For this reason too, I find that Respondent has failed to meet his burden of proof.<sup>49</sup>

### **3. Pincus Failed to Show That He Cannot Borrow Funds to Make a Meaningful Payment Toward the Award**

Pincus claimed that he has exhausted all avenues to borrow money from any friends or family and lending institutions.<sup>50</sup> He testified that he applied for additional credit cards that had cash advances, and applied for credit limit increases on his existing credit cards, but was declined.<sup>51</sup>

Pincus's claimed efforts to borrow money are suspect. He has no documentation to substantiate his claimed efforts to apply for additional credit cards or increase his credit limits, despite Reg Ops's repeated requests for such documentation.<sup>52</sup> And he failed to produce his full credit report to Reg Ops even though they asked him twice to produce it.<sup>53</sup> Also, Pincus never explained whether he tried to apply for a personal loan from any lending institution. Moreover, Pincus already had three credit cards that permitted him to obtain cash advances yet he never explained why he did not obtain cash advances on those cards to pay down the balance of the Award. In fact, the evidence shows that the only time Pincus obtained a cash advance on any of his credit cards was when he gifted his son \$865 to gamble at a casino in Atlantic City.<sup>54</sup>

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<sup>48</sup> Notwithstanding the inability to determine Pincus's actual average monthly expenses, the record nonetheless reveals that his nondiscretionary expenses must be quite modest because he had sufficient excess net income to divert over \$47,000 to trade in the stock market.

<sup>49</sup> *Regulatory Operations v. Fannin*, Expedited Proc. No. ARB170007, at 12 (OHO Aug. 25, 2017), [http://www.finra.org/sites/default/files/OHO\\_Fannin\\_ARB170007\\_082517.pdf](http://www.finra.org/sites/default/files/OHO_Fannin_ARB170007_082517.pdf) (citing *Dep't of Enforcement v. Respondent*, Expedited Proc. No. ARB0400037, at 9 (OHO Mar. 2, 2005), [http://www.finra.org/sites/default/files/OHODecision/p038234\\_0.pdf](http://www.finra.org/sites/default/files/OHODecision/p038234_0.pdf) ("Without complete information and documentation, [I am] unable to ascertain Respondent's true financial situation, and for that reason alone, Respondent has failed to meet his burden of proof.")).

<sup>50</sup> JX-11, at 2 (Response No. 15); Tr. 130.

<sup>51</sup> Tr. 127-31.

<sup>52</sup> Tr. 131.

<sup>53</sup> Tr. 127-28; JX-10, at 2 (Request No. 16); JX-31, at 1 (Request No. 3).

<sup>54</sup> JX-19, at 21, 23; Tr. 166-68. Pincus testified that he gave this cash to his son as a birthday gift rather than make the monthly payment toward his son's student loan. Tr. 166-68.

Additionally, Pincus has at least one asset, a 2008 Honda Accord, which has a Kelly Blue Book trade-in value ranging from \$4,120 to \$5,043.<sup>55</sup> This is not his primary car—he drives a leased Mazda CX5.<sup>56</sup> Although Pincus admits he currently owns the Honda Accord, he claimed that the car is actually his middle son’s car.<sup>57</sup> Pincus asserted that he was obligated to give the car to his middle son under his 2014 divorce settlement; however, his divorce settlement does not reference this car.<sup>58</sup> And Pincus provided no other documentation to show that his son has a legal claim to this car.

Given my concerns about the reliability of Pincus’s testimony and the lack of documentation to substantiate his claimed inability to borrow, I find that Pincus failed to prove he could not borrow sufficient funds to make some meaningful payment toward the Award (or at least borrow funds that, coupled with his income, could have aided him in making a meaningful payment).<sup>59</sup> For this reason, among others, Pincus has failed to establish his inability-to-pay defense.

**D. Pincus’s Claim That Oppenheimer Prevented Him from Making a Meaningful Payment by Rejecting His Settlement Offer Is Not a Defense**

Pincus argues that he attempted to negotiate a settlement with Oppenheimer to repay his outstanding loans but Oppenheimer rejected his proposals. Pincus testified that prior to the entry of the Award, his counsel offered the firm a \$50,000 down payment and a payment plan to satisfy the balance of the loans.<sup>60</sup> Pincus did not specify any additional amounts that he offered to pay as part of the proposed payment plan. He claimed that Oppenheimer refused his offer and refused to accept partial payment of the outstanding loans.<sup>61</sup>

After the Award was issued, Pincus did not attempt to negotiate a settlement with Oppenheimer until the week of this hearing.<sup>62</sup> Again, Pincus did not specify the settlement terms offered to Oppenheimer, but he testified that Oppenheimer refused this offer as well.

Pincus has no documentation to substantiate his assertions that he tried to settle his debt to Oppenheimer. But even accepting his representations as true, Oppenheimer had no obligation to settle with him. Oppenheimer was entitled to full payment of the Award within 30 days of

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<sup>55</sup> JX-24; Tr. 109-10.

<sup>56</sup> Tr. 106-10; JX-9, at 2 (Response No. 4).

<sup>57</sup> Tr. 106-08; JX-9, at 2 (Response No. 4).

<sup>58</sup> Tr. 106-08; JX-24.

<sup>59</sup> See, e.g., *Gallagher*, 56 S.E.C. at 170 (rejecting inability-to-pay defense because, among other things, respondent failed to submit evidence that he could not have borrowed against a home he claimed he had transferred to his children).

<sup>60</sup> Tr. 31-32, 75-77, 83-85, 93; JX-9, at 3 (Response No. 25).

<sup>61</sup> Tr. 31-32, 75-77, 83-85, 93; JX-9, at 3 (Response No. 25).

<sup>62</sup> Tr. 83-85.

issuance and was under no obligation to accept any installment settlement plan. A good-faith effort to settle does not constitute a defense to a failure to pay an arbitration award.<sup>63</sup>

### III. Conclusion

I find, and the parties do not dispute, that Pincus has failed to pay any portion of the Award. I also find that Pincus has failed to establish any of the defenses permitted by FINRA rules or case law and specifically failed to prove the defense he asserted, a bona fide inability to pay.

“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>64</sup> Here, Pincus harmed the prevailing arbitration claimant (Oppenheimer) by causing it to wait for the satisfaction of the Award and to enforce the Award through litigation. “Conditionally suspending [Pincus] from association with FINRA members gives him an incentive to pay the Award. And inducing him to pay the award through suspension of his [FINRA] membership furthers the public interest and the protection of investors.”<sup>65</sup>

Accordingly, pursuant to Article VI, Section 3 of FINRA’s By-Laws and Rule 9559(n), Pincus is suspended from associating with any FINRA member in any capacity, effective as of the date this Decision is issued. The suspension shall continue until Pincus provides documentary evidence to FINRA showing that (1) the Award has been paid in full; (2) he and the claimant have agreed to settle the matter (and he is in compliance with the settlement terms); or (3) he has a petition pending in a United States Bankruptcy Court, or the debt has been discharged by a United States Bankruptcy Court.

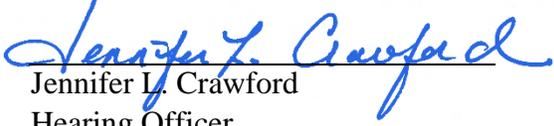
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<sup>63</sup> See *Tretiak*, 2001 NASD Discip. LEXIS 1, at \*15, 17; *Regulatory Operations v. Grady*, Expedited Proc. No. ARB170025, at 12-13 (OHO Dec. 14, 2017), <http://www.finra.org/sites/default/files/OHO-Grady-ARB170025-121417.pdf>.

<sup>64</sup> *Michael David Schwartz*, Exchange Act Release No. 81784, 2017 SEC LEXIS 3111, at \*18 (Sept. 29, 2017) (internal quotation marks omitted) (quoting *Gallagher*, 2003 SEC LEXIS 599, at \*15).

<sup>65</sup> *Schwartz*, 2017 SEC LEXIS 3111, at \*18 (internal quotation marks omitted).

In addition, Pincus is ordered to pay costs of \$2,502.67, which includes an administrative fee of \$750 and the hearing transcript cost of \$1,752.67.<sup>66</sup> The costs are due upon the issuance of this Decision.

  
Jennifer L. Crawford  
Hearing Officer

Copies to:

Robert J. Pincus (by overnight courier and first-class mail)  
Seth Huberman, Esq. (by email and first-class mail)  
Sora Lee, Esq. (by email and first-class mail)  
Deon McNeil-Lambkin, Esq. (by email)  
Ann-Marie Mason, Esq. (by email)

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<sup>66</sup> I have considered all of the arguments made by the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.