

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

REGULATORY OPERATIONS,

Complainant,

v.

KEITH PATRICK SEQUEIRA
(CRD No. 3127528),

Respondent.

Expedited Proceeding

No. ARB160035

STAR No. 20160510627

Hearing Officer–AHP

DECISION

November 18, 2016

Respondent is suspended from associating in any capacity with any FINRA member firm for his failure to pay an arbitration award. The suspension will automatically convert to a bar if he fails to provide sufficient documentary evidence to FINRA Regulatory Operations within 30 days after the date of this decision, showing: (1) he paid the award in full; (2) he entered into a written settlement agreement with Wells Fargo, and he is current in his obligations under the terms of the settlement agreement; or (3) he filed a bankruptcy petition in U. S. Bankruptcy Court pursuant to Title 11 of the United States Bankruptcy Code and the case is pending before the Bankruptcy Court (or the Bankruptcy Court has discharged the debt representing the award).

Appearances

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

For Respondent: Pro se.

DECISION

I. Introduction

FINRA's Office of Dispute Resolution sent Respondent Keith Patrick Sequeira a Notice of Suspension informing him that he would be suspended from associating with any FINRA member firm for his failure to pay an arbitration award. Sequeira stayed the suspension by filing

a hearing request with FINRA's Office of Hearing Officers. Sequeira's hearing request was granted.

Sequeira contended that he had timely filed a motion to vacate the arbitration award and that the motion had not been adjudicated on the merits. Thus, he argued that he could not be suspended under FINRA's By-Laws and rules for his failure to pay the award.

Regulatory Operations moved to dismiss Sequeira's hearing request, claiming that he had failed to assert a valid defense under Rule 9554.¹ Regulatory Operations argued that Rule 9554 requires that a hearing request must "demonstrate" a valid defense upon which relief could be granted.² And here, Regulatory Operations stressed that Sequeira had not identified and established a valid defense because the records it had obtained from the New Jersey Superior Court showed that the court had dismissed the complaint in which Sequeira sought to have the arbitration award vacated.³

I denied Regulatory Operations' motion to dismiss for two reasons. First, the motion was procedurally improper. As the National Adjudicatory Council recently held in *Dep't of Enforcement v. Lundgren*, Expedited Proceeding No. FPI150009, 2016 FINRA Discip. LEXIS 2, at *11 (Feb. 18, 2016),

[T]he rules governing these proceedings provide a streamlined, expedited adjudicatory process. That process begins with a request for hearing in which the respondent must assert his defenses, and it culminates in a prompt hearing at which the respondent presents those defenses. *See* FINRA Rule 9559(0(4) (requiring that the hearing be held within 30 days after a respondent files his hearing request) The rules do not provide an alternative, pre-hearing means for adjudicating defenses. Specifically, the rules do not authorize dispositive motions, such as motions to dismiss, motions for summary disposition, or similar procedural devices. Indeed, allowing such motions would inject an increased level of procedural complexity inconsistent with the expedited nature of these proceedings.

Second, FINRA Rule 9554 requires a respondent to assert one of the permitted defenses for failure to pay an arbitration award in an expedited proceeding, but it does not require a respondent to submit documentary proof with the hearing request conclusively establishing the asserted defense. Indeed, the purpose of the hearing is to give a respondent an opportunity to

¹ Mot. to Dismiss (Sept. 2, 2016).

² *Id.* at 1.

³ *Id.* at 6.

present evidence in support of the permitted defense he identified with specificity in the hearing request.⁴

The hearing was held on September 15, 2016.

For the reasons discussed below, I conclude that Sequeira failed to establish a valid defense to the Notice of Suspension. Sequeira is therefore suspended from associating with any FINRA member firm in any capacity.

II. Findings of Fact

A. Keith Patrick Sequeira

Sequeira was a registered broker with Wells Fargo Advisors, LLC (and its predecessors) from 1998 until 2010.⁵ Wells Fargo discharged Sequeira in August 2010. Following his discharge, Sequeira associated with Royal Alliance Associates, Inc. He is registered with FINRA as a general securities representative.

B. Sequeira's Motion to Vacate the Arbitration Award

An arbitration award was entered against Sequeira and in favor of Wells Fargo on August 5, 2014.⁶ Wells Fargo was awarded: (a) compensatory damages in the amount of \$47,462.56 plus interest at the rate of 2.45% per annum from August 25, 2010, until paid; (b) attorney's fees in the amount of \$30,000; and (c) filing fees in the amount of \$1,000.

FINRA sent Sequeira a copy of the arbitrator's decision by letter dated August 5, 2014.⁷ The letter informed Sequeira that he was obligated to pay the award in full by September 4, 2014.

Sequeira did not pay the arbitration award. Instead, on September 4, 2014, he filed a multi-count civil action against Wells Fargo, its attorneys, and FINRA in the Superior Court of New Jersey, Law Division, Monmouth County, *Keith P. Sequeira v. Wells Fargo Advisors, LLC*,

⁴ Order Denying Mot. to Dismiss (Sep. 3, 2016). However, a hearing request may be denied where a respondent fails to "set forth with specificity" one of the permitted defenses to a notice of suspension issued under Rule 9554. *See* Rule 9554(e).

⁵ CX-1, at 4. (Complainant's exhibits are labeled "CX"; Respondent's exhibits are labeled "RX"; and the parties' joint exhibits are labeled "JX.") Sequeira was hired by Prudential Securities Incorporated (Prudential) in 1998 as a financial advisor. In 2003, Prudential merged with Wachovia Securities, LLC (Wachovia). Wachovia later changed its name to Wells Fargo.

⁶ *Wells Fargo Advisors, LLC v. Sequeira*, No. 12-01869, 2014 FINRA Arb. LEXIS 698 (Aug. 5, 2014); JX-2.

⁷ JX-4.

Docket No. MON-L-003393-14.⁸ The complaint sought to vacate the arbitration award as well as to recover damages and other relief for various alleged wrongful acts and omissions. Sequeira however did not properly and timely effect service of process on the defendants. Thus, on March 27, 2015, the New Jersey Superior Court dismissed the complaint and marked the case closed.⁹

Sequeira then filed a motion for reconsideration, asking the court to reinstate the complaint to the active trial list. The court denied this motion on July 10, 2015.¹⁰ In an attached Statement of Reasons, the court recited the procedural history of the case and found that Sequeira had not provided proof of personal service of the complaint on the defendants as required by the applicable rules of procedure.¹¹ The court further noted that the case “remains closed.”¹²

For the next nearly 14 months, Sequeira took no further action with regard to the New Jersey lawsuit. Then, two years after the arbitration award was issued, and shortly after Wells Fargo advised FINRA that he had not paid the award, Sequeira attempted to perfect service of process on Wells Fargo.¹³ And on September 8, 2016, he filed a new motion with the New Jersey court to have the case reinstated to the active trial list.¹⁴ As of the date of the hearing in this proceeding, the New Jersey Superior Court had not ruled on this motion.¹⁵

III. Conclusions of Law

Article VI, Section 3(b) of FINRA’s By-Laws provides in pertinent part that FINRA may upon written notice suspend the registration of an associated person who fails 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 a motion has been denied.

Here, Sequeira concedes that the New Jersey Superior Court dismissed his lawsuit to have the arbitration award vacated. Still, he argues that his request that the court vacate the

⁸ JX-6.

⁹ JX-10. On April 10, 2015, the court reopened the case to consider Sequeira’s March 24, 2015, motion for an extension of time to file and serve an amended complaint, which the court had not addressed before it dismissed the complaint. The court denied the motion and noted that “this matter remains dismissed.” JX-12, at 2.

¹⁰ JX-14.

¹¹ JX-14, at 5.

¹² JX-14, at 7.

¹³ See RX-4 and RX-7.

¹⁴ CX-2.

¹⁵ I note that as of October 11, 2016, the New Jersey Superior Court’s public access Internet site reflects that that court denied Sequeira’s motion on September 30, 2016.

arbitration award is still “pending” before the court because the order of dismissal did not adjudicate the merits of his claims. Sequeira’s defense is without merit.

A. The Applicable Law

FINRA’s arbitration rules are “designed to provide a mechanism for the speedy resolution of disputes among members, their employees, and the public.”¹⁶ An essential element of FINRA’s arbitration process is the requirement that arbitration awards be honored promptly.¹⁷ Rule 13904(j) of FINRA’s Code of Arbitration Procedure for Industry Disputes requires that “[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.” When a court denies a motion to vacate or modify an award, the award must be paid immediately, absent a court order staying compliance with the award.¹⁸

The importance of prompt payment of arbitration awards is further reinforced by Interpretative Material (“IM”) 13000(e), which provides that failure to honor an arbitration award in accordance with FINRA rules “where timely motion has not been made to vacate or modify such award pursuant to applicable law” may be deemed conduct inconsistent with just and equitable principles of trade and a violation of FINRA Rule 2010. IM-13000 further provides that “[a]ll awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award ... upon receipt of the award.”

To ensure the prompt payment of arbitration awards, FINRA adopted FINRA Rule 9554 that allows for expedited suspension proceedings against members, associated persons, and formerly associated persons who have allegedly failed to timely pay arbitration awards.¹⁹ “FINRA’s expedited proceedings under Rule 9554 use the leverage of a potential suspension to help ensure that a firm or an associated person promptly pays a valid arbitration award.”²⁰ FINRA Rule 9554(a) provides:

¹⁶ *Regulatory Operations v. DiPietro*, Expedited Proceeding No. ARB140066, 2015 FINRA Discip. LEXIS 24, at *5 (June 8, 2015) (quoting *Herbert Garrett Frey*, 53 S.E.C. 146, 153 (1997)), *appeal dismissed*, Exchange Act Release No. 77398, 2016 SEC LEXIS 1036 (Mar. 17, 2016).

¹⁷ See *William J. Gallagher*, 56 S.E.C. 163, 171 (2003) (“Honoring arbitration awards is essential to the functioning of the NASD arbitration system.”); *Richard R. Pendleton*, 53 S.E.C. 675, 679 (1998) (“[w]e have repeatedly stated that the NASD arbitration system provides a speedy mechanism for settling disputes, which the NASD may foster by taking prompt action against those who fail ... to honor arbitration awards”); NASD Notice to Members 04-57, 2004 NASD LEXIS 90 (Aug. 2004); NASD Notice to Members 00-55, 2000 NASD LEXIS 63 (Aug. 2000).

¹⁸ NASD Notice to Members 00-55, 2000 NASD LEXIS 63, at *6 n.5 (Aug. 2000).

¹⁹ NASD Notice to Members 00-55, 2000 NASD LEXIS 63 (Aug. 2000); *Richard R. Pendleton*, 53 S.E.C. 675, 679 (1998) (“the NASD arbitration system provides a speedy mechanism for settling disputes, which the NASD may foster by taking prompt action against those who fail ... to honor arbitration awards”).

²⁰ FINRA Regulatory Notice 10-31, 2010 FINRA LEXIS 58, at *3 (June 2010).

If a member, person associated with a member or person subject to FINRA's jurisdiction fails to comply with an arbitration award ... FINRA staff may provide written notice to such member or person stating that the 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.

FINRA Rule 9554(a) implements Article VI, Section 3(b) of the FINRA By-Laws, which provides for the suspension of any associated person who does not pay an arbitration award.

B. Sequeira's Defense is Without Merit

Sequeira does not dispute that the New Jersey Superior Court dismissed the complaint he filed to have the arbitration award vacated. Nor does he claim to have filed any other motion or application to vacate or modify the award. Instead, he rests his defense on the argument that the dismissal for failure to prosecute does not constitute a denial of his request to have the award vacated because the court did not adjudicate the merits of his claims. Thus, he reasons, his request has been continuously pending before the New Jersey Superior Court since August 4, 2014. I reject Sequeira's arguments and conclude that his defense does not excuse his failure to honor the arbitration award. Sequeira's interpretation of FINRA's By-Laws, rules, and guidance is inconsistent with the purpose of FINRA's arbitration system.

Article VI, Section 3 of FINRA's By-Laws and FINRA's rules provide a strictly limited exception to the obligation that arbitration awards be paid in cash upon receipt of the award. Rule 13904(j) provides that all monetary awards shall be paid in full within 30 days unless a motion to vacate has been filed with a court of competent jurisdiction. And where a motion is properly and timely filed, the payment obligation is suspended while the motion is pending before the court. But once the court denies the motion without an order staying compliance with the award, payment of the award is due immediately.²¹

This scheme allows a person subject to a monetary award to withhold payment while the motion to vacate is pending before a court. But once the award is no longer subject to a bona fide challenge, the 30-day "grace period" to pay the award no longer applies and payment under the award is due immediately.²² The same is true whether the court dismisses the motion to vacate on substantive or procedural grounds. And it is particularly the case here, where the dismissal was the direct result of Sequeira's failure to prosecute the action. Contrary to Sequeira's argument, the fact that he filed a request to vacate the award timely under New Jersey law did not relieve him of the obligation to diligently pursue the case in good faith. To hold otherwise

²¹ See Notice to Members 00-55, 2000 NASD LEXIS 63, at *6 n.5. As an alternative to a court order staying compliance with the award, FINRA permits respondent may post a supersedeas bond in an amount acceptable to FINRA.

²² *Dep't of Enforcement v. LH Ross & Co.*, No. CAF040042, 2004 NASD Discip. LEXIS 57, at *11-12 (OHO Dec. 15, 2004).

would condone the unethical use of a dormant court action to forestall payment and to leverage a claimant into accepting less than the full amount due under the award.²³ This strict construction of Article VI, Section 3, FINRA's rules, and IM-13000 is consistent with FINRA's goal of fostering an effective and speedy dispute resolution system.²⁴

I also note that this case is quite distinct from one in which an administrative dismissal of a motion to vacate is cured promptly by the moving party. Here, Sequeira waited until after FINRA sent him the Notice of Suspension before he served the long-since dismissed complaint on Wells Fargo. He offered no reason for his delay other than to argue that he felt caught in limbo while he appealed the dismissal of two other lawsuits that he had filed against Wells Fargo. But Sequeira presented no evidence to show that he could not have perfected service of the complaint that contained his request to vacate the arbitration award within the time required by the New Jersey court rules.

In brief, Sequeira argued that the latest complaint he filed in 2014 was part of his on-going employment dispute with Wells Fargo. From the various documents Sequeira filed in this proceeding, it appears that he first filed suit against Prudential in 2008 for employment discrimination.²⁵ Sequeira refers to this lawsuit as "Sequeira I." The New Jersey Superior Court dismissed this case on the pleadings in 2010. Sequeira appealed the court's rulings.

While Sequeira I was pending in the New Jersey Superior Court, Sequeira continued to work at Wells Fargo. And in February 2010, he received a loan from Wells Fargo in connection with a loyalty award program. The loan was evidenced by an agreement and a promissory note. It is this promissory note that formed the basis of Wells Fargo's arbitration claim against Sequeira. The promissory note contained a mandatory arbitration clause.

In 2012, while Sequeira I was on appeal, Sequeira filed a second lawsuit ("Sequeira II"), alleging substantially the same claims as those dismissed in Sequeira I. The trial court dismissed Sequeira II in November 2013. Sequeira also appealed this dismissal, and on February 26, 2016, the appellate court upheld the dismissals of both Sequeira I and II.

Sequeira's argument that he could not perfect service of the 2014 complaint against Wells Fargo because Sequeira I and II were on appeal is frivolous. His two dismissed lawsuits

²³ Cf., *LH Ross & Co.*, 2004 NASD Discip. LEXIS 57, at *17-18 (finding that respondent's dilatory tactics to pry a compromise and settlement out of the claimant constituted unethical conduct and a violation of just and equitable principles of trade).

²⁴ See *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *25 n.15 (NAC June 2, 2000) ("The purpose of the arbitration system is 'to provide speedy resolution of disputes among members, their employees, and the public.'") (quoting *James M. Bowen*, 51 S.E.C. 1152, 1153 (1994)).

²⁵ In an amended complaint, Sequeira added Wachovia as a defendant. Sequeira also included other claims and respondents in Sequeira I. None of the claims in Sequeira I is relevant or material to this proceeding.

against and the FINRA arbitration proceeding underlying this matter (and related challenge to the arbitration award) are procedurally independent of one another.

C. Sequeira's Additional Defense

In his written submissions, Sequeira asserted an additional defense. He claimed that FINRA lacks authority under its "Constitution, By-Laws, or Rules" to take any action against him based upon the "self-serving assertions of an attorney who ... no longer represents a party in the subject arbitration."²⁶ Sequeira complains that FINRA instituted this proceeding at the request of the attorneys who represented Wells Fargo in the arbitration proceeding although they did not enter an appearance in the case and they later refused to accept service on Wells Fargo's behalf, claiming that they no longer represented Wells Fargo.²⁷ Although his argument is not well set out, Sequeira seems to argue that Wells Fargo (or possibly its attorney) is a necessary party to this expedited proceeding. Sequeira's defense is specious. FINRA's authority to institute a regulatory proceeding to suspend an individual who fails to honor an arbitration award is founded on Article VI, Section 3(b) of FINRA's By-Laws and FINRA Rule 9554. Under Rule 9554, once FINRA initiates an expedited proceeding, it is the respondent's burden to prove one of the permitted defenses to the Notice of Suspension. An arbitration claimant is not a necessary party to that determination.

IV. Conclusion

In sum, I conclude that the arbitration award became final when, on March 27, 2015, the New Jersey Superior Court dismissed Sequeira's complaint seeking to have the award vacated, and payment in full was then immediately due under FINRA's rules.

V. Order

Under Rule 9559(n), I have broad discretion to impose an appropriate sanction in this expedited proceeding. Rule 9559(n) provides that the Hearing Officer "may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and ... may also impose any other fitting sanction and may impose costs."

I suspend Sequeira from associating with any FINRA member firm in any capacity as of the date of this decision. The suspension shall automatically convert to a bar if Sequeira does not provide sufficient documentary evidence to FINRA Regulatory Operations on or before [insert date 30 days from decision date], showing: (1) he paid the award in full; (2) he entered into a written settlement agreement with Wells Fargo, and he is current in his obligations under the terms of the settlement agreement; or (3) he filed a bankruptcy petition in U. S. Bankruptcy

²⁶ JX-1, at 3.

²⁷ See JX-7; RX-4.

Court pursuant to Title 11 of the United States Bankruptcy Code and the case is pending before the Bankruptcy Court (or the Bankruptcy Court has discharged the debt representing the award).²⁸

Sequeira also is ordered to pay FINRA costs of \$1,294, which include an administrative fee of \$750 and hearing transcript costs of \$544.²⁹ These costs are due and payable as of the date of this decision.

Andrew H. Perkins
Chief Hearing Officer

Copies to:

Keith Patrick Sequeira (via FedEx and email)
Sora Lee, Esq. (via email)
Meredith MacVicar, Esq. (via email)
Ann-Marie Mason, Esq. (via email)

²⁸ In assessing this sanction, I considered the fact that Sequeira has never contended that he lacks the ability to pay the award in full. I also considered Sequeira's unethical dilatory conduct that he used to justify his refusal to pay the arbitration award.

²⁹ The Hearing Officer has considered all 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.