SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 85231 / March 1, 2019

Admin. Proc. File No. 3-17734r

In the Matter of the Application of

KEITH PATRICK SEQUEIRA

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF FINRA ACTION

Registered securities association suspended associated person of member firm because he failed to pay an arbitration award. *Held*, application for review is *dismissed*.

APPEARANCES:

Keith Patrick Sequeira, pro se.

Alan Lawhead, *Megan Rauch*, and *Jante Turner* for FINRA.

Appeal filed: January 19, 2018
Last brief received: May 11, 2018

Keith Patrick Sequeira, formerly a registered representative with Wells Fargo Advisors, LLC, seeks review of a FINRA decision indefinitely suspending him from association with any member firm because he failed to pay an arbitration award owed to Wells Fargo.[1] Based on our independent review of the record, we find no basis for Sequeira's contention that the indefinite suspension should be set aside. Accordingly, we dismiss his application for review.

[1] *Regulatory Operations v. Keith Patrick Sequeira*, Expedited Proceeding No. ARB160035 (Hearing Officer Dec. 21, 2017), *available at* https://www.finra.org/sites/default/files/OHO-Sequeria-ARB160035-122117_0.pdf.

I. Background

Sequeira joined the firm that eventually became Wells Fargo Advisors in September 1998 and remained employed there until he was terminated in August 2010.[2] In February 2010, Wells Fargo loaned Sequeira nearly $50,000 pursuant to a "Client Service and Loyalty Award—Level One Agreement" and promissory note. Both the Level One Agreement and promissory note specified that any disputes under them should be resolved before a FINRA arbitration panel.

A. A FINRA arbitration panel issued an award against Sequeira.

In May 2012, Wells Fargo commenced a FINRA arbitration against Sequeira by filing a statement of claim that asserted he had breached the Level One Agreement and promissory note. After Sequeira asserted various counterclaims against Wells Fargo, Sequeira filed a motion in a pending lawsuit he had brought against Wells Fargo in New Jersey state court to "transfer" the FINRA arbitration to that court.[3] In November 2013, the trial court judge denied the motion to transfer on the grounds "that the promissory note contained an arbitration clause which 'clearly stated that "any controversy arising out of this [n]ote . . . shall be brought before the facility of . . . [FINRA] to the exclusion of all others,"'" and that the dispute "was properly in arbitration."[4]

In August 2014, a FINRA arbitration panel entered an award against Sequeira and in favor of Wells Fargo in the amount of $78,462.56, plus interest (the "Award"). FINRA properly served Sequeira with notice of the Award and of his obligation to pay it within 30 days. FINRA also informed Sequeira and Wells Fargo that it "request[s] that prevailing claimants notify us in writing when their awards have not been paid within 30 days of receipt of the award."

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[2] We take official notice of Sequeira's employment history in the Central Registration Depository. *See Aliza A. Manzella*, Exchange Act Release No. 77804, 2016 WL 489353, at *1 & n.3 (Feb. 8, 2016). To the extent that they do not appear in the record before FINRA, we also take official notice of the documents cited below in Sequeira's various state court lawsuits. *See* Rule of Practice 323, 17 C.F.R. § 201.323 (providing that "[o]fficial notice may be taken of any material fact which might be judicially noticed by a district court of the United States"); *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (explaining that "documents on file in federal or state courts" are properly the subject of judicial notice); *McDonald v. Jones*, 427 F. App'x 84, 85 n.1 (3d Cir. 2011) (stating that "[l]ike the District Court, we take judicial notice of the state court proceedings, which are a matter of public record").

[3] *See Sequeira v. Wells Fargo & Co.*, Docket No. L–00925–12, 2016 WL 715689, at *4, *6 (N.J. App. Div. Feb. 24, 2016) (setting forth procedural history). The lawsuit also asserted certain claims that had been dismissed with prejudice in a separate, earlier lawsuit. *Id.* at *2.

[4] *See id.*, 2016 WL 715689, at *4, *6 (setting forth and quoting trial court findings). The New Jersey court also dismissed the lawsuit, and an appellate court affirmed the dismissal and denial of Sequeira's motion to transfer. *Id.* at *7.

Sequeira did not pay the Award. Rather, he sought to have the Award vacated in a new state court action he filed against Wells Fargo on September 4, 2014.[5] Because Sequeira failed to serve the summons and complaint on the defendants, the state court dismissed this lawsuit without prejudice for lack of prosecution on March 27, 2015, and marked the case "closed."[6]

Subsequently, the court denied Sequeira's requests to file an amended complaint and to reopen the lawsuit.[7] The court explained that Sequeira "still . . . ha[d] not . . . provided [it] with any documentation that Defendants were properly personally served with the complaint pursuant to the Court Rules," nor had he demonstrated "good cause or exceptional circumstances" for his failure to provide timely proof of service.[8] Thus, "th[e] case remain[ed] closed."[9]

B. FINRA instituted proceedings against Sequeira after he failed to pay the Award.

In July 2016, nearly two years after the FINRA arbitration panel's decision, Wells Fargo informed FINRA that Sequeira had not paid the Award and that his action seeking to vacate the arbitration award had been dismissed. On July 29, 2016, FINRA instituted expedited proceedings against Sequeira under FINRA Rule 9554 by serving him with a notice of suspension.[10] The notice stated that based on his failure to comply with the Award, FINRA would suspend Sequeira from association with any member firm on August 19, 2016, unless he demonstrated before that date that he met one of four defenses: he had (1) paid the Award in full; (2) entered into a settlement agreement concerning the Award and was in compliance with his obligations thereunder; (3) timely filed an action to vacate or modify the Award and such motion had not been denied; or (4) filed for bankruptcy protection and the award had not been

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5 *See Sequeira v. Wells Fargo Advisors*, Docket No. A-1995-16T1, 2018 WL 3018882, at *1 (N.J. App. Div. June 18, 2018) (setting forth trial court procedural history).

6 *Sequeira v. Wells Fargo*, Docket No. L-3393-14 (N.J. Sup. Ct. Mar. 27, 2015) (unpublished).

7 *Sequeira v. Wells Fargo*, Docket No. L-3393-14 (N.J. Sup. Ct. July 10, 2015) (unpublished).

8 *Id.* at 5.

9 *Id.*

10 *See* Rule 9554(a) ("If a . . . person associated with a member . . . fails to comply with an arbitration award . . . , FINRA staff may provide written notice to such . . . person stating that the failure to comply within 21 days of service of the notice will result in . . . a suspension from associating with any member."); *see also* FINRA Rule 9554(d) ("The suspension . . . referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.").

deemed by a federal court to be non-dischargeable.[11] The notice also stated that Sequeira could request a hearing, which would stay the effective date of the suspension.[12]

On August 16, 2016, Sequeira timely requested a hearing before FINRA, which stayed his suspension. Around that time in 2016, Sequeira served on Wells Fargo his September 2014 state court complaint challenging the Award. Sequeira subsequently requested twice that his lawsuit be reinstated, but the state court found that he had failed to establish good cause for reinstatement, denied his requests, and explained that the "case remain[ed] closed."[13]

In November 2016, a FINRA hearing officer issued a decision finding that Sequeira had not paid the Award in full or established a recognized defense for his nonpayment.[14] The hearing officer found that the Award became fully due to Wells Fargo upon the March 2015 dismissal of Sequeira's lawsuit challenging the Award. The hearing officer also rejected Sequeira's argument that because his lawsuit had been dismissed without prejudice, rather than on the merits, it remained "pending" and thus presented a valid basis to refuse to pay the Award.

The hearing officer suspended Sequeira from association with any FINRA member firm in any capacity and imposed fees and costs on him. Sequeira's suspension automatically converted to a bar if he failed to establish within 30 days that he had (1) paid the Award in full; (2) entered into a written settlement agreement with his former employer, with which he was current; or (3) filed a bankruptcy petition and the case was pending (or the debt was discharged). The hearing officer did not specify if satisfying these conditions would terminate the bar and noted in a footnote that, in imposing the sanction, he had considered what he termed "Sequeira's unethical dilatory conduct that [Sequeira] used to justify his refusal to pay the arbitration award."

C. Sequeira appealed to the Commission, the Commission remanded to FINRA, and following the remand FINRA imposed an indefinite suspension on Sequeira.

In December 2016, Sequeira appealed FINRA's decision to the Commission. We remanded for FINRA to further explain the nature of and basis for the sanction.[15] We explained that, based on the record before us, it was unclear whether we should apply the standard of

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11 *See Order Approving Proposed Rule Change Relating to FINRA Rule 9554*, Exchange Act Release No. 62211, 2010 WL 2233764, at *2 (June 2, 2010).

12 *See supra note* 10; FINRA Rule 9559(c)(1) (stating that a timely request for a hearing stays the effectiveness of a notice of suspension in a Rule 9554 expedited proceeding).

13 *See Sequeira v. Wells Fargo Advisors LLC*, Docket No. L-3393-14, at 2 (Sept. 30, 2016) (unpublished); *Sequeira v. Wells Fargo Advisors LLC*, Docket No. L-3393-14, at 4 (Dec. 2, 2016) (unpublished).

14 *Regulatory Operations v. Keith Patrick Sequeira*, Expedited Proceeding No. ARB160035 (Hearing Officer Dec. Nov. 18, 2016), *available at* https://www.finra.org/sites/default/files/OHO_Sequeira_ARB160035_111816_0.pdf.

15 *Keith Patrick Sequeira*, Exchange Act Release No. 81786, 2017 WL 4335070, at *5 (Sept. 27, 2017).

review under Section 19(e) of the Securities Exchange Act of 1934 applicable to final disciplinary sanctions imposed by self-regulatory organizations ("SROs") or the standard of review under Section 19(f) applicable to nondisciplinary bars imposed by SROs.[16]

In our decision remanding to FINRA, we stated that we "have determined that SRO action indefinitely suspending a person for failure to pay an arbitration award until certain conditions have been met effectively bars the person from association with a member."[17] In past cases of indefinite suspensions for failure to pay an arbitration award that terminated on compliance with the award or through other events, we had applied the standard specified in Exchange Act Section 19(f) "because the suspension was not imposed as a disciplinary sanction" but rather to secure compliance with the award.[18] But unlike in other arbitration cases we had reviewed, the hearing officer in Sequeira's case had "imposed a suspension that automatically converted into a bar" without specifying how the bar could be lifted, and the "decision suggest[ed] that [t]he [hearing officer] did so to sanction Sequeira for conduct inconsistent with just and equitable principles of trade."[19] As a result, we could not determine the appropriate standard of review because FINRA "failed to clearly explain the precise terms of the sanction and the basis for it."[20] We remanded for FINRA to provide that explanation.[21]

On December 21, 2017, a FINRA hearing officer issued an expedited decision following remand which indefinitely suspended Sequeira, specified the conditions for having the suspension lifted, and did not provide that it would automatically convert to a bar.[22] The hearing officer explained that the decision was intended "to make clear that the sanction imposed is not disciplinary in nature, but [rather], consistent with other expedited proceedings instituted under FINRA Rule 9554, is 'designed to influence Sequeira to comply with the arbitration award.'"[23] FINRA suspended Sequeira until he "provides sufficient documentary evidence to FINRA Regulatory Operations showing that he: (1) paid the award in full; (2) entered into a written settlement agreement with Wells Fargo, and is current in his obligations under the terms of the settlement agreement; or (3) 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)."[24] On January 19, 2018, Sequeira filed his application for review of "FINRA's decision following remand."

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16 *Id*. at *4-5. The two standards are "similar" but not identical. *Id.* at *3 & nn.14 & 15.

17 *Id.* at *4.

18 *Id.*

19 *Id.*

20 *Id.* at *5.

21 *Id.*

22 *See supra* note 1.

23 *Id.* at 3 (quoting *Sequeira*, 2017 WL 4335070, at *4).

24 *Id.* at 7-8.

II. Analysis

A. FINRA's indefinite suspension pending Sequeira's payment of the Award or satisfaction of other conditions is not a disciplinary sanction.

We previously remanded this case to FINRA "to further explain the nature of and basis for the sanction [it] imposed on Sequeira" so that we could determine the applicable standard of review.[25] In its decision following the remand, FINRA indefinitely suspended Sequeira, did not provide that the suspension would convert to a bar, and explained that it imposed the suspension to secure Sequeira's compliance with the Award rather than to discipline him for misconduct. The indefinite suspension under review is not a disciplinary sanction.[26]

Sequeira argues that portions of FINRA's first decision, and an earlier procedural order referring to the expedited proceeding as a "disciplinary proceeding," show that FINRA imposed a disciplinary sanction. This argument fails because Sequeira relies exclusively on documents that predate our opinion remanding the matter to FINRA for clarification. We remanded for FINRA to clarify its decision since some portions of its first decision suggested that FINRA had imposed a disciplinary sanction while other portions suggested it had not.

Sequeira asks us to effectively ignore FINRA's clarification on remand. Indeed, he takes issue with FINRA's decision on remand because the portions of its first decision that he contends show it imposed a disciplinary sanction "were either not repeated in its [r]emand [d]ecision or only repeated to the extent that [they] did not conflict with FINRA's" clarification of its sanction. It is true that FINRA's first decision was not clear. But the purpose of our remand was to provide an opportunity for FINRA to clarify whether it sought to discipline Sequeira for having failed to pay the Award or whether it sought to suspend him in order to secure his compliance with the Award. In its decision following remand, FINRA clarified that the purpose of its proceeding is the latter and conditioned his suspension accordingly. FINRA's decision on remand is the decision subject to our review now.[27]

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25 *Sequeira*, 2017 WL 4335070, at *5.

26 *See Order Approving Proposed Rule Change Relating to FINRA Rule 9554*, 2010 WL 2233764, at *2 (explaining that expedited proceedings indefinitely "suspending a respondent for failing to pay a previously imposed arbitration award" are "[u]nlike . . . disciplinary cases" and that their "the main goal" "is to encourage respondents to comply with the law or previously imposed [arbitration] awards, not to sanction them for past misconduct").

27 *AutoChina Int'l*, Exchange Act Release No. 79010, 2016 WL 5571626, at *4 n.21 (Sept. 30, 2016) ("AutoChina cites findings in FINRA's prior decision that it contends are unsupported by the record as evidence that FINRA 'exhibited bias against the company.' But our review is based on FINRA's decision on remand, and that decision does not contain those findings.").

For these reasons, we review FINRA's decision to indefinitely suspend Sequeria until he either pays the Award or satisfies other conditions under Exchange Act Section 19(f).[28]

B. Sequeira's appeal of FINRA's decision must be dismissed under Section 19(f).

Exchange Act Section 19(f) requires that we dismiss Sequeira's appeal from the decision on remand if we find that the specific grounds on which FINRA based its action exist in fact; that FINRA's action was in accordance with its rules; and that those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[29] We find that FINRA's action on remand meets this standard and accordingly dismiss Sequeira's appeal.[30]

1. The specific grounds for the indefinite suspension exist in fact.

We find that the specific grounds on which FINRA based Sequeira's indefinite suspension exist in fact. FINRA rested its determination to suspend Sequeira under Rule 9554 on three findings: (1) the Award was entered, (2) Sequeira did not pay it, and (3) Sequeira failed to establish a defense for his failure to pay that is cognizable under FINRA Rule 9554. Sequeira concedes the first two grounds but contends that he established a cognizable defense. Article VI, Section 3 of FINRA's By-Laws permits FINRA to suspend an associated person for failure to pay an arbitration award unless the person moves to vacate the award and the motion has not been denied.[31] Sequeira asserts that, because the lawsuit in which he requested that the Award be vacated was dismissed without prejudice, his request was never "denied." We disagree.

Sequeira's argument fails for three reasons. First, the state court rejected Sequeira's attempt to have the Award vacated. That is a denial of his request under the plain meaning of the

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[28] *William J. Gallagher*, Exchange Act Release No. 47501, 2003 WL 1125378, at *2 (Mar. 14, 2003) (stating that "[b]y imposing an indefinite suspension until Gallagher submits proof that he has satisfied certain requirements, the NASD has effectively barred Gallagher from associating with an NASD member," and concluding that "[o]ur review of Gallagher's appeal accordingly is governed by Section 19(f) of the Securities Exchange Act of 1934"); *see also Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 WL 1071562, at *2 (Mar. 17, 2016) ("Section 19(f) of the Securities Exchange Act of 1934 governs our review of an SRO action imposing an indefinite suspension contingent on the payment of an arbitration award.").

[29] 15 U.S.C. § 78s(f). Section 19(f) also requires that the action not impose an undue burden on competition. *Id.* Sequeira does not claim, and we see no basis for concluding, that his suspension imposes an unnecessary or inappropriate burden on competition.

[30] Although Sequeira asserts that FINRA imposed a disciplinary sanction, he does not argue that the choice of the standard of review determines the outcome.

[31] FINRA By-Laws, Art. VI, Sec. 3(b) ("The Corporation after 15 days notice in writing, may . . . suspend from association with any member any person, for failure to comply with an award of arbitrators properly rendered pursuant to the Corporation's Rules, where a timely motion to vacate or modify such award . . . has been denied . . . .").

term.[32] FINRA's By-Laws do not require that a request to vacate an arbitration award be denied on the merits. Nor do they distinguish requests to vacate arbitration awards that are denied "with prejudice" from those that are denied "without prejudice."[33] FINRA rules thus do not require that an action seeking to vacate an arbitration award be dismissed with prejudice before FINRA may suspend an associated person for failing to pay the award.

Second, 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 that award.[34] We see no reason to treat the possibility that a dismissed lawsuit seeking to vacate an arbitration award might be reinstated by the court that dismissed it or might be refiled in a different court any differently. In both situations, the litigant's attempt to have the arbitration award vacated has been rejected. The possibility that the litigant may obtain relief eventually does not change the fact that the attempt to have the award vacated has been denied, which renders the litigant subject to a suspension for failing to pay the award. Any assumption that Sequiera will eventually obtain relief would be particularly inappropriate here given that the trial court has repeatedly rejected Sequeira's attempts to reinstate his complaint and that an appellate court recently affirmed those decisions.[35]

Third, accepting Sequeira's argument would create an opportunity for abuse. "FINRA's expedited proceedings for failure to pay an arbitration award use the leverage of a potential suspension to help ensure that . . . an associated person promptly pays a valid arbitration award."[36] FINRA would not be able to use such proceedings to accomplish this end if an associated person could file but not serve a lawsuit seeking to vacate an award, allow the lawsuit to be dismissed without prejudice for failure to prosecute, and then avoid suspension on the basis of the dismissed lawsuit.[37] Sequeira's argument means that FINRA could not suspend a person in an expedited proceeding for failing to pay an award, even if the request to vacate the award

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[32] *See* Black's Law Dictionary 353(abridged 7th ed. 2000) (defining "denial" as a "refusal or rejection").

[33] FINRA By-Laws Art. VI, Sec. 3(b) (authorizing suspension where "motion [to vacate] has been denied").

[34] *Gallagher*, 2003 WL 1125378, at *4 (finding that NASD Rules did not require it to "delay its process until all appeals of . . . denial [of a motion to vacate an arbitration award] are exhausted"); *accord DiPietro*, 2016 WL 1071562, at *3 ("FINRA's rules do not require it to delay the effective date of a suspension or the commencement of suspension proceedings until after resolution of an appeal from a district court's denial of a motion to vacate.").

[35] *See Sequeira v. Wells Fargo Advisors*, 2018 WL 3018882, at *2 (affirming dismissal and denial of reinstatement of the complaint "in light of the pattern of non-conformance by Sequeira with [New Jersey] rules of court and court orders").

[36] *Order Approving Proposed Rule Change Relating to FINRA Rule 9554*, 2010 WL 2233764, at *1.

[37] *See id.* ("When FINRA's efforts to suspend a respondent who has not paid an award have been defeated, a claimant is much less likely to be paid.").

has been dismissed, because the lawsuit might be revived at some point. We find no support for this position, and in fact would be contrary to the purpose of such expedited proceedings.

2. The suspension was in accordance with FINRA's rules.

We also find that Sequeira's suspension was in accordance with FINRA's Rules. FINRA Rule 9554 provides for expedited proceedings to suspend from association with a member firm an associated person who has failed to pay an arbitration award. The rule authorizes FINRA to initiate the proceedings by issuing a written notice that specifies the grounds for, and the effective date of, the suspension and advises the respondent of his right to file a written request for a hearing. It is undisputed that FINRA's written notice to Sequeira complied with these requirements and was properly served, that FINRA conducted a hearing pursuant to Rule 9559 upon Sequeira's request, and that following the hearing it issued a written decision. On remand, FINRA properly clarified its decision at our request. We perceive no deficiency under FINRA rules with this process, and Sequeira identifies no such defect. As explained above, FINRA's decision to suspend Sequeira was consistent with its By-Laws and rules.

3. The FINRA rules at issue are, and were applied in a manner, consistent with the purposes of the Exchange Act.

The FINRA rules at issue are also consistent with the purposes of the Exchange Act. Exchange Act Section 15A(b)(6) requires that FINRA's rules be designed to protect investors and the public interest.[38] And allowing "members or their associated persons that fail to pay arbitration awards to remain in the securities industry presents regulatory risks."[39] As a result, Rule 9554 "further[s] FINRA's investor protection mandate by promoting a fair and efficient process for taking action to encourage members and associated persons to pay arbitration awards."[40] "The payment of arbitration awards and the facilitation of the arbitration process, in general, will assist in the protection of investors and further the public interest."[41]

We also find that FINRA's application of Rule 9554 to Sequeira was consistent with these purposes. "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."[42] Sequeira has harmed the prevailing arbitration claimant (Wells Fargo) by causing it to wait for satisfaction of the Award. Conditionally suspending Sequeira from association with FINRA members gives him an incentive to pay the

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38 15 U.S.C. § 78*o*-3(b)(6).

39 *Order Approving Proposed Rule Change Relating to FINRA Rule 9554*, 2010 WL 2233764, at *2.

40 *Id.* at *3.

41 *Order Granting Approval of Proposed Rule Change Relating to Suspension or Cancellation of Membership or Registration for Failure to Comply with Arbitration Awards*, Exchange Act Release No. 31763, 1993 WL 25192, at *3 (Jan. 26, 1993).

42 *Gallagher*, 2003 WL 1125378, at *4.

Award. And inducing Sequeira to pay the Award through suspension of his ability to associate with FINRA members "furthers the public interest and the protection of investors."[43]

C. Sequeira provides no basis for setting aside FINRA's decision.

Sequeira's additional attacks on FINRA's decision fail. First, Sequeira contends that FINRA exceeded the scope of its "statutorily delegated . . . function" under the Exchange Act by compelling him to arbitrate Wells Fargo's claims based on an arbitration clause that he asserts is unenforceable under New Jersey state law. Sequeira argues that the Award, and his suspension for failing to pay it, are thus "ultra vires," "void for lack of jurisdiction," and "impeachable."

This argument fails because "[a]n arbitration award cannot be collaterally attacked by a respondent in [a] FINRA expedited proceeding."[44] Permitting that "tactic would subvert [FINRA's] procedures, which are designed to promote prompt payment of arbitration awards."[45] Rather than a collateral attack, Sequeira's "remedy for his dissatisfaction with the arbitration award was to move for the award's vacation or modification or to appeal the award."[46]

Sequeira argues that his challenge to the Award is not a collateral attack. But "[a] 'collateral attack' is '[a]n attack on a judgment in a proceeding *other than a direct appeal*.'"[47] Because Sequeira seeks to challenge the Award by appealing from FINRA's decision on remand in the Rule 9554 expedited proceeding, and this proceeding is not a direct appeal from the FINRA arbitration, Sequeira's challenge to the Award is an impermissible collateral attack.

As discussed above, the proper method for Sequeira to challenge the Award was to seek vacatur in a "court of competent jurisdiction."[48] But a state court rejected Sequeira's attempts to have the Award vacated. Although Sequeira attacks the trial judge's rulings in that proceeding

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43 *Id*.

44 *DiPietro*, 2016 WL 1071562, at *4.

45 *Robert Tretiak*, Exchange Act Release No. 47534, 2003 WL 1339182, at *5 (Mar. 19, 2003); *see also John G. Pearce*, Exchange Act Release No. 37217, 1996 WL 254675, at *2 (May 14, 1996) (rejecting applicant's attack on "the fairness of the underlying arbitration proceeding" because permitting "a party dissatisfied with an arbitral award to attack it collaterally for legal flaws" "would subvert the salutary objective that the NASD's [arbitration] resolution seeks to promote").

46 *Richard R. Pendelton*, Exchange Act Release No. 40237, 1998 WL 405698, at *3 (July 21, 1998).

47 *Wall v. Kholi*, 562 U.S. 545, 552 (2011) (emphasis in original) (quoting Black's Law Dictionary 298 (9th ed. 2009)).

48 *See* FINRA Rule 13904(j) ("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.").

on the ground that the judge "held himself above the law," that is just another impermissible collateral attack. Sequeira's direct appeal of the trial court's decisions was recently rejected.[49]

In any case, when Sequeira asked a state court to transfer the arbitration dispute between Sequeira and Wells Fargo to court, the state court found that the dispute was "properly in arbitration." Sequeira's appeal of that decision was later denied.[50]

Second, Sequeira claims that "FINRA knowingly engaged in multiple acts of common law and statutory fraud" from which it is not entitled to immunity from suit. He contends that FINRA made a "continuing" misrepresentation that the dispute between Sequeira and Wells Fargo was subject to arbitration and an additional misrepresentation by stating in the decision on remand that the expedited proceeding against him was nondisciplinary.

These claims do not provide a basis to overturn FINRA's action against Sequeira. Sequeira does not establish that FINRA made misrepresentations of fact. His claim that FINRA lied by stating that the dispute between him and Wells Fargo was subject to arbitration is another improper collateral attack on the Award. And FINRA's statement on remand that the proceeding against him was nondisciplinary—because the suspension would terminate upon payment of the Award rather than convert to a bar that did not specify how it could be lifted—was made in response to our prior opinion requesting clarification. Sequeira's dissatisfaction with FINRA's legal conclusions, and its arguments in this proceeding, is not a basis to allege fraud.

Third, Sequeira contends that FINRA "colluded" with Wells Fargo by ordering arbitration, issuing the Award, and commencing the expedited proceeding in which it suspended him. To the extent that this allegation challenges the arbitration or the Award, it is yet another improper collateral attack. With respect to FINRA's subsequent decision to institute the expedited proceeding and resolve it against Sequeira, Sequeira's allegations of improper conspiratorial conduct fail. Despite Sequeira's claims to the contrary, "communications between FINRA and the prevailing party in arbitration before the institution of Rule 9554 proceedings are a standard part of the process for enforcing awards."[51] FINRA requested that Wells Fargo inform it if Sequeira failed to pay the award, and Wells Fargo provided FINRA with a valid basis to commence the expedited proceeding against him by informing it that he had not.[52]

Fourth, Sequeira argues that FINRA "libeled" him by "knowingly and falsely publishing the falsehood" in its first decision that he was "unethical" in a footnote that discussed its basis for imposing the bar. But we remanded that decision to FINRA for further clarification, and in

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49 *See supra note* 35.

50 *See supra* note 4.

51 *Michael David Schwartz*, Exchange Act Release No. 81784, 2017 WL 4335068, at *6 (Sept. 29, 2017) (rejecting applicant's allegation that "FINRA colluded with [arbitration claimant]'s outside counsel 'to bring the expedited proceeding'").

52 *See id.* (stating that "Schwartz's failure to pay the Award provided FINRA with a basis for instituting the Rule 9554 proceeding") (citing FINRA Rule 9554(a)).

the decision now under review FINRA neither imposed a bar nor repeated that statement. In any event, Sequeira's defamation allegations are outside the scope of this proceeding.[53]

Finally, Sequeira argues that he "lost his livelihood" and "suffered irreparable harm" because his suspension means he can no longer work in the securities industry. But Sequeira's current inability to associate with a FINRA member firm is nothing more than a "natural and foreseeable consequence[]" of the suspension[54]—and Sequeira can terminate that suspension at any time by paying the Award or otherwise establishing a valid defense to it.[55] Sequeira also attributes these negative consequences to the bar that FINRA imposed in its first decision, but as explained above that sanction has been withdrawn and is not before us in this appeal.

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[53] *See Beatrice J. Feins*, Exchange Act Release No. 33374, 1993 WL 538913, at *3 n.14 (Dec. 23, 1993) (declining to reach applicant's claim that SRO's action violated the federal Age Discrimination Act of 1975 and New York State's Human Rights Law because the claims under these statutes "are outside our jurisdiction, and redress, if any, under these statutes must be pursued in other forums"); *see also Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 WL 1902072, at *2 (Apr. 30, 2008) ("SRO action is not reviewable merely because it adversely affects the applicant."); *cf. Morgan Stanley & Co.*, Exchange Act Release No. 39459, 1997 WL 802072, at *4 (Dec. 17, 1997) (finding that allegation that SRO action "had a negative impact on . . . firm's business" is not sufficient to establish Commission jurisdiction).

[54] *See Michael H. Johnson*, Exchange Act Release No. 75894, 2015 WL 5305993, at *4 n.20 (Sept. 10, 2015).

[55] *See Order Approving Proposed Rule Change Relating to FINRA Rule 9554*, 2010 WL 2233764, at *3 (noting that individuals subject to suspension "can avoid regulatory action by paying the award, reaching a settlement with the customers (which can include payment plans), moving to vacate the award, or filing for bankruptcy"); *cf. Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 WL 503416, at *5 (Feb. 11, 2013) (finding in order denying motion to stay bar order that respondent failed to establish that he would suffer irreparable harm without a stay because he "could end the suspension—and asserted harm—any time before [a date certain] by complying with FINRA's requests" for production of documents).

In sum, we find that the specific grounds on which FINRA based Sequeira's suspension exist in fact, that the suspension was imposed in accordance with FINRA's rules, and that those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. Accordingly, we dismiss Sequeira's application for review.

An appropriate order will issue.[56]

By the Commission (Chairman CLAYTON and Commissioners JACKSON, PEIRCE and ROISMAN).

Brent J. Fields
Secretary

[56] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85231 / March 1, 2019

Admin. Proc. File No. 3-17734r

In the Matter of the Application of

KEITH PATRICK SEQUEIRA

For Review of Action Taken by

FINRA

ORDER DISMISSING APPLICATION FOR REVIEW

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by Keith Patrick Sequeira is dismissed.

By the Commission.

Brent J. Fields
Secretary